



UNIVERSITY OF TRENTO - Italy  
School of International Studies

# **From International to EU-Driven Statebuilding: the Reorganization of Sovereignty in Post- Dayton Bosnia and Herzegovina**

**Ph.D. Dissertation**

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# List of Abbreviations

ARDA	Accredital Regional Development Agency of Northwest BiH
BiH	Bosnia and Herzegovina
CBB&H	Central Bank of Bosnia and Herzegovina
CoE	Council of Europe
COWEB	Group for the Western Balkans (European Council)
CFSP	European Common Foreign and Security Policy
CSCE	Conference for Security and Cooperation in Europe (1973-1995)
DPA	Dayton Peace Accords
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ENP	European Neighborhood Policy
EP	European Parliament
ESDP	European Security and Defense Policy
EU	European Union
EUFOR	European Force 'Mission Althea'
EUPM	European Union Police Mission to BiH
EUSR	Special Representative of the EU to BiH
FBiH	Federation of Bosnia and Herzegovina (Entity of the Bosnian state)

FIPA	Foreign Investment Promotion Agency (Bosnian state agency)
FYROM	Former Yugoslavian Republic of Macedonia
IEBL	Inter-Entity Boundary Line
GAERC	General Affairs and External Relations Council (EU)
HDZ-BiH	Croatian Democratic Union of BiH (Bosnian party)
HDZ-1990	Croatian Democratic Union 1990 (Bosnian party)
HR	High Representative
ICISS	International Commission on Intervention and State Sovereignty
ICG	International Crisis Group
ICTY	International Criminal Tribunal for the former Yugoslavia
IFOR	Peace Implementation Force (NATO)
MEP	Member of the European Parliament
NATO	North Atlantic Treaty Organization
NERDA	Northeast Regional Development Association
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OHR	Office of the High Representative
OSCE	Organization for Security and Cooperation in Europe
PDP	Party of Democratic Progress (Bosnian party)
PIC	Peace Implementation Council
PIC-SB	Steering Board of the Peace Implementation Council
RDA	Regional Development Agency (Bosnian agency)

REDAH	Regional Economic Development Association Herzegovina
REZ	Regional Development Agency for Central BiH Region
RS	Republika Srpska (Entity of the Bosnian state)
RSNA	National Assembly of Republika Srpska
R2P	Responsibility to Protect
RS	Republika Srpska
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process
SBiH	Party for Bosnia and Herzegovina (Bosnian party)
SDA	Party of Democratic Action (Bosnian party)
SDP	Social Democratic Party of Bosnia and Herzegovina (Bosnian party)
SDS	Serbian Democratic Party (Bosnian party)
SEE	South-East Europe
SERDA	Sarajevo Economic Region Development Agency
SFOR	Peace Stabilization Force (NATO)
SIPA	State Investigation and Protection Agency (Bosnian state agency)
SNSD	Alliance of Independent Social Democrats (Bosnian party)
SoS	Secretary of State (US Department of State)
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNSC	United Nations Security Council
USIP	U.S. Institute for Peace

# Abstract

*International statebuilding projects are characterized by a sovereignty paradox: external actors compromise crucial aspects of sovereignty in order to rehabilitate domestic political authorities in the full exercise of their legitimate governing prerogatives. Scholars also posit that an understanding of sovereignty as responsibility provides this paradox with a justification and an ethic. Reflecting on the statebuilding experience in Bosnia and Herzegovina (BiH), with all of its contradictions and inconsistencies, two questions emerge. Is the sovereignty paradox valid in all statebuilding projects? Do the ideas of sovereignty as a capacity and a responsibility genuinely inform international policy-makers?*

*In the case of BiH, the EU complicates the sovereignty paradox. As a post-nation state organization that 'educates' prospective members, Brussels promotes institutional reorganization in a state that is still 'in-the-making' with a view to its integration into supranational structures. While containing dispersions of sovereignty and suppressing centripetal forces with the prospect of membership and the activities of its field offices, the EU seeks to prepare autochthon elites to relinquish sovereign prerogatives and join the supra-national Union. Acknowledging this qualitative difference between international statebuilding projects and EU member-statebuilding initiatives, this thesis explores how Brussels both 'thinks and operates'. Building on the literature on sovereignty and statebuilding, the empirical analysis examines two aspects of the current Bosnian reform agenda: the constitution-making process and police reform.*

*By looking at the specific attitude of EU policy-makers towards the reform process of the Bosnian constitution, this thesis sheds light on a peculiar 'EU hands-up statebuilding' approach. The ambiguity of throwing its hands up when called upon to take direct responsibility for political reconciliation and constitutional reform conceals the inherent difficulties for Brussels in resolving two crucial operational dilemmas: bottom-up vs. top-down statebuilding, and technical presence vs. complex post-war stabilization.*

*The account of the reform of the Bosnian police shows that the tendency to throw the hands up in a denial of responsibility for complex political undertakings is combined, to use another powerful metaphor, with a 'hands-off modus operandi'. The EU promotes its own statebuilding policies by insisting on technical adjustments, attempting a process of statebuilding by induction. Moreover, the EU-sponsored police reform is a case of mismanaged conditionality. This reform was identified in Brussels as an essential prerequisite for the signing of the Stabilization and Association Agreement (SAA), but it ended up provoking Bosnia's most severe crises in its post-Dayton history. With the credibility of the whole European integration project for BiH at risk, the EU refrained from further confrontation and diluted its most critical demands, allowing local politicians to perform a 'conquest' of the reform agenda.*

*This thesis demonstrates that the institutional reconstruction of BiH has been pursued by the EU with a risk-avoidance mentality. Brussels has procrastinated in facilitating a solution to the internal sovereignty struggle and has distanced itself from sharing key political responsibilities in the Bosnian stabilization process, revealing a tendency to 'technify' the relationship with local elites. Furthermore, this detached position has allowed the EU to avoid a more open confrontation with the residual influence of the United States in the Bosnian statebuilding project.*

# Introduction

At the Council of Feira in Portugal in June 2000, the EU announced for the first time its commitment to guarantee the ‘fullest possible integration’ of the countries of the Western Balkans region (European Council 2000). Exactly three years later, that statement was followed by another solemn promise. Building on the momentum of the imminent enlargement to Eastern European countries, in Thessaloniki it was acknowledged that also ‘the future of the Balkans is *within* the EU’ (European Council 2003: emphasis added). EU leaders thus chose to present the next enlargement of the Union to the Western Balkans as an inevitable and necessary development; three years later, they again confirmed that the future of the whole region certainly ‘lies’ in the Union (European Council 2006b).

The challenge of the next EU enlargement to South-East Europe has nevertheless been qualitatively different from the process between 1993 and 2007 that led to the integration of the states formerly belonging to the USSR’s sphere of influence. Amongst other structural and socio-economic differences, most of the countries of the Western Balkans – with the exception of Croatia and Serbia – can still be described as ‘states in-the-making’, which remain subject to internal sovereignty struggles among competing ethno-religious elites, face complex



issues related to the integration of national minorities, and have not been fully rehabilitated in the independent exercise of their governing prerogatives.

Focusing on the challenge of integrating new members into its supranational structures, the EU's stabilizing influence in the region differs in approach, rationale, and ethics from 'ordinary' internationally-driven statebuilding projects. The emphasis on the promotion of human rights, the rule of law, and socio-economic recovery – which is also a characteristic of UN-led initiatives for the reorganization of weak or failed states – should not obscure the fact that from the Brussels' perspective, stabilization in the Western Balkans can only be achieved by creating domesticated member-states instead of restoring full sovereignty and allowing local elites to exercise it in complete independence. The rehabilitation of international and domestic sovereign capacities has not been the main objective of the peculiar EU's 'member-statebuilding' in the region. Rather, the transfer of critical sovereign prerogatives from candidate countries to the post-nation state Union removes the key object of controversy from local elites.

## **1. The Bosnian case and statebuilding**

Bosnia and Herzegovina (BiH) is a prime case for understanding the EU's stabilization strategy for the Western Balkans. This country represents a complex multiethnic polity, where political reconciliation has never been achieved and where there is a constant 'multilevel' sovereignty struggle, ranging from central state institutions down to the municipal level. BiH has not yet consolidated its sovereign independence and remains exposed to domestic tensions between three

competing ethno-religious groups: Bosniak Muslims, Catholic Croats, and Orthodox Serbs.

Fifteen years after the signing of the Dayton Peace Accords (DPA),<sup>1</sup> which brought to an end the bloodiest conflict in Europe since World-War II, renewed attention has been devoted to the stabilization of BiH. International concern about the fate of this young and troubled multiethnic state waiting on the EU's doorstep has grown due to a combination of two factors. On the one hand, scholars have developed new interest in BiH because of the political dynamics of the whole Western Balkans. In recent times, there has been a new series of 'territorial re-adjustments' in the region: Croatia is trying to speed up its efforts to join Slovenia in the EU, Montenegro has formalized its peaceful separation from Serbia, and Pristina has opted for a unilateral secession from Belgrade and started its own path towards EU integration. Given its complex multiethnic and religious mosaic, which makes the country resemble Yugoslavia on a smaller scale, BiH is the key to regional territorial stabilization, both geographically and strategically.

On the other hand, beyond the dynamics that are specific to the Western Balkans, the growing interest in the future of BiH is part of a global trend. Numerous intra-state upheavals are threatening the stability of governments and, consequently, of entire regions of the world. Weak or undemocratic regimes and the increased number of failing and failed states have provided fertile ground for the expansion of international terrorist networks and the consolidation of other global security threats, such as those created by transnational criminal groups, narco-terrorist clans, and even pirates (as the case of Somalia has dramatically shown). In the words of Stephen Krasner (2004: 86) 'the consequences of failed and inadequate governance have not been limited to the societies directly affected.

Poorly governed societies can generate conflicts that spill across international borders. Transnational criminal and terrorist networks can operate in territories not controlled by the internationally recognized government’.

The international arena is thus confronted with a series of unprecedented destabilizing challenges. Most, if not all of these challenges have developed a transnational dimension; however, their emergence has been possible in specific weak institutional contexts. As a consequence, the topic of internationally-driven statebuilding is again relevant for academics, policy analysts, and practitioners. It is worth noting that in August 2004, in line with this trend, the US administration decided to create *ex novo* a specific unit for peacebuilding and statebuilding initiatives within the Department of State, which was inaugurated as the Office of the Coordinator for Reconstruction and Stabilization.<sup>2</sup>

This increased interest coincides with the fact that statebuilding has become ‘a corollary of anti-terrorism and counter-proliferation’ (Chalmers 2005: iv). In line with this assessment, Francis Fukuyama has emphasized that, prior to the attack on the Twin Towers and the Pentagon, the Western world had been reluctant to tackle the internal crises of weak and failing states with substantial and rapidly-deployed missions. However, ‘September 11 proved that state weaknesses constituted a huge strategic challenge’ (Fukuyama 2004: xix), especially when the institutional weaknesses undermining the stability of a country are so dramatic that the state ends up being ‘hijacked’ by a terrorist organization, as happened in Kabul under Taliban domination.

The problematic stabilizations of Afghanistan, Iraq, Haiti, Liberia, Somalia, Sierra Leone, Sudan – just to cite the most striking examples – have re-opened the debate on both the concrete operational modalities and the theoretical

pillars upon which a foreign intervention in weak, collapsed, or failing states should be built. With a history and characteristics that fall at the intersection of these two points of debate, BiH represents a unique source of empirical data for scholars and policy analysts, as well as lessons learned for practitioners. In other words, if an ideal ‘learning curve’ of the international community<sup>3</sup> on statebuilding could be drawn, this would inevitably start ‘with the comprehensive institutionalisation and proportionalisation of ethnicity in Bosnia’ (van Meurs 2004: 6).

Western governmental organizations have invested heavily in the whole Western Balkans, turning the region into a ‘laboratory for European policies, transatlantic solidarity and western values’ (Eichberg 2004a: 1). However, BiH has thus far represented the most crucial test case of this laboratory, ‘a template for new experiments in international administration and external assistance in state reconstruction and post-conflict reconciliation’ (Chandler 2005c: 308). In a recent assessment made by two American scholars, ‘\$14 billion in international aid’ turned BiH into ‘the most extensive and innovative democratization experiment in history’ (McMahon and Western 2009: 69). In similar terms, Sumantra Bose (2002: 3) has stressed that BiH has been ‘since the beginning of 1996 ... the site of internationally sponsored political engineering on a remarkable scale’. For many years now, the United Nations, the OSCE, NATO, and the EU – as well as a myriad of international NGOs – have committed an extraordinary amount of human and material resources to the reconstruction of BiH, achieving unexpected successes but also experiencing striking failures.

## **2. Research questions**

Several studies have assessed the international experience in BiH and elaborated guiding principles and praxes that could potentially be applied to other statebuilding cases. The analysis thus far produced by both scholars and policy analysts has addressed a wide range of items – ranging, for instance, from security sector reform (King 2001; Orsini 2003; Heinz 2006; Perdan 2006; Muehlmann 2007) to democratization-related issues (Chandler 2000; Galen Carpenter 2000; Domm 2007) – as well as the broader strategic discourse on the foreign presence in a post-conflict environment (Cox 2001; Okuizumi 2002; Chandler 2004a; Weller 2006; Belloni 2007).

Beyond technical and context-specific debates, this thesis addresses the Bosnian case with a view to shedding light on the gaps in the literature on the paradox of sovereignty and statebuilding and emphasizing the contradiction inherent in the EU's performance as a statebuilder. Scholars committed to reconstructing the ethics and rationale of current externally-driven statebuilding efforts generally agree that such initiatives inevitably entail a 'sovereignty paradox': international missions compromise domestic sovereign prerogatives to foster the institutional reorganization of a failing or failed state, democratize it, and establish stable authorities and well-functioning institutions that at the end of the process will independently exercise full sovereignty again, both domestically and internationally. The goal of creating fully independent states justifies intervention and prolonged interferences in the domestic jurisdiction of the target countries. Moreover, the ethics of statebuilding – as identified by the sovereignty paradox literature – is based on the hypothesis that a new vision of sovereignty is genuinely informing external statebuilders.

An understanding of *sovereignty as an internationally shared responsibility* has been identified as the normative ground on which statebuilding initiatives can be justified. This discourse was inaugurated by Francis M. Deng (et al 1996: 70), who focused on the various issues related to conflict management and peacekeeping initiatives in Africa. Based on a neo-communitarian understanding of International Relations, Amitai Etzioni (2006) has claimed that this vision contains *in nuce* the pillars that constitute the ‘ethics’ of contemporary post-conflict peace and statebuilding. Moreover, it has been argued that the ideal of a shared responsibility has been internalized by the personnel serving in international institutions and the members of the Western diplomatic club. One optimistic point of view by Dominik Zaum (2007: 237) suggested that this concept has already influenced ‘statebuilding policies by providing a blueprint for the institutions to be built, and by serving as a justification for the continued governance of post-conflict territories by international administrations’.

Reflecting on this assessment in light of the statebuilding efforts in BiH, with all of its contradictions and inconsistencies, two important questions can be identified. Does the normative principle of sovereignty as responsibility inform the various strategic efforts of current statebuilding missions worldwide, including the EU’s member-statebuilding in the Western Balkans? If it is accepted that the ideas of sovereignty as a capacity and a responsibility provide a ‘comfortable’ basis to justify peacekeeping and post-conflict statebuilding interventions, have these principles also generated a new *forma mentis* amongst statebuilders and a ‘blueprint’ that is generally complied with in the field?

Providing answers to these questions, this dissertation examines the policies of the EU for the stabilization of BiH with a focus on the issue of

responsibility. The starting point of the analysis is that the ‘EU commitment to BiH’ is characterized by additional complexity if compared with ‘ordinary’ international administrations and statebuilding missions working under the UN umbrella. This additional complexity cannot be overlooked and minimized for the sake of theoretical generalizations. Interestingly, Robert Keohane (1988: 379-380) has cautioned against making overly ambitious generalizations: since ‘no general theory of international politics may be feasible [it might be appropriate] to seek to develop cumulative verifiable knowledge, but we must understand that we can aspire only to formulate conditional, context-specific generalizations, rather than to discover universal laws’.

Inquiring into the normative vision of sovereignty and the understanding of post-conflict stabilization at the heart of EU initiatives to reorganize the Bosnian state reveals a further element of interest in comparison with UN-led operations. This project assesses how the current EU-driven statebuilding in BiH is creating a ‘paradox within the paradox’ of sovereignty and statebuilding. When the highly-intrusive statebuilding project was initially launched, the external actors deployed in Sarajevo compromised Bosnian self-governing prerogatives in order to foster a reorganization of domestic sovereign powers. However, a further paradox has resulted from having a post-nation state organization, the EU, take the lead in the Bosnian multiethnic experiment. While helping the reorganization of the state by containing the dispersions and the asymmetries of sovereignty produced by the implementation of the DPA, the EU actually prepares this state to be part of a system of pooled sovereignty; in other words, Brussels educates domestic elites to give up certain sovereign prerogatives when the appropriate time to join the Union arrives.

EU-driven statebuilding ‘complicates’ the trajectory of sovereignty rehabilitation in a post-conflict environment. The EU is a ‘post-nation state organization’ that is based on the concentration of certain sovereign prerogatives originally attributed to its member states (Della Sala 2006: 221). The whole European experience has indeed been based on the idea of containing the excesses of national governments through delegating to a supranational level decision-making prerogatives on certain issues. During the early stages in the life of the European Community, this philosophy was given such priority that efforts to find a solution for the most critical problems concerning the democratic character of the supranational integration process had to be delayed.

Recognizing the qualitative difference between EU member-statebuilding and internationally-driven statebuilding, this thesis examines the strategies elaborated in Brussels for the stabilization of BiH in order to understand whether the EU has been able to overcome the operational limitations that normally affect statebuilding missions. Inter alia, these include: excessive technocratism, a disproportionate focus on institution-building rather than nation-building, scarce attention to grass-roots reconciliation strategies, and bottom-up policies. In addition to examining operational and strategic aspects, this thesis focuses on the specific attitude that the EU has developed vis-à-vis the ideal moral imperative to share with domestic elites the responsibilities related to stabilization in BiH.

As this thesis demonstrates, however, the strategic thinking taking place in the ‘capital of Europe’ does not seem to be genuinely grounded in the sovereignty as responsibility ideal. The institutional reconstruction of BiH is pursued with a risk-averse mentality, which also allows the EU to preserve its own ‘no mistake policy’ on the field. On the basis of this approach, the EU has been operating



predominantly through a set of technical and economic instruments that are operationalized mostly by the European Commission (EC) – such as those falling within the Stabilization and Association Process (SAP) – and through the deployment of ESDP<sup>4</sup> field missions and the offices of an EU Special Representative (EUSR) that exercise various degrees of interference with the self-governance of the host state. Moreover, Brussels relies on the membership perspective as an indirect stabilization tool, which should enable, at minimum cost, the domestication of local elites and the containment of their potential nationalist and extremist drifts.

The ultimate goal of this unique combination of bargaining processes, membership perspective, economic aid, incentives, technical assistance, conditionality, and field presence is to prepare the elites of target states to relinquish some crucial sovereign prerogatives and educate them to become active members of the Union. In comparative perspective, the trajectory of sovereignty in EU-driven statebuilding is thus different from that determined by UN-led operations of a similar kind. The EU does not interfere with the self-governance of the target state with the aim of fully restoring the empirical statehood of the fragile South-Eastern European states; rather, it approaches its mission with a more sophisticated mindset and a self-serving goal: to prepare political elites and bureaucrats from the target states for membership. Nevertheless, the analysis developed in this thesis clarifies how the EU *modus operandi* repeats the most recurrent shortcomings of all international missions in crisis areas.

The EU accession process locks new members into a construction that is qualitatively different if compared with ‘ordinary’ intergovernmental settings. The EU indeed can be defined as being the *aliquid novi* (that something new) in the

complex firmament of multilateral organizations. The system that rotates around the main Brussels-based institutions and the European Court of Justice (as well as on the several executive agencies that have been created to strengthen the integration and harmonization processes in the most diverse policy areas) has been consolidated thanks to two unique legal pillars and one main governing principle. The latter is the idea of subsidiarity, which regulates the EU's decision making processes. On the basis of this ideal *Grundnorm*, which constitutes the main sociological rule in the communitarian life, the EU legal space is characterized by the supremacy of EU law over member state law, and the direct effect (both vertical and horizontal) given to whatever EU decision-makers produce as binding norms.

At this stage, it is important to devote more attention to the specific role of the EU in carrying out its member-statebuilding initiatives. There are several processes that have driven the EU to expand its effort and expertise in the fields of statebuilding and promotion of good governance practices, also beyond the range of its near abroad. At the same time, it should not be disregarded that 'if the European Union has begun to develop a strategic identity, it is rooted in statebuilding [and that] the need to respond to the failure of Yugoslavia has been a driving force in the evolution of the Common Foreign and Security Policy' (Chalmers 2005: iii). Furthermore, from an EU perspective, this research assumes even more relevance after the entry into force of the Lisbon treaty, which provides the legislative basis for the creation of a single EU foreign service<sup>5</sup> with an embassy network, to be led by a single EU Foreign Minister.

### **3. Thesis structure**

This thesis is organized into four main chapters. Chapter I focuses on the concept of sovereignty and its evolution in contemporary international relations. Different visions of sovereignty are reconstructed by identifying the dominant trends in the scholarly literature. The discourse on sovereignty is developed by highlighting the major issues concerning both the external and the domestic aspects of state sovereignty. By investigating both dimensions of sovereignty, this review provides an understanding of the legal dimensions of externally-driven statebuilding. Specific attention is devoted to the recent debate on the feasibility of stretching the traditional characteristics of sovereignty towards a vision encompassing the ideal of shared responsibility and an emphasis on the notion of domestic authorities' capabilities.

Moving to more policy oriented aspects of intervention, the second part of Chapter I addresses the main elements of the statebuilding literature. The aim is to show that international actors involved in post-conflict statebuilding efforts are destined to face two crucial operational dilemmas. A comprehensive intervention for the reconstruction of a failed or collapsing state needs to find a balance between bottom-up and top-down policies, and between a technical presence and a more complex and socially-oriented post-war stabilization. At the intersection between these two ranges of strategic choices – which will be referred to as the 'vertical' and the 'horizontal' dilemmas of statebuilding – lies the grand juxtaposition of technical institution-building on the one hand, and nation-building on the other.

Chapter II identifies the main features of the Bosnian post-conflict stabilization efforts, highlighting how the process of 'ownership' in the country

has passed from the international community to the EU without a decisive involvement of the Bosnian constituent peoples and via the consolidation of a strained relationship between autochthon elites and key international actors. The transition from international to EU-driven statebuilding has nevertheless remained incomplete. Emphasis is thus given to the activities and the position of the Office of the High-Representative (OHR) in the complex framework of the multilateral organizations operating on the ground in BiH. The OHR – which since 2002 has been ‘double-hatted’ with the Office of the EUSR – still constitutes the leading international agency in the Bosnian statebuilding project.

Building on the analysis of the current state of affairs in BiH, Chapter III shows that in the parallel implementation of its statebuilding and enlargement agendas, the EU reproduces some peculiarities of a neo-medieval empire. The interference inherent in EU-driven statebuilding cannot be justified by the goal of establishing the Bosnian authorities’ full and legitimate exercise of empirical statehood. As emerges from the analysis of official documents and extensive interviews with participants and observers to the EU-decision making processes in both Brussels and Sarajevo, the EU intervention can be traced back to the conviction that the various internal fractures and wounds of the Bosnian multiethnic experiment can be healed only when the country’s sovereignty is partially diluted within the greater European integration machine. By studying the specific attitude of the EU towards the Bosnian constitution-making process, the second part of Chapter III sheds light on the EU’s ‘hands-up statebuilding’ attitude.

Beyond the specific field of constitutional reform, Chapter IV examines the other issue that has dominated the reform agenda in BiH for the last few years:

police reform. In particular, the analysis focuses on the conditionality that was attached to this reform process by the EU. The development of such conditionality confirms that Brussels has not been able to create a balance between its own rigid technocratism and the more ideological elements of its enlargement process. In other words, Chapter IV looks at the other side of what could be metaphorically referred to as ‘the responsibility coin’ of externally-driven statebuilding. In parallel with the reconstruction of the EU’s hands-up attitude, an analysis of the reform of the Bosnian police shows that the tendency to throw the hands up in a denial of responsibility for complex political undertakings is combined with a, so to speak, ‘hands-off’ *modus operandi*. The EU promotes its own statebuilding policies by demanding technical adjustments and hoping that progress will follow automatically. However, Brussels pursues a hands-off statebuilding strategy: partial and procedural adjustments serve the purpose of hiding the long term metamorphosis to which the target state will actually be subjected to through completion of the integration process.

Combining the empirical analysis developed in Chapters IV and V it is possible to demonstrate that the institutional reconstruction of BiH is pursued by the EU with a risk-avoidance mentality. In spite of its apparently dominant position in the Bosnian stabilization process, Brussels has thus far refrained from facilitating a resolution of the domestic sovereignty struggle and has distanced itself from sharing key political responsibilities with local actors. Furthermore, this detached position has allowed the EU to avoid a more open confrontation with the residual statebuilding influence of the United States in the Bosnian project.

## **4. Methods and instruments**

This study has three key analytical aims: first, to provide an account of the trajectory of sovereignty in post-Dayton BiH and identify the terms of the ‘paradox within the paradox’ in EU member-statebuilding; second, to reconstruct the understanding of sovereignty and post-conflict stabilization shared by major actors at EU level; and third, to highlight the main operational characteristics of the EU commitment to BiH, with a specific focus on the problem of shared responsibilities. The emphasis on specific reform processes is a methodological choice that serves a precise analytical purpose. By analyzing processes in detail, explaining their initial conceptual phases and evolution, and reconstructing the various diplomatic machinations behind them, it becomes easier to uncover the strategies, interests, and ideas of different actors.

The understanding of sovereignty and post-conflict stabilization informing the EU’s initiatives in BiH is reconstructed by combining three types of inquiry. EU official documents have been systematically examined to identify the development of strategies and key-terminology that has been applied to the Bosnian statebuilding experiment. Based on initial research at the EU digital archives and in Brussels, particular attention has been devoted to specific terms including: sovereignty, institutional reorganization, democratization, normalization, post-conflict stabilization, consolidation of authority, ownership, and reconciliation.

The documentation considered for this thesis relies predominantly on the records from 2000 to the present. The choice of this start date is connected to three key documents published in that year by the EU that formally inaugurated the EU membership perspective for the whole Western Balkans region and also

clarified the specific EU commitment to BiH. The first document is the previously mentioned final declaration of Feira (European Council 2000). The second is the final declaration of the Zagreb Summit, which formally launched the SAP for all Western Balkan countries (EU 2000). The third is the specific Road Map for BiH – adopted in the same year – in which Brussels identified 18 essential steps that BiH had to undertake before the work on a Feasibility Study for the Stabilization and Association Agreement (SAA) could be formally launched (European Commission 2000). These steps represent the formal ‘inauguration acts’ of the EU’s commitment to the integration of the Western Balkans and BiH into its supranational structures.

In order to develop a fuller understanding of the normative principles informing the EU’s policy-making for BiH official documents are not sufficient. Consequently, consideration has also been given to other sources. These have mostly included: speeches and other public statements by decision-makers, parliamentary debates and hearings (primarily at the European Parliament), policy analysis published by independent experts on EU affairs, policy briefs circulated by government-contracted experts, as well as media commentaries that have been selected from both international and regional sources.

Finally, considering that important facets of the processes through which decisions are made are not recorded in official documents or public statements, the inquiry has been complemented by extensive interviews with participants and observers of the EU decision-making processes that concern BiH (see Appendix B for a detailed list of the interviewees). These have included permanent staff and seconded personnel at the Brussels offices of the EU Commission (particularly those serving at the Directorate General for Enlargement and that for External

Relations) and the EU Council (particularly at the Western Balkans Task Force); Members of the European Parliament (MEPs) with a competence on enlargement-related issues or with a role in the delegations for relations with the countries of South-East Europe (SEE); and officials employed at the various EU agencies and missions in BiH. Specifically, this last category includes: the Delegation of the European Commission in Sarajevo<sup>6</sup>, the EU Police Mission (EUPM), the Offices of the ‘double-hatted’ High Representative and EU Special Representative (HR/EUSR), European Force Mission Althea (EUFOR), and the European Gendarmerie Force (Eurogendfor).

A targeted round of interviews has also been undertaken with member states diplomats employed at their respective national embassies in Sarajevo, as well as at their Permanent Missions to the EU in Brussels. Extensive contacts have been established for the most part with those Brussels-based diplomats who serve in COWEB.<sup>7</sup> The acronym COWEB is used in the EU jargon to refer to the group of national diplomats who discuss Western Balkan issues and routinely support the work of the Permanent Representatives Committee, also known as COREPER II.<sup>8</sup>

Each interview was ‘semi-structured’, thus combining both open- and closed-ended questions. At first glance, the aim of reconstructing the normative vision of sovereignty and post-conflict stabilization informing EU policy-makers and the strategies attached to the various EU policies for BiH would have suggested conducting unstructured interviews. However, the risk of such a choice was seen as twofold. Firstly, totally unstructured interviews might end up focusing on issues that are only of marginal interest for the interviewer, especially when the interviewee has vast professional competences and deals with several



technical or geographical dossiers. Secondly, this might have impeded a systematic reconstruction of the normative principles and ideas concerned. In order to avoid vagueness and ambiguity, interviews were conducted by respecting a predetermined set of criteria (see Appendix A).

## **(Chapter I)**

# **Normative Principles and Operational Challenges of Contemporary Statebuilding**

### **1. Introduction**

A sequence of dramatic crises – from Afghanistan to Somalia – has reopened the debate on both the operational modalities and conceptual pillars upon which foreign intervention in weak, collapsed, or failing states should be based. While policy analysis has focused on technicalities related to capacity- and institution-building, the scholarly literature has devoted more attention to the concept of sovereignty, in an attempt to consolidate new possible interpretations. This chapter reconstructs the main features of both these debates.

The first part of the chapter is devoted to the idea of sovereignty. The recent debate has mostly revolved around the possible reinterpretation of sovereignty as an internationally shared responsibility. In this regard, two major positions have emerged. On the one hand, libertarians and neo-conservatives have tried to expand the idea of sovereignty as responsibility to legitimize even preventive international action. On the other hand, neo-communitarian scholars have tried to contain such interventionist tendencies by emphasizing the idea of responsible international action, and by narrowly interpreting the responsibility to

intervene by international actors and coalitions of states. The point where these contrasting interpretations converge reveals a key challenge of contemporary international politics: how to encourage governments to act in a more responsible way both internally, towards their constituent people, and internationally, in their concerted activities for the promotion of peace and the consolidation of good governance practices in crisis areas and post-conflict environments. Apart from being crucial for national governments, the issue of responsible intervention is relevant also for all international intergovernmental organizations that carry out peacekeeping and peacebuilding activities.

The idea of sovereignty as an internationally shared responsibility, which has been widely debated over the last decade, represents a powerful concept. This innovative interpretation of sovereignty fosters the idea of responsible action, by shedding light on the vertical bond between political leaders and their constituency, as well as on the horizontal relationships between national governments and other relevant multilateral actors that are part of the international community. In operational terms, if genuinely internalized and truly implemented in practice, this new normative understanding of sovereignty could resolve the tension between the residual elements of the Westphalian world and the ideal global system of collective security centered on the primacy of the United Nations Security Council (UNSC) that has never been fully implemented. This vision provides a promising moral justification for contemporary peacekeeping and post-conflict peace and statebuilding efforts.

In order to understand all the aspects of the sovereignty as responsibility concept, the literature review that follows proposes a reconstruction of mainstream theories of sovereignty. Highlighting both the dynamics internal to

nation states and international aspects of sovereignty, the analysis shows the main evolutions that have characterized this ‘key rule of the game’ in world politics through the centuries. Moving from the field of ideas and normative principles related to sovereignty into the arena of actual policy-making and intervention, the second part of this chapter analyzes the most recent literature on statebuilding with a view to identify the key operational dilemmas that characterize the work of international missions today.

## **2. The concept of sovereignty in international relations: from Westphalia to San Francisco**

Introducing their seminal work on *State Sovereignty as Social Construct*, Thomas Biersteker and Cynthia Weber (1996: 2) cautioned that ‘attention to sovereignty tends to raise more questions than it answers’. More recently, John Boli (2001: 54) has recognized that probably ‘where sovereignty is located is [still] an open question’. Describing ‘the surrender of sovereignty to governance by international actors’, Francis Fukuyama (2004: 132) has depicted East Timor as a reality from which sovereignty was removed and ‘located on a ship floating in the harbour outside the capital of Dili’. The concerns voiced by such respected scholars confirm that sovereignty remains one of the most complex and debated issue in international politics; however, they should not discourage. After all, as Jarat Chopra and Thomas Weiss (1992: 102) have explained, the complexity and the doubts underpinning the concept of sovereignty simply stem from the fact that

this concept is ‘a legal fiction that continues to evolve [but remains] the best mechanism for organizing human society at the global level’.

The concept of sovereignty is one that scholars and practitioners have defended, contested, updated, analyzed and even denied for over four centuries. Nevertheless, the system of sovereign states remains the most accepted way of organizing human relations, which has endured for centuries precisely because no concrete alternatives have emerged, but also because it continues to enjoy generalized bottom-up support. Those who have opposed sovereign states or manifested their dissent have mostly been groups promoting a secessionist cause and striving to establish a new independent state. Therefore, unless humanity one day rejects the system of sovereign states and replaces it with an alternative structure, as Jo-Anne Pemberton claims, ‘we may attempt to further civilize this system through adding to and *thickening the responsibilities of states to each other and to humanity in general*’ (2008: 215, emphasis added). Recognizing the validity of this statement, the issue of shared responsibilities will be put to test in the empirical chapters of this thesis.

## **2.1. Origins of the sovereignty ideal**

The concept of sovereignty virtually did not exist in the realm of political thought until the fall of medieval Christendom. At that time, all of the tensions between the Papal authority and the emperors were indeed ‘not about sovereignty but about political predominance’ (Smelser 2001: 78). Some scholars argue that the modern international community actually has its origins in the relations between the three sovereign imperial entities that arose in the ninth century: the Carolingian, the Islamic, and the Byzantine (Ago 1977). Nevertheless, the

majority of theorists acknowledge that only when the Peace of Westphalia was agreed upon (at the end of the Thirty Years' War, 1618-1648) both the concept of sovereignty and the configuration of the modern state emerged. The settlement provided a series of secular elements, upon which new forms of political power could be constructed and the religious basis for authority replaced. Leo Gross (1948: 28) defined the 1648 peace agreement as 'the majestic portal which leads from the old world into the new world'. In the old world, kings could indeed declare but not create positive law, as they were themselves bound by it; in the new world, sovereigns had the right to create law and the duty to enforce it, not as if they were necessarily *above* the law, but as original *sources* of it.

The conventional view that depicts the 1648 Peace of Westphalia as the origin of the modern system of sovereign states has been contested by part of the literature. Amongst other International Relations scholars, Stephen Krasner (1993: 244) has argued that the treaties of Münster and Osnabrück were actually 'less consistent with modern notions of sovereignty' than the precedent Augsburg Peace of 1555. This critique can be accepted. Indeed, if the Peace of Westphalia has always been defined as a watershed in the history of political theory and, particularly, in the development of the concept of state sovereignty, it cannot be disregarded that the seeds of this institutional revolution had actually been sown almost one century earlier. In spite of the unconditional support of all the German Catholic Princes, in the first half of the sixteenth century, the attempt by Charles V to defeat the Protestant heresy failed. The conflict was ended with the 1555 Peace of Augsburg. The core concept of this peace agreement can be synthesized in the Latin formula *cuius regio, eius religio*. This expression (which literally means 'whose region, is the religion') implicitly acknowledged the right of each

entity with a defined territory and an established governing authority to develop its autonomy from external powers, the Catholic Church in particular (Smelser 2001: 14706-9).

An interesting debate on this specific issue has also taken place between two eminent American scholars of the last century: Charles Tilly and Joseph Strayer. The latter claimed that most of the preconditions that allowed the sovereign state to emerge after Westphalia as the dominant form of political organization could already be identified during the fourteenth century. In contrast with this view, Tilly (1975: 25-31) has counter argued that alternative forms of political organization – such as the Papal state, trans-boundary commercial federations, and the feudal structure – were not inevitably bound to fail, as it might seem from a superficial analysis.

Proper point of reference or not, as has been made clear in the contemporary academic debate (Krasner 1993; Philpott 1999; Osiander 2001), Westphalia has nonetheless become an icon for scholars. The Westphalian system included relatively large territorial units, which were ruled by a central sovereign authority. A core peculiarity of such authorities was that there was no formal control binding their freedom. More precisely, sovereign states emerged as supreme authorities ruling over a given territory (internal aspect of sovereignty) but also as units obliged not to interfere in each others' internal affairs (independency coincides with the external aspect of sovereignty: *superiorem non recognoscent*). In other words, the sovereign power cannot be challenged from the inside and it can respond to outside challenges by resorting to the use of force, in addition to diplomatic means.

The arrangement which emerged at Westphalia can be labeled a European system. Based upon the European common heritage, Westphalia gave rise to the two key concepts of sovereignty and territoriality, thus further exacerbating the divergence between the European world and the rest of the planet. Meanwhile, the European powers did not refrain from conducting their ‘international public relations’ in terms of – paraphrasing a well-known expression coined by Hobbes – *homo homini lupus*. Following Westphalia, recourse to war remained a clear and undisputable foreign policy option. However, war could only occur between units (the sovereign states) that had the power to mobilize organized and loyal forces.

Self-defense became an inextricable prerogative of states. More precisely, at the time of Westphalia war was mostly a means to secure boundaries, territories, and resources. But after the first industrial revolution and the emergence of what eminent historians like Pierre Renouvin called ‘the doctrine of colonies’ (1961: 45-60, my translation), war also became a way to defend and ensure economic interests and commercial networks established overseas. These overseas interests were perceived by European governments as being vital for their domestic welfare. However, in addition to being driven by pragmatic interests, the idea of a civilizing mission was more or less genuinely shared amongst the ruling elites of the Christian-European powers.

Those who exercise sovereign powers have always been described as holding supreme authority, and thus, as having by definition the ‘supremacy in respect of power, domination or rank’ in a given community (1970: 489). Supremacy is intended as a situation of pre-eminence, which internally should coincide with an ‘absolute and perpetual power of both making and unmaking



laws' (Kuper 1996: 835). In Latin, the sovereign was indeed the *superānus*, the one above all others who held the supreme powers (*summa potestas*).

Against this backdrop, a straightforward but comprehensive definition of sovereignty could sound like 'supreme authority within a territory', as most recently re-proposed by Daniel Philpott (2001). This short but effective formulation has developed a broad consensus. Most scholars actually have no doubt that such an expression perfectly describes the system of sovereign states that emerged in Europe after 1648 and that has survived with minimal changes for almost four centuries: a structure composed of relatively large territorial units internally organized under a central sovereign authority. This definition encompasses three distinctive elements, which are each equally important in identify sovereignty: authority, supremacy, and territoriality. Ideas on each of these elements have gone through several evolutions; however, such a combination of terms remains optimal to describe state sovereignty and, indirectly, to identify the essential peculiarities of both the international community and its juridical order.

## **2.2. Sovereignty in the rationalist accounts of international relations**

In the theoretical debate developed by contemporary International Relations scholars, the position of sovereignty has traditionally been linked to the discussions on the state. This might well be explained – using again the words of Thomas Biersteker (2002: 157) – by the fact that 'state and sovereignty are [indeed] mutually constitutive concepts'. A typical example of how sovereignty was attached to states as a fixed and exogenous attribute can be found in

Morgenthau's seminal work on the *Politics Among Nations*. Being concerned 'with human nature as it actually is, and with the historic processes as they actually take place', Morgenthau (1978: 4) recognized sovereignty as synonymous with *independence, equality, and unanimity*. Moreover, he depicted its consolidation as a process that elevated into a legal theory a series of political facts. The evolution of sovereignty coincides with the emergence of a doctrine mirroring the relations between different political units at the end of the Thirty Year's War. According to Morgenthau (1978: 329), such a doctrine provided simple facts with 'both moral approbation and the appearance of legal necessity'.

Attaching to sovereignty the role of a key rule of the game, Morgenthau minimized the analytical problems related to the theoretical evolutions of the concept. Nevertheless, hypothesizing a contrast between the structure of international relations (with all its norms, concepts, institutions and procedures) and the reality of international politics, he described in very effective terms the tension between modern international law and the social dynamics of the state system that emerged after Westphalia. Sovereignty is presented as lying exactly at the crossroads of laws and anarchy. According to Morgenthau, modern international law is based on two core assumptions that cannot escape a subtle but substantial logical incongruity: rules (customary or treaty-based that they might be) emerge by imposing constraints upon nation states; at the same time, being sovereign, these units remain 'the supreme law-creating and law enforcing authorities' of a decentralized system (Morgenthau 1978: 329).

Classic realism developed along the idea that sovereign units live in an international system characterized by anarchy; this would have always worked as a 'permissive condition'. Viewed this, the complete decentralization of the

legislative, the judicial, and the executive functions of the international system represent the clearest manifestation of sovereignty.<sup>9</sup> The assumptions of classic realism were challenged for the first time in the 1970s by Robert Keohane and Joseph Nye (1972) who emphasized the growing interdependence between states, transnational relations and non-state actors alike, in particular, multinational corporations. The two scholars proposed a vision of states as being immersed in an environment based on complex and growing interdependence. Initially, ‘attacks on the state-centric paradigm implied that state sovereignty was being eroded by economic interdependence, global-scale technologies, and democratic politics’ (Thomson 1995: 215).

The challenge to classic realism that was put forward by the advocates of liberal interdependence faced a first substantial set of counter arguments in 1979, when Kenneth Waltz elaborated his *Theory of International Politics*. The basic assumption of classical realism was that ‘the international system is anarchical, in the sense that it lacks central authority to impose order; ... in such a system states are primarily interested in their own survival’ (Burchill 2005: 190). Waltz developed this basic framework by introducing the concept of hierarchy. In order to ensure their survival in the anarchical international order, states tend to maximize their power, in particular their military power; while doing so, they tend to develop a ‘defensive positionalist attitude’. If on the one hand Waltz (1979: 93, 94) acknowledged that ‘states are not and never have been the only international actors’, on the other hand he admitted that ‘so long as the major states are the major actors, the structure of international politics is defined in terms of them’.

Confronted with Waltz’s structural realist proposals, the liberal critique to classic realism partially rounded off its edges and went back to recognizing

sovereign states as the main actors in an inherently anarchical world politics. Indeed, in *After Hegemony*, Keohane (1984) focused on the core challenge of explaining cooperation under anarchy. Realists had widely argued that, in the chaotic international system, cooperation is only possible under pressure from a hegemonic power that imposes institutions that are functional to its own strategic concerns. The proposals put forward by neoliberals tried to go beyond the neorealist view. A more detailed account of the neoliberalist arguments is beyond the scope of this review. What is relevant is that by accepting some of the basic assumptions of the neorealist tradition (e.g. the international system is anarchical, and states, which are essentially self-interested actors, are the most important units of it) Keohane and other scholars supporting the liberal interdependence theory ended up reviving a traditional view of sovereignty.

This evolution has been traced by Janice Thomson (1995: 215-216) back to the empirical and theoretical challenges brought against the original formulation of liberal interdependence theory. This thesis can be criticized by arguing that the post-World War II growing interdependence was not, both in qualitative and quantitative terms, more capable of eroding states' sovereignty and centrality than previous waves of globalization. Amongst other scholars who support this critique, Krasner has pointed out that liberal theorists tended to be over-focused on the problem of control and consequently overemphasized erosions of sovereignty in this sense. Furthermore, he has argued that: first, control and authority of government have always been challenged, evidence shows that the flow of both international capital and immigrants was more overwhelming during the second half of the eighteenth century than it is today (Krasner 1999b: 13); second, the problem of control is very different from the one

of authority, as a consequence, claims on the erosive effects of globalization on states sovereignty are mostly ‘historically myopic’ (Krasner 1999a: 34); third, ‘interdependence sovereignty, or the lack thereof, is not practically or logically related to international legal or Westphalian sovereignty’ (Krasner 1999b: 13).

Another critique against the liberal interdependence theory can be made by arguing that interdependence is a condition that states spontaneously allow in the exercise of their power and in reflection of their own interests. This argument, which was developed by Robert Gilpin and the scholars following Kenneth Waltz’s neorealist path, has been partially re-proposed by Thomas Heller and Abraham Sofaer (2001). The majority of globalization studies have insisted on the idea that the decline of the centrality of states in a world of growing interdependence would inevitably be accompanied by the erosions of sovereignty.

Is sovereignty substantially fading away? States have increased enormously their international commitments and keep delegating to supranational organizations (as well as private non-governmental bodies) the responsibility for several activities of transnational nature. However, these developments can be seen as ‘an expression of the value of sovereignty [rather] than a threat to its continuing importance’ (Heller and Sofaer 2001: 31). Moreover, the tendency that states have to delegate functions to international agencies or other entities does not affect the key attributes of sovereignty; on the contrary, it would ‘enhance the capacity of states (and the international system) to cope with complex problems requiring transnational or private-sector management or expertise’ (Heller and Sofaer 2001: 32).

Deconstructing authority into two dimensions, Thomson suggests that while ‘sovereignty constitutes the state system as the meta-political authority in

world politics', there is also a functional dimension of authority that can vary over time in terms of both extensiveness and intrusiveness. And if it is true that the market and non-state actors have increased their role in the economic sphere, it is equally true that the 'state's intrusion into formerly private aspects of people's life is reaching astonishingly high levels' (Thomson 1995: 224).

### **2.3. Hypocritical deviations, manipulations, ideational changes, or socially constructed developments of sovereignty?**

Analyzing the most critical points of the liberal interdependence literature, it has been possible to identify an excessive focus on control as the main weakness of this theoretical strand. Sovereignty is indeed not just a matter of mere control; rather, it represents a construction simultaneously encompassing authority, control, and legitimacy. In his extensive academic output, Krasner has emphasized how these three elements can further lead to four different facets that do not necessarily co-vary: international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty. Each of these pillars can be differentiated by following two paths: on the one hand, differences emerge by looking at the features of authority, control, and legitimacy referred to above; on the other hand, different peculiarities emerge by examining the logics underpinning them.

As far as the first set of characteristics is concerned, Krasner clarifies that the problem of control is central only to interdependence and domestic sovereignty: while the former refers to the capacity of government to control flows across national borders, the latter is concerned with exercising power over the domestic constituency. Therefore, it is only by looking at international legal

and Westphalian sovereignty that it becomes possible ‘to understand what sovereign statehood has meant in actual practice’ (Krasner 1999b: 4). Krasner seeks to demonstrate that the international environment, like every political or social space, is dominated by the conflict between logics of consequences and logics of appropriateness; it is such a conflict, and the supposed supremacy of the logics of consequences, that makes an *organized hypocrisy* emerge (Krasner 1999b: 66). While the idea of appropriateness implies an understanding of political actions as the ‘product of rules, roles, and identities that stipulate appropriate behavior in given situation’ (Krasner 1999b: 5), consequences instead refers to the evaluation that political actors make when they rationally consider expected outcomes and their own sets of preferences. In other words: ‘organized hypocrisy occurs when states say one thing but do another; they rhetorically endorse the normative principles or rules associated with sovereignty but their policies and actions violate these rules’ (Krasner as quoted in Kreisler 2003).

How can we explain the supremacy of the logics of consequences? Krasner invites to consider separately rules and rulers. On the one hand, dealing with rules, he traces the predominance of the logics of expected consequences back to the key peculiarities of the international community: international rules can be highly contradictory, thus domestic logics of appropriateness tend to overwhelm international ones in the calculations made by political leaders; this scheme is further complicated by the power asymmetries that characterize the international arena. On the other hand, when focusing on the rulers, Krasner (1999b: 7) emphasizes that logics of expected consequences prevail because ‘rulers want to stay in power and, being in power, they want to promote security, prosperity, and values of their constituents’. So, for instance, while the logic of

appropriateness of Westphalian sovereignty is probably the most recognized by policy-makers, it has also been one of the most violated.

Here, the hypocrisy of rulers becomes evident: given the anarchical configuration of international society, actors can breach rules when they start to feel that their adherence to a given set of international norms is far from maximizing their advantage. Rulers have often pushed Westphalian sovereignty aside, abandoning ‘the principle that external actors should be excluded from authority structures within the territory of their own or of others’ (Krasner 1999b: 8). Actually, as Krasner (1999b: 24) further clarifies, ‘neither the Westphalian nor international legal sovereignty has ever been a stable equilibrium from which rulers had no incentives to deviate’.

If in Krasner’s eyes sovereignty has offered to political leaders the possibility to act in an opportunistic manner, in the vision proposed by Immanuel Wallerstein the whole of modern history becomes a tale of manipulated sovereignty, in which the stage is dominated by groups of capitalist entrepreneurs who substantially pull the strings of political relations. In synthesis, instead of depicting state sovereignty as an *organized hypocrisy*, Wallerstein presented it as a manipulated fiction that has perfectly served the interests of dominant capitalists, and that actually can be consolidated only in accordance with the acquiescence of private interests. Wallerstein did not go as far as Marx did when he presented the modern state merely as the instrument that allows the bourgeoisie to dominate over the proletariat. Nevertheless, he re-proposed some core ideas that had emerged in the Manifesto of the Communist Party. For example, Wallerstein (1999: 27) claimed that one of the most evident advantages that



capitalists obtain from the state is order and, in particular, ‘order against the insurgency of the working classes’.

Wallerstein’s core thesis was that concepts such as sovereignty, nation-state, and international environment cannot be fully understood if one does not link the debate on inter-state relations with the discussions on the relationship between nation-state’s public authorities and the capitalist world, with all its actors, institutions, forces, and mechanisms. Wallerstein suggested that these two debates are intersected by the idea that the ‘political system of sovereign states within an interstate system, of states and an interstates system both having an intermediate degree of power, suited perfectly the needs of capitalist entrepreneurs’. Based on this understanding, a boost to the consolidation of the system of nation states would have been given by the need, shared among early capitalists, to have public authorities functioning as diligent and low-cost watchdogs. States would have preserved capitalists from losing their accumulated capital. Indeed, ‘capital can be stolen; it can be confiscated; it can be taxed’. By strengthening the role of the state, capitalists saved on resources otherwise used to secure ‘privately’ their accumulated capital. In line with this perspective, taxation has emerged as a fair price for two crucial services provided by the state: the protection of capital from being stolen, and defense against ‘the illegitimacy of confiscation via the establishment not only of property rights but [also] of the rule of law’ (Wallerstein 1999: 23-24).

In addition to those two safeguards that states are able to offer, Wallerstein believed that capitalists have happily coexisted with states due to the capacity of public authorities to also provide other types of services. In the first place, the state was identified by capitalists as an effective structure from which to protect

against the uncertainties generated by a truly free market. Wallerstein (1999: 25) claimed that ‘the free market is the mortal enemy of capital accumulation’. Amongst other ways of interfering with and undermining the fluidity of the free market, states could abuse their authority to impose legal constraints, thus enabling national entrepreneurs to enjoy a protection that they would not otherwise legally have.

Apparently in line with Krasner’s idea of sovereignty as an *organized hypocrisy*, Biersteker stresses that ‘[s]tates are hypocritical and have always intervened in each other affairs’. Nevertheless, he criticizes Krasner’s view for being excessively static and thus having the same explanatory power of ‘the pioneering work of Carl Schmitt or ... Hinsley’ (Biersteker 2002: 162). Furthermore, in the seminal volume co-edited with Cynthia Weber, Biersteker (1996: 1-2) presents sovereignty as an inherently social concept: ‘States’ claims to sovereignty construct a social environment in which they can interact as an international society of states, while at the same time the mutual recognition of claims to sovereignty is an important element in the construction of states themselves’.

Moreover, Biersteker and Weber argue that each component of sovereignty (e.g. territory, population, recognition, and authority) is socially constructed and linked by a normative concept. ‘The modern state system is not based on some timeless principle of sovereignty, but on the production of a normative conception that links authority, territory, population (society, nation), and recognition in a unique way and in a particular place (the state)’. The result is that ‘the idea of state sovereignty is a product of the action of powerful agents and the resistance to those actions by those located at the margins of power’. The

peculiarity of Biersteker and Weber's work is that it has its focal point in the social construction of sovereignty as well as 'by what practices and on whose behalf it is constructed'. As they openly admit, they have intentionally placed 'an empirical consideration of the social construction of sovereignty at the center of [their] analysis' (Biersteker and Weber 1996: 3, 8, 4).

How does Krasner react to such an articulated critique? Firstly, he firmly distances himself from any of the constructivist suggestions and stresses that his presentation of sovereignty as an *organized hypocrisy* has its central focus on power and material interests, which he presents as the only valuable means by which to understand 'the contested character of Westphalian sovereignty' (Krasner 1999b: 45). In line with such a statement, Krasner's more meticulous defense against constructivist claims stems from his idea that concepts like sovereignty emerge from the political reality and become consolidated legal expressions only when they are manipulated by dominant actors. In his in-depth analysis of the Peace of Westphalia, he challenges two main assertions that, prior to his research, scholars had normally taken for granted: firstly, he rejects the view that Westphalia is 'a clear break with the past' (Krasner 1993: 235); secondly, he criticizes the hypothesis that mere ideational developments constituted the driving forces that paved the way for the collapse of universal institutions such as the Holy Roman Empire and the Papacy.

In addition to these two points, Krasner stresses that sovereignty remains one of the most contested ideas; both *de facto* and theoretically. However, he argues that developments in sovereignty mainly stem from the availability of material resources. Further expanding on this last observation, he specifies that: the interests of leading figures are central; nevertheless, it is material assets that

determine who the leading figures are and thus, indirectly, what type of interests are going to prevail; having proposed such a scenario, Krasner ends up stating that thinkers have done nothing but offer 'a variegated menu of intellectual ideas from which [rulers] could draw to justify their policies' (Krasner 1993: 263).

An alternative way of addressing the evolution of the international society and of its ordering principle of sovereignty has been proposed by Daniel Philpott (2001). Advocating the driving power of ideas in shaping the 'constitution' of international society, Philpott has identified the Peace of Westphalia and the process of decolonization started in the 1960s as the two defining revolutions that have shaped the international order in the last four centuries (Philpott 2001: 11-15). While Westphalia produced a set of norms, rules, and practices that became the basis of a new society, decolonization eventually facilitated the extension of such a system to the whole planet.

In contrast with Krasner, Philpott has put central emphasis on the assumption that ideas can be so powerful that, sooner or later, they end up generating new authority. Expanding on this opinion, Philpott has suggested that looking at the international environment one can distinguish three relevant 'faces' of authority. Each face addresses a precise question: first, what are the legitimate polities composing the international society? Second, what rules are disciplining membership in such a society? Third, what basic prerogatives are characterizing the members of the international community? Having presented these three relevant nuances of authority, Philpott has argued that a revolution in the constitution of international relations takes place only when the pillars of at least one of the faces of authority are substantially altered. Perfectly inscribed in a constructivist analytical framework, he has claimed that there can be moments in

history in which new ideas and beliefs are so powerful that they might generate reaction chains culminating in structural readjustments of the international society: 'ideas convert hearers; these converts amass their ranks; they then demand new international orders; they protest and lobby and rebel to bring about these orders; there emerges a social dissonance between the iconoclasm and the existing order; a new order results' (Philpott 2001: 4).

### **3. From the humanitarian intervention debate to the Responsibility to Protect**

The history of the last century can reveal different types of interpretations if examined from the prospective of international law, security studies, or theories of international relations. Further insights can be gained by merging these approaches. For example, applying a multidisciplinary approach to the historical evolutions and the reciprocal conditioning of the forms of war and the forms of international cohabitation, Alessandro Colombo (2006) has presented the informal Westphalian system and the treaty-based collective security architecture launched at the 1945 San Francisco conference as being in conflict with each other. An account of the diplomatic negotiations that led to the creation of the UN system is far beyond the scope of this literature review. What matters, however, is to briefly reconstruct the rationale behind the original configuration of the UN system.

The idea that people do not have a *locus standi* in international law remained practically unchallenged until the end of World War I. Prior to the spreading of 'the Wilsonian spirit' through Europe, the community that resided

with a territory tended to be seen as a sort of ‘pertinence’ of the sovereign authority, thus excluding the legitimacy of any type of external interference: *quisquis in territorio meo est, meus subditus est* / everyone who is in my territory, is my subject (Conforti 2002: 199). In 1945, the tragedy of two World Wars and the negative experience of the League of Nations provided a clear incentive for the establishment of a system that would update the normative basis of the Westphalian world and favor the promotion of international peace and security through institutionalized multilateral cooperation and the promotion of the centrality of the human person. Unfortunately, the full realization of this alternative model was hampered by the emergence of a bipolar system and negatively affected by the failure to implement those military aspects of the new construction that might have enabled the international community to overcome Westphalia in a substantial way. For example, the establishment of an international military force placed permanently at the disposal of the UNSC, ready to intervene to protect the population in crisis areas, as well as the creation of a unified military committee, which was set out in articles 43 and 45 of the UN Charter, but have never been implemented (UN 1945). As a consequence, and similarly to the League of Nations, the UN system was established as another multilateral experiment that was not properly equipped to fully replace the pillars, practices, and dynamics typical of the Westphalian order.

With the end of the Cold War, new political conditions paved the way for the progressive elimination of the points of friction between the surviving pillars of the Westphalian system and those of the collective security structure that could not, so to speak, ‘take off’ due to the structural limitations of the UN and the political dynamics of the bipolar international environment. The dramatic crises

that erupted in every continent in the early 1990s gave impetus to the debate on humanitarian intervention<sup>10</sup> and, consequently, led to a questioning of the concept of *domaine réservé*. Holzgrefe and Kehoane (2003: 18) define humanitarian intervention as ‘the threat or the use of force by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied’.

In retrospect, one of the first concrete proposals that have induced to rethink the concept of sovereignty in the context of the need for humanitarian intervention dates back to October 1991 and was specifically limited to the pan-European context. The UN founding act states that, at least on a theoretical level, states are all equal because they are all sovereign entities. Art. 2.1 of the UN Charter clearly states that ‘the Organization is based on the principle of the sovereign equality of all its Members’ (UN 1945). The emphasis on equality was linked to the belief that nothing could dismantle the inviolability of the *domestic jurisdiction*. At the third Conference on the Human Dimension of the CSCE, held in Moscow, 38 delegations from the pan-European region (including the United States and the USSR, which was experiencing the last stages of the agony that led to its dissolution) agreed on a document that represented the first serious challenge to the concept of the *domestic jurisdiction*. CSCE members agreed that the inviolability of the internal affairs of the state was no longer a legitimate argument for matters falling within the realms of human rights, fundamental freedoms, democracy, and the rule of law. This idea was clearly explained in the Moscow document:

issues relating to human rights, fundamental freedoms, democracy and the rule of law are of *international concern*, as respect for these rights and freedoms constitutes one of the foundations of the international order ... [T]he commitments undertaken in the field of the human dimension of the CSCE are *matters of direct and legitimate concern to all participating States* and do not belong exclusively to the internal affairs of the State concerned. They express their determination to fulfill all of their human dimension commitments and to resolve by peaceful means any related issue, individually and collectively, on the basis of mutual respect and co-operation. In this context they recognize that the active involvement of persons, groups, organizations and institutions is essential to ensure continuing progress in this direction (CSCE 1991: 2, emphasis added).

This formulation was radically innovative and of great significance, in spite of the *soft law* character of all CSCE/OSCE documents. However, it is the emergence of the idea of sovereignty as an internationally shared responsibility that can be identified as a potential watershed. Indeed, this normative innovation represents a powerful tool for practitioners. Grounded in an understanding of sovereignty as a capacity, this vision has offered a chance to move beyond the *status quo* that had been the accepted thinking for decades in international politics. According to this new formulation, the exercise of national sovereignty is recognized as a privilege that governments are entrusted with, but that is dependent on the fulfillment of a set of responsibilities. This understanding of sovereignty simultaneously emphasizes the international and the domestic accountability of national governments. In the eyes of Amitai Etzioni – a scholar who supports a neo-communitarian understanding of international relations – with this re-characterization of sovereignty, nations could become less and less ‘free



agents, [as] they will increasingly be treated as members of one community' (Etzioni 2006: 83).

The discourse on sovereignty as responsibility was introduced by Francis M. Deng (et al. 1996), who focused on the various issues related to conflict management and peacekeeping initiatives undertaken under the auspices of the international community in several African states. In Deng's eyes

The locus of responsibility for promoting citizens' welfare and liberty, for organizing cooperation and managing conflict, when not exercised by the society itself, remains within the state. Until a replacement is found, the notion of sovereignty must be put to work and reaffirmed to meet challenges of the times in accordance with accepted standards of human dignity (Deng 1996: xi).

Six years later, the International Commission on Intervention and State Sovereignty (ICISS) – an initiative promoted by the Canadian government that gathered both scholars and practitioners from all over the world – expanded on Deng's farsighted theories. In its final report, building on the idea of responsible sovereignty, the ICISS argued for the promotion of a concept with clear operational implications, the *responsibility to protect* (R2P), which in the analysis of the ICISS should be accompanied by two corollaries: a *commitment to prevent* and a *responsibility to rebuild*.<sup>11</sup> Developing Deng's ideas, the ICISS argued the following:

Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion

of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security (ICISS 2001: 13).

### **3.1. From the responsibility to protect towards a duty to prevent, already?**

How did scholars react to these normative developments? Offering classifications or generalizations is often a pointless exercise. Nevertheless, one can say that in parallel with the conceptual evolution of the principle of *sovereignty as responsibility* two visions of international relations have emerged: a libertarian and neoconservative view on the one hand, and a communitarian and idealistic view on the other hand. Advocates of the former approach to international relations (Feinstein and Slaughter 2004) have emphasized that, other than the *responsibility to protect*, intending *sovereignty as a capacity* would also ideally imply a *duty to prevent*, which would justify initiatives by single states or groups of states seeking to prevent possible sources of insecurity from threatening the international environment (this idea will be examined more extensively in the following section). Conversely, supporters of the latter idea have argued in favor of strong external involvement in failing or collapsed states only in cases where serious humanitarian emergencies occur. Arguing in favor of this neo-

communitarian view, but also taking the concept further, Amitai Etzioni (2006: 82) has stressed that ‘when a state acts irresponsibly, some international body will rule that the state has defaulted on its responsibilities and thus call for corrective international intervention by an international or regional body’.<sup>12</sup>

Seeking to identify what responses to security threats should more appropriately form part of a global strategy that ‘maximizes the chances of early and effective collective actions’, Feinstein and Slaughter (2004: 136) have tried to answer this question in the pages of *International Affairs*. Their proposal, however, ends up going a bit too far and turn the general *commitment to prevent* from *responsibility* to a *duty*. The two analysts have argued that the characteristics of the idea of sovereignty as an internationally shared responsibility allows early and preventive action against regimes that collect or trade technologies for the development of WMD. Feinstein and Slaughter (2004: 136) suggest that today, for the sake of international security and stability, it is necessary to recognize ‘a collective duty to prevent nations run by rulers without internal checks on their power from acquiring or using WMD’. Developing further this hypothesis in the hope that it would allow and motivate states to become ‘proactive’ rather than reactive, Feinstein and Slaughter (2004: 137) identify three elements:

First, [the *duty to prevent*] seeks to control not only the proliferation of WMD but also people who possess them. Second, it emphasizes prevention, calling on the international community to act early in order to be effective and develop a menu of potential measures aimed at particular governments – especially measures that can be taken well short of any use of force. Third, the duty to prevent should be exercised collectively, through a global or a regional organization.

Arguing against the inadequacy of the current regimes against the proliferation of nuclear, chemical and biological weapons, Feinstein and Slaughter emphasize that the *duty to prevent* makes the case for greater multilateral control over governments that both lack a credible system of internal checks and that try to acquire WMD. The two scholars are in favor of the preemptive use of force, but while they state that this should be legitimately authorized by the UNSC, they nevertheless criticize its dangerous tendency towards paralysis and they propose, as a second best option, the initiatives of ‘geographically competent’ regional organizations.

This proposal however reveals a series of weaknesses. Firstly, will it always be easy to identify and activate the geographically responsible organization? Secondly, according to article 53 of the UN Charter, if an initiative of a regional organization implies the use of force, the UNSC still remains the only institution that can legitimately authorize such types of action. The UNSC authorization would be unnecessary only if the old definition of ‘enemy state’ provided in the UN Charter – against which a regional organization could legitimately employ force without any authorization – was updated. For instance, a reform of the UN founding treaty could specify that enemies are no longer the countries defeated in World War II (who have been ‘rehabilitated’ by joining the UN) but those regimes that are based on a system of terror and, as Feinstein and Slaughter (2004: 143) argue, whose leaders have ‘terrified, brainwashed, and isolated their populations and have either destroyed internal opposition or subdued it by closing their societies, restricting information as much as possible’.

If a reform of the Charter in this direction is inconceivable, the risks that derive from it are equally clear. Amongst others skeptics, Gareth Evans has

openly criticized the idea of a *duty to prevent* since it focuses excessively focus on a 'label' that can be attached to regimes rather than on the actual behavior of governments in relation to their inclination to develop WMD, provide support to terrorist groups, or tolerate transnational organized criminal networks. The former Co-chair of the ICISS has stated that, in principle, 'the rule of law is always at risk when the focus is on what people are rather than what they do' (Evans 2004).

### **3.2. The sovereignty as responsibility ideal: consolidated ethics for contemporary statebuilding or mirage?**

The debate between neo-communitarians and neoliberalists has been characterized by an interesting confrontation. However, it started to drift attention away from the most crucial issues of intervention today: first, what are the operational implications of the sovereignty as responsibility ideal? Second, is this concept positively influencing international policy making?

Stephen Krasner (2004) has provided an interesting reflection on the first issue raised above, since he has seen the debate on *sovereignty as responsibility* as a chance to openly argue against the inadequacy of transitional administrations and programs of governance assistance. These represent the two policy instruments mostly utilized by regional organizations and coalitions-of-the-willing that are mandated to act in crisis areas under the legitimizing umbrella provided by UNSC resolutions. Krasner avails of the wide consensus surrounding the idea of *sovereignty as responsibility* to expand the toolbox of policy instruments for international action in failed or failing states by proposing the formalization of two mechanisms: *de facto* trusteeships and partnerships. In

particular, formal partnerships imply the reorganization of core domestic authorities of weak or failed states on the basis of ‘shared sovereignty’ formulas (Krasner 2004: 105-117).

When it comes to the second question above, it should be noted that there have been attempts to show that the idea of sovereignty as responsibility has actually become a driving principle for practitioners, especially for those who are involved in the work of international peacekeeping missions or take part in the reconstruction of post-conflict societies, failing and failed states (Etzioni 2004). Reconstructing the normative vision of state sovereignty and post-war stability lying behind the activities of UN missions deployed in crisis areas, Dominik Zaum (2003; 2007) has argued in favor of the actual consolidation of this new understanding of sovereignty in international relations.

At the same time, criticism against the reinterpretation of sovereignty as a shared responsibility has started to emerge. For instance, commentators have warned that ‘subordinating the supremacy of state sovereignty to the higher authority of the international community undermines the project of making power more accountable, and restrains the exercise of political agency in international politics’ (Cunliffe 2007: 40). A more articulated critique, equally focused on the problem of accountability, has been proposed by David Chandler (2006), according to whom the centrality of statebuilding in the current international political debate perfectly serves the rationale of an *Empire in Denial*.

The main purpose of the analysis developed in this thesis is to make a step back from the problem of accountability and question the genuine diffusion among international policy-makers of the sovereignty as responsibility ideal. Focused on the case of the EU, the pages that follow specifically examine the

ability of a complex multilateral organization to genuinely take responsibility for its action in crisis areas. The decision to focus on the EU is a conscious choice in order to fill a series of gaps in both the scholarly literature and policy analysis.

The reconstruction of the normative principles informing the strategic member-statebuilding undertaken by the EU in its neighborhood has been thus far quite overlooked. The recent literature on sovereignty and statebuilding has mostly focused on the UN, and it has concerned the identification of the ineluctable paradox stemming from statebuilding practice: international missions compromise domestic sovereign prerogatives to foster the institutional reorganization of a collapsing or collapsed state, democratize it, and re-establish stable and well-functioning authorities that will properly exercise sovereignty again.

According to the definition proposed by Krasner (1999b: 20), Westphalian sovereignty is not violated while domestic rulers are ‘free to choose the institutions and policies regarded as optimal, [whereas] Westphalian sovereignty is violated when external actors influence or determine domestic authority structures’. However, violations of sovereignty differ from one another, since they can be based on *invitation* or *intervention*. When the latter occurs, both international legal and Westphalian sovereignty are simultaneously breached. But when domestic rulers voluntarily renounce their domestic autonomy – as to a certain extent happened in the history of the EU integration process – only Westphalian sovereignty is breached.

Analyzing the normative vision of sovereignty at the basis of the EU initiatives for the reorganization of its neighboring weak states encompasses a further element of interest if compared with the analysis of UN-led initiatives of

the same kind, because it enables the exploration of a ‘paradox within the paradox’ of sovereignty and external statebuilding. The case of BiH is pivotal in this regard. Given its multinational character and the legacy of the civil war, BiH offers a unique ground for analysis, which can be useful in understanding the broader dynamic of the EU’s commitment to the stabilization and integration of its near-abroad, where several units are still states in-the-making but have already formally signed up to be part of the EU enlargement process. Moreover, the experience of massive international intervention in this country offers a vast analytical ground to test another theoretical assumption on intervention. Krasner (2004: 87) has highlighted an incongruence between how statebuilding is presented and how it is in actually implemented by the external actors once they operate on the ground of a failing or failed state:

Nationbuilding or state-building efforts are almost always described in terms of empowering local authorities to assume the responsibilities of conventional sovereignty. The role of external actors is understood to be limited with regard to time, if not scope, in the case of transitional administration exercising full executive authority. Even as the rules of conventional sovereignty are de facto violated if not de jure challenged, and it is evident that in many cases effective autonomous national government is far in the future, the language of diplomacy, the media, and the street portrays nothing other than a world of fully sovereign states.



#### **4. Modeling sovereignty and institutions: what is critical in contemporary statebuilding?**

With a successful attempt to characterize nation- and statebuilding practices in geopolitical terms, Mark Berger has offered a comprehensive definition, which sheds light on both the strategic objective and the main instrument that are generally employed by internationals in crisis areas. Statebuilding can be referred to as:

Externally driven, or facilitated, attempt to form or consolidate a stable, and sometimes democratic, government over an internationally recognised national territory against the backdrop of the establishment and consolidation of the UN and the universalisation of a system of sovereign nation-states. Nation-building and statebuilding can encompass formal military occupation, counterinsurgency, peacekeeping, national reconstruction, foreign aid and the use of stabilisation forces under the auspices of the USA, Britain, France, NATO, the UN or another international or regional organisation (Berger 2006: 6).

This definition can be complemented with the characterization offered by Roland Paris and Timothy Sisk (2009: 1-2), who have labeled statebuilding as ‘a particular approach to peacebuilding, premised on the recognition that achieving security and development in societies emerging from civil war partly depends on the existence of capable, autonomous and legitimate governmental institutions’. From the pages of *Politique Internationale*, Richard Caplan and Beatrice Pouligny (2005a: 124) have acknowledged that the development of a systematic practice aimed at containing the failure of states through multilateral intervention has been a clear watershed in contemporary international politics, since it implied for the

international community to recognize that ‘la guerre (ou la menace contre « la paix et [...] la sécurité internationale ») ne naît plus de la puissance des États mais de leur faiblesse / war (or the threat against international peace and security) does not stem from the power of states but from their frailty’. Adopting a similar position, Francis Fukuyama (2004: xvii) has warned that ‘statebuilding is one of the most important issues for the world community because weak or failed states are the source of many of the world’s most serious problems’.

Actually, the practice of securing troubled territories under international tutelage is not a novelty of the last two decades. This tendency can be traced back to the mandates issued by the League of Nations right after the end of World War I if not, to some extents, also to the aftermath of the Balkans Wars that preceded the Great War in the earliest part of the last century. Examples of externally regulated and re-organized states, however, can also be found by making a further step back in history. For example, the various forms of protection that were granted by the Ottoman Empire represent only one amongst many other examples that could be brought.

Today’s statebuilding praxes, however, are different for both qualitative and quantitative peculiarities if compared to past experiences of a similar kind. On the one hand, there is a ‘legal’ difference. It should not be disregarded that peace- and statebuilding projects worldwide are generally covered by the legal umbrella agreed upon at the United Nations, the only global organization that is morally and legally entitled to provide legitimacy to such initiatives. On the other hand, the reconstruction and rehabilitation of sovereignty in weak polities is pursued by structured and long term missions that are attributed an unprecedented degree of resources, power, and authority, and that develop a degree of institutionalized

multilateral intrusiveness in the socio-political life of the target state that has no equivalent in contemporary history.

Throughout the Cold War era, the UN undertook numerous field missions for the stabilization of states that either were going through the decolonization process or were coming out from both regional and endemic conflicts. In 1992 two remarkable decisions of the UNSC opened the way for the intensification of the debate on humanitarian intervention. Firstly, the eruption of the crisis in Somalia induced the UNSC to authorize the use of force within the border of a state. In a clear break with the past, such a breach of the domestic jurisdiction was not justified by producing evidence on the possible regional impact of the crisis. With such a shift, the rigid application of the limit disposed by article 2.7 of the UN Charter were overcome and slowly turned into history by the UNSC. Secondly, in the same year, a UN Mission was sent to Cambodia (APRONUC) inaugurating, even if with dubious results, the season of post-Cold War statebuilding initiatives.

Post-conflict statebuilding missions are complex and articulated projects. The externally-driven construction of democratic institutions and the injection of good governance practices require substantial human and financial resource from like-minded states and multilateral organizations, as well as a long term commitment. In the previous sections of this chapter, it has been argued that the concept of sovereignty is central to the debate on the justification of statebuilding initiatives as well as, more in general, peacebuilding projects. Moving from the ground of normative principles to more operational aspects of intervention, the following sections address three concrete dilemmas that are connected to the reconstruction of failed or failing states. These dilemmas will be applied to the

specific Bosnian context in Chapter III. The empirical analysis that will follow in Chapters IV and V focuses on the performances of the EU in the stabilization of BiH with a view to understand how (in this case EU) policy-makers who contribute to a complex multilateral statebuilding project think when they debate and design their policies, but also how they end up operating in the field.

At a first glance, the initial statebuilding dilemma that is going to be discussed here seems to resemble a mere diplomatic concern rather than a concrete issue. On the contrary, it probably represents a fundamental issue that the international community faces in the aftermath of civil wars: is it desirable to reassemble states that have collapsed along marked ethnic and/or religious fractures and have experienced dramatic domestic violence? This question becomes more difficult if civil war has actually resulted into a high number of internally displaced people, flows of refugees beyond the national boundaries, and cases of mass murders or genocide.

Beyond the reflections on what can be referred to as the preliminary dilemma of statebuilding in post civil-war environments, attention will be then switched to the concrete operational and strategic problems that characterize statebuilding practices on the field. Looking at the projects for the external reconstruction of states that have been undertaken in the last decades it is possible to sum up two main operational dilemmas, which are distinct but entrenched around the demand for effectiveness. To be precise, these two dilemmas intersect around the contraposition between nation-building and technical institution-building.

On the one hand, practitioners face the strategic question: should statebuilding initiatives privilege a bottom-up or a top-down approach? This

question can be metaphorically identified as the ‘vertical’ dilemma of statebuilding, since it addresses the strategic direction towards which policies are tuned. On the other hand, since resources and time are limited, practitioners have to identify systematically the character of their initiatives. In other words, a ‘horizontal’ dilemma of intervention can be synthesized with the following question: is a technical approach to statebuilding preferable to the ambition of promoting wider socio-political projects and grass-roots reconciliation policies in the reorganization of a fractured polity? If the vertical dilemma focuses on the choice of the primary target of international policy-making in statebuilding initiatives, the horizontal dilemma refers instead to the definition of the means for intervention. From a policy perspective, to provide an answer for these questions is of crucial importance. As Ashraf Ghani and Clare Lockhart (2008: 4) have warned, ‘the failed state ... is at the heart of a worldwide systemic crisis that constitutes the most serious challenge to global stability in the new millennium’.

#### **4.1. The statebuilding dilemma I: together again? Reflections on the post-civil war reconstruction of collapsed multi-ethnic states**

International intervention in civil wars opens up a series of issues, which range from the reestablishment of security to the containment of the humanitarian emergencies produced by the conflict. But once the necessary resources to contain such challenges have been successfully employed on the ground, the international community faces the initial, crucial dilemma of statebuilding: is it possible (and desirable) to recompose all the fracture lines that have led to a civil war and

rebuild a unitary state? In his analysis on *State Failure and Nation-Building*, Michael Ignatieff (2003: 309) has pointed out that, from a global perspective, multiplying the number of states that follow the rigid Westphalian model may not necessarily 'reduce chaos and ... improve domestic governance and stability'. On this basis, Ignatieff ends up questioning the opportunity of gluing together again (in the name of a supposed 'Westphalian ideal') parts of states that have collapsed for the presence of serious ethnic fractures within their borders.

Against this backdrop, one further question can be identified: on what basis can we consider the reconstruction of a unitary multiethnic state as an appropriate choice? Useful reflections on this issue have been provided by Robert Keohane (2003). In his analysis on humanitarian intervention and post-conflict statebuilding, he proposes to highlight the key distinction between good and bad neighborhoods. It is on the basis of such strategic distinction that decisions shall be adopted by international institutions, at least on the very initial phases of the post-war reconstruction. Institutional development, evidently, results smoother in good rather than in bad neighborhoods (Keohane 2003: 292-297).

If this vision is accepted, it is possible to say, for example, that the installation of the EU prospect of membership on the Western Balkans and the approximation process between Brussels and the capitals of the region has served the purpose of projecting former Yugoslavia into a broader network. This network guarantees to former Yugoslavia the possibility to benefit of a better neighborhood. More precisely, integration with Western Europe represents a chance to dilute critical intra-regional tensions – within states and between states of the region – into a greater area of institutionalized cooperation. The European construction is based on the respect of sophisticated procedures and norms, the

*primauté* of the European Community laws over national legislations, as well as on multilevel interaction networks that are bound to respect the key principle of subsidiarity. As long as the Western Balkans remains an unstable region at the periphery of Europe, consolidating a credible stabilizing geopolitical perspective thus remains a crucial challenge for the EU.

To conclude the reconstruction of the first ‘preliminary’ statebuilding dilemma, a final methodological remark can be proposed, by making another reference to the work of Keohane. Analyzing the unbundling of sovereignty that derives from foreign intervention in troubled states, he has pointed out that the restoration of unitary sovereignty produces highly dangerous risks in the aftermath of a civil war, especially if the conflict was generated from ethnic or religious clashes. Providing indirectly an argument for the formalization of shared sovereignty arrangements – which, as previously mentioned, have been more openly supported by Stephen Krasner (2004) – Keohane (2003: 287) carefully stresses that ‘it is foolhardy to grant unconditional, unitary sovereignty to new states with severe ethnic divisions’.

#### **4.2. The statebuilding dilemma II: bottom-up vs. top-down approach**

If the first dilemma of statebuilding emerges prior to intervention, the remaining two dilemmas characterize the choices of international statebuilding missions as soon as security on the ground improves and the peacebuilding process enters its implementation phase. In one of his most recent works, Francis Fukuyama (2004: xvii) has pointed out that ‘while we know a lot about statebuilding, there is a great

deal we don't know, particularly about how to transfer strong institutions to developing countries'; indeed, according to the American scholar, 'well-functioning public institutions require certain habits of mind and operate in complex ways that resist being moved'. As the picture presented by Fukuyama suggests, both academics and policy analysts shall renew attention to the operational dimension of the discourse on statebuilding, possibly, with two main objectives in mind. On the one hand, it is crucial to assess the procedures and practices through which new institutions in failing or failed states are established and actually put to work (which constitute the technical dimension of statebuilding). On the other hand, it is also necessary to examine the modalities in which internationals interact with both the elites and constituent people of the target state. The empirical chapters of this thesis aim to elaborate exactly on both these aspects and fill the current analytical gap by assessing the quality of statebuilding policies beyond the debate on, so to speak, the 'quantity' of intervention.

The sometimes 'random' division of labor between the different external actors (often with overlapping competences) that compose the international presence in a post-conflict scenario generates an unbalanced approach to the overall stabilization process. As the recent two-decade history of post-conflict reconstruction demonstrates, international policy-making tends to marginalize the tensions characterizing the bottom of the state, and the micro-conflicts underpinning it, to focus mostly on the very political surface. The two dimensions are indeed dealt with in absence of a coherent planning and with the tendency to pour resources mostly into technical initiatives rather than bottom-up policies that help stabilizing the civil society and promote its maturation. Actually, it has



become regularity in peacebuilding processes to leave the social dimension of state consolidation mostly to the voluntary and sporadic care of NGOs.

In other words, there is an operational dilemma between top-down institution building initiatives and bottom-up maneuvers (that promote a culture of democracy, long-term reconciliation, incentives for participation, and revitalize the civil society). The experience of the statebuilding processes undertaken over the last twenty year – from BiH to Iraq – demonstrates that international missions tend to employ resources predominantly to create institution and inject good governance practices. With a very strong but effective expression, Christopher Bickerton (2005b: 11, 10) has emphasized that, in consideration of this operational tendency, contemporary statebuilding results into an unbalanced process, where the international agent ends up ‘stripping states of their soul’ that is, in other words, ‘all the intangible and immeasurable concepts such as political authority, legitimacy, agency and collective will – in a word, sovereignty’.

Capacity building and technical assistance programs focused on political and bureaucratic elites can be powerful tools to accelerate the reorganization of a public administration and, more in general, they represent a way to equip domestic authorities with better managerial attitudes. However, when the focus on such policies produces a dangerous marginalization of the socio-political dimension of intervention, is not sustainable in a long term run. Often, the result is indeed that the political environment is overdosed by repeated elections – that often are organized also in the very aftermath of conflict – while profound fractures continue to undermine the stabilization process under the surface.

### **4.3. The statebuilding dilemma III: technical international presence vs. complex post-war stabilization**

Fukuyama's concise definition of statebuilding as 'the creation of new government institutions and the strengthening of existing ones' (2004: ix), seems to be excessively technocratic. This critique actually finds a further confirmation, if we consider the way in which Fukuyama assesses the weaknesses of contemporary statebuilding practices. Apparently overlooking the sociological aspects and the complexities related to the formation and stabilization of the state, Fukuyama seems concerned mostly with the fact that a successful field implementation of externally-driven statebuilding initiatives can be seriously hindered by organizational ambiguities and scarce policy planning. Indeed, goals agreed upon at international level are frequently 'unclear, contradictory, or otherwise poorly specified' (Fukuyama 2004: 69).

Other than for lacking clarity of objectives and coordination, statebuilding initiatives have also been criticized for being too broad and excessively intrusive. For instance, Marina Ottaway (2002: 1008-09) has emphasized that '[i]n an attempt to remedy early mistakes and avoid future failures, the international community has developed a set of prescriptions for state reconstruction that is so exhaustive that it cannot be possibly followed in practice'. What international officials might call 'creative ambiguity' is instead (too often) scarce awareness of the social context in which intervention takes place and poor understanding of the processes that, historically, are at the basis of the social and political structures of the recipient state. In this regard, Caplan and Pouligny find statebuilding missions guilty for their scarce consideration to 'the complex processes of interaction between the state and the society that allow the constructions of nations' (2005b:

121, my translation). Lacking such a focus, contemporary statebuilding practices may end up in undermining rather than strengthening the governance capacities in failed or failing states.

The negative influence of multilateral missions in crisis areas does not merely stem from the strategic focus that is given to internationally-led institutional reconstruction. The installation of a long-term international presence holds *in nuce* also some structural elements that create distortions in the post-conflict environment. Among others, distortions are determined on the local labour market. For instance, the former director of the OSCE Management and Finance section Michael von der Schulenburg has critically emphasized how the presence of international missions that hire local people inevitably creates distortion on the already weak labour market of the recipient state: '[c]ompared to local scales, international organisations and agencies pay highly inflated local salaries. This creates a local labor market in which a new government has no chance to compete' (von der Schulenburg 2005: 22). Loosing such competition forces local administrations to face a sort of internal brain-drain: the most skilled locals tend to offer their expertise to international agencies, this 'unintentionally contribute[s] to marginalising the role of local administrations' (Chalmers 2005: 22). On this specific regard, with a very strong expression, Michael Ignatieff (as quoted in Fukuyama 2004: 139) has claimed that the international community's capacity-building initiatives have often turned out being 'capacity sucking-out' actions.

The account above seems to confirm that also scholars, in line with the work of practitioners, have approached statebuilding policies mostly by focusing on technical issues rather than encompassing societal considerations in their

concern. This is only partially true. Even Fukuyama (2004: xvii, 40) has recognized that both the efficiency and the stability of public institutions have a lot to do with ‘certain habits of mind’ and that ‘the development of formal institutions is strongly affected by cultural factors’. Compensating his largely technical approach to statebuilding, the American scholar has suggested that stateness should be examined by distinguishing ‘four nested aspects’: organizational design and management, political system design, basis of legitimization, and cultural and structural factors (Fukuyama 2004: 31-41). While acknowledging that the first component (institutional capacity *stricto sensu*) is the one that can be more easily exported and resists the influence of societal and cultural tensions, the fourth component of stateness introduces a sociological and anthropological dimension of statebuilding, which Fukuyama (2004: 43) further expands by analyzing the issue of generating a genuine demand for institutions – a challenge that state-builders cannot easily overcome and that they largely underestimate.

Another series of key questions on contemporary international policy-making practices has been brought by David Chandler (2004b; 2005c; 2005b; 2006), who has emphasized that one of the most crucial concerns for the officials involved in contemporary statebuilding is how to avoid accountability. In this regard, Chandler criticizes the proposals of the ICISS and the normative debate on the sovereignty as responsibility ideal for providing merely a fertile ground of useful justification to what has emerged as a complex framework for ‘the regulation of and the intervention in non-Western states’ (Chandler 2005b: 2). Statebuilding is the operational core of such a framework, which might paradoxically weaken states by undermining the crucial relations of power and

accountability. The most evident result of states created ‘as administrative centres, directed from Brussels or Washington’ is that the crucial connection that should sustain the life of the state (the one between the state as organization and the state has a societal community) does not have chances to develop; ‘this is particularly problematic in situations where states have a weak social basis or their societies are particularly divided or fragmented’ (Chandler 2005b: 6).

Caplan and Pouligny (2005a: 133) have brought two main critiques against what they call ‘l’ingénierie du state building à la mode onusienne’ or UN-driven statebuilding. On the one hand, they have highlighted that there could be several long-term problem of institutional stability because statebuilding is too often undertaken by simply transplanting into a society the practices, the institutions and the laws that have developed in this or that Western state. On the other hand, they criticize the tendency of multilateral statebuilding missions to focus most exclusively on institutional and legal aspect of reconstruction. Transferring practices and rearranging the institutions of a failing or failed state turns out to be ineffective when it absorbs the resources of the international institutions involved in the statebuilding project up to the point that the ‘societal component’ is completely marginalized. Focusing on institutions- rather than nation-building cannot be a successful grand strategy: the long term stability of national institutions will only be granted if they serve a community that is reconciled and wants to continue living together. Referring, among others, to the work of Benedict Anderson (1991), Caplan and Pouligny (2005a: 134) have emphasized that the vital lymph of a community should originate from ‘l’adhésion général et toujours renouvelée des citoyens au projet du vivre

ensemble / the general, constantly renewed adhesion of the citizens to the project of living together’.

## **5. Conclusions**

Sovereignty, it has been claimed, ‘sprang out from universal morality’ (Pemberton 2008: 64-65). As the first part of this chapter shows, the key rule of the game in international relations is also one of the most debated ideas in the history of political thought. When theoretical confrontation on this concept started, the main concern for classical thinkers was to identify the principles that could allow stabilizing this normative imperative as a sort of ‘shield’ for the domestic consolidation of authority. Later in history, in parallel with the emergence of individuals as actors who have relevance and rights in the international realm (also beyond the shell of their nation-state authorities), the normative efforts of political theorists have been oriented towards the valorization of the democratic character of sovereignty. Throughout the last decade, elaborations on sovereignty have made another step forward, since the main concern for both scholars and policy analysts has been to emphasize the connection between legitimate sovereignty on the one hand and good-governance capabilities of rulers on the other.

This last normative ferment has now reached an interesting crossroads. There is a widespread consensus that the interpretation of sovereignty as an internationally responsibility represents a new powerful normative basis on which a substantial renovation of international cooperation could be grounded. However,

interest on the general promotion of responsible sovereignty should not distract from the concrete operational limitations that still affect long-term missions in post-conflict scenarios. As the case of BiH will show, international policy-makers are still, so to speak, in a marriage of convenience with the re-conceptualization of sovereignty as a capacity and a responsibility. On the one hand, this new understanding of sovereignty has provided a comfortable basis to justify intervention and the prolonged international intromission in states that the international community labels are weak, failed or in the process of failing. On the other hand, the moral ideal of sharing responsibilities is not yet fully respected by the external actors operating in crisis areas. Statebuilding missions maintain a tendency to 'babe' local elites, but they nevertheless privilege the 'technicisation' of the relationships with the representatives from the target state.

This attitude is quite interesting in the case of the member-statebuilding undertaken by the EU in BiH. In spite of the sophisticated ideal underpinning this particular exercise of reconstruction – which is to dilute the sovereignty struggle of the post-civil war multiethnic state through progressive integration into a complex post-nation state union – Brussels nevertheless tends to distance itself from political processes and uses, paraphrasing from Krasner, the sovereignty issue in a hypocritical way. In this regards, it will be clarified that EU policy-makers have adopted a 'hands-up statebuilding' attitude. The sovereignty as responsibility ideal has not become yet a principle that genuinely informs and is concretely implemented, even by EU policy-makers. As the analysis of the Bosnian case will demonstrate, 'logics of consequences' remain still predominant amongst statebuilders.

The normative ground and the mix of interests that affects a multilateral statebuilding missions are not the only focus of this dissertation. The second part of this chapter has also reconstructed the main strategic problems that statebuilding missions are generally bound to face in their policy planning. The challenge for the international community is always greater when states collapse due to profound ethno-religious fractures that affect the community within its boundaries. In such specific cases, a first critical dilemma emerges even before the statebuilding mission is launched. As soon as a cease fire is reached and stabilized, and the negotiations for the peace settlement are structured, the international community needs to assess the desirability of the reconstruction of a multi-ethnic state. Once the pros and cons of this crucial initial decisions are overcome and a choice in one direction or the other is taken, two operational dilemmas of statebuilding emerge: the dilemma of bottom-up vs. top-down statebuilding (which has metaphorically been referred to as the ‘vertical’ dilemma), and the conflict between technically oriented assistance and a complex post-war stabilization focused, from the earlier stages of the statebuilding project, on grass-root reconciliation and the establishment of a definitive socio-political peace (which has been instead identified as the ‘horizontal’ dilemma of statebuilding).

As the literature review in this chapter demonstrates, at the intersections of these two sets of operational choices lies the subtle contraposition between technical institution building and externally-incentivized nation-building. The need to create a balance between these two trajectories represents the key to success for statebuilding initiatives. When interest in the former is predominant, human and financial resources from international agencies are mostly invested



for the creation of structures that can guarantee short-term achievements. On the contrary, if the latter, but more arduous path is privileged, international institutions would be expected to tune their efforts mostly to implement policies that respect a long-term vision, while in the medium range they favor the consolidation for a stable environment where domestic political forces can play the games of democratic confrontation and overcome relative-gain logics of cooperation.

The case of BiH will be analyzed to demonstrate that foreign intervention has rarely overcome these dilemmas, even when it has been rationalized in view of a highly ideological project like EU integration. It will be clarified that also the EU has thus far failed in consolidating an operational balance between the horizontal and the vertical dilemmas of statebuilding. In pursuing its peculiar member-statebuilding, even the EU is not yet immune from the strategic limitations that affect other multilateral settings in their strategic decision-making. A clear orientation in favor of technical and partial achievement leads to overlook, or better, marginalize the civil society component. Short term and limited successes remain a privileged objective. Moreover, the need for success-stories drives international agencies to privilege relationship with a selected class of bureaucrats (mostly educated in Western countries) which allows procrastinating confrontation with a turbulent political class and the fractured and difficult-to-approach constituency. This, so to speak, 'more comfortable' way of interaction can be traced back to some very basic needs that condition the international community when it sets a highly-intrusive field action.

The recent history of peacebuilding efforts confirms that once a crisis is under control and reconstruction can be launched, the continued involvement by

the international community is normally fed by two elements: the occurrence of small crises that can be easily contained and, equally important, periodic and partial successes. The former allow a mission to be kept in place and be justified in the eyes of the host country and its population; the latter allows the field effort to be justified in the eyes of the domestic constituencies of the countries that contribute to the mission by sending their soldiers, personnel, different types of material resources, and direct funding.

## (Chapter II)

# The Bosnian Context

Bosnia is a wonderful country, fascinating,  
with nothing ordinary in the habitat or people.  
And just there are mineral riches under the earth in Bosnia,  
so undoubtedly are Bosnians rich in hidden moral values,  
more rarely found in their compatriots in other Yugoslav lands.  
But, you see, there's one thing that the people of Bosnia,  
at least people of your kind, must realize and never lose sight of.  
Bosnia is a country of hatred and fear.

*Ivo Andrić, A Letter from 1920*

### 1. Introduction

This project assesses how the current EU-driven stabilization of BiH has led to a ‘paradox within the paradox’ of sovereignty and statebuilding. International multilateral organizations embarking on statebuilding projects are bound to produce a paradox of sovereignty since the outside-in promotion of good domestic governance in failed and failing states inevitably imposes constraints on sovereignty. When the highly-intrusive statebuilding project was initially launched in BiH under the strategic guidance of the UN, the external actors operating – to paraphrase a famous expression from the DPA<sup>13</sup> – ‘in and around’ Sarajevo compromised the self-governance of the target state, albeit with a view to restoring the full sovereign prerogatives of domestic political authorities. Prior

to the involvement of the EU, this rehabilitation process was designed to stabilize the independent multi-ethnic institutions and to rationalize the complex constitutional architecture established under the DPA. However, this has resulted in a further paradox whereby Brussels oversees the Bosnian multiethnic experiment and fosters the creation of a specific 'EU-feasible' state. In this member-statebuilding exercise, the EU educates national elites to relinquish certain sovereign prerogatives when the time comes to join the supranational Union.

Despite of the European perspective, which in principle is supported by all members of the domestic political environment regardless of ethnic root or religious affiliation, BiH remains a complex reality, in which party leaders continue to approach cross-ethnic cooperation with a logic of relative-gain. Moreover, the history of the last fifteen years shows that the process of 'ownership' in BiH has passed from the international community to the EU without the decisive involvement of the Bosnian people and without lifting the protectorate cloak from the politico-institutional life of the country. To be sure, establishing a modern form of protectorate carries its own risks. According to Susan Woodward (1999; 2001), sacrificing self-governance to restore sovereignty through a massive and articulated external presence can lead to highly unstable situations, especially in ethnically divided states like BiH that have emerged from civil war and still suffer from serious ethnic fractures. Looking at the repeated crises that affected political life in Sarajevo only a few years ago, Woodward (2001: 258) emphasized that

The only force in favour of Bosnia as a whole is the international community. While that does not mean that there are no domestic

constituents of a sovereign Bosnia, the way in which this international operation is taking place gives free rein to those who are opposed. It appears to provide no sanctuary or platform for those who are committed to Bosnia.

Against this backdrop, the analysis in this chapter identifies the main problems that have so far undermined the emergence of a political class that is disposed to operate for the common good beyond ethno-religious divisions and is therefore, recalling Woodward's expression, truly 'committed to BiH'. The first part of the chapter describes the three main factors that make BiH a complex and unstable political system. These coincide with the residual discontents of the DPA, the negative impact that the protracted technical intrusiveness of the HR has had on the political arena, and the dangers of weak democratization. Weak democratization refers to the tendency of the international community to promote institutional and technical developments, while disregarding the bottom-up dimension of democracy. In the second part of the chapter, the main processes and outcomes determined by the Bosnian stabilization process are connected to the three operational dilemmas of statebuilding previously highlighted. In the third section, the concrete and potential effects of the specific EU-driven statebuilding in BiH are examined. An analysis of the OHR-EUSR transition will highlight the difficulties for Brussels in pursuing its member-statebuilding and definitively establishing its leadership role in BiH.

## **2. From international to EU-driven statebuilding: fifteen years of international presence in BiH**

Since the EU has become the leading international actor in the Bosnian stabilization experiment there is evidence of a further ‘complication’ in the paradox of sovereignty and statebuilding identified by academics. Under EU direction, it seems that BiH could potentially skip a step in the restoration of its sovereign prerogatives. Seduced by the prospect of EU membership, BiH is moving towards integration into a greater supranational organization that will absorb critical sovereign prerogatives in the name of peace and development, and with the repeated promise of prosperity. Sovereignty is thus restored with international assistance, but only in the expectation that it will be subsequently relinquished by the local government to the European supranational sphere.

What kind of rehabilitation process is the EU overseeing in BiH? Carl Schmitt (1922: 5) wrote that ‘sovereign is he who decides on the exception’. Paraphrasing Schmitt’s well-known formulation, it can be argued that, through the prospect of membership, the EU is creating an exceptional situation if compared to the trajectory of sovereignty in post-conflict statebuilding projects as identified by the sovereignty paradox literature. Statebuilding initiatives are complex and articulated projects; however, since the EU has taken over responsibility for the Bosnian reconstruction, a clear objective has emerged: BiH is to be constructed as a state ready to join the EU and relinquish some of its key sovereign prerogatives when the time comes. In the words of the Head of the Western Balkans Task Force at the Policy Unit of the EU Council:

The EU is ready to interact with a non-orthodox state structure. Even a country like Dayton Bosnia, to a certain degree, with all its anomalies with regards to sovereignty and institutional arrangements, can interact with the EU<sup>14</sup> ... Bosnia is a state apparatus that can be understood and thus changed only in relation to the European integration project. We cannot say, “Let’s do Bosnia and then we integrate it”. *We are making Bosnia because of and through integration.*<sup>15</sup>

In the eyes of former HR/EUSR Paddy Ashdown (2007a: 112): ‘[t]he phase at Dayton was the stabilization phase and the phase of statebuilding is the phase of Brussels’. Perhaps inevitably at this stage, the idea that a stable and multiethnic BiH is in the making ‘because of and through’ the EU integration process is a deep rooted conviction amongst all practitioners working at the offices of both the EU Council and the Commission. In line with this perception, building the Bosnian state means moulding the future institutions of BiH into a supranational institutional expression that originally emerged from the main aspiration (of prosperity) that the Bosnian people have: increasing integration with Western European countries. In brief, the prospect of EU membership has induced the constituent peoples of BiH to attach to a supranational context their idea of *developmental state* – to employ a term widely used in the political and economic literatures, which has also ‘been crucial to the discussion of state failure and collapse’ (Milliken and Krause 2002: 762) since it encapsulates the idea that states’ legitimization stems from their ability to promote security and, most importantly, the welfare of their citizens. For this reason, there is not a single political leader in the country, even amongst the most radical or nationalist, who expresses skepticism regarding the EU integration process for BiH.

Opinion polls conducted on the tenth anniversary of the DPA (Prism Research 2005) show that EU integration is perceived by Bosnian citizens mainly as a process that should secure wellbeing and economic opportunity. Expressing their understanding of EU integration, Bosnian citizens described Brussels first and foremost as ‘a way to create a better future for young people’. The next most popular answers were that EU membership guarantees freedom to travel and seek opportunities abroad, as well as general economic improvements on the domestic front. Interestingly in a post civil war scenario, the idea that the EU guarantees ‘lasting peace’ to BiH was only the fourth most popular answer, which actually was cited by less than 10% of the population. Interviewed on what meaning should be attached to EU citizenship, again, Bosnians indicated primarily the right to move permanently to any country in the Union (over 70%). Over 50% also pointed to the specific right to work in other countries; and an average of 23% mentioned access to healthcare and social welfare outside BiH. Political rights were only acknowledged by a very limited number of interviewees (less than 10%) as a relevant implication of EU citizenship. Moreover, 61,8 % of Bosnians admitted to expecting concrete ‘personal advantages’ from integration into the EU.

To some extent, as has been noted also by the Peace Implementation Council Steering Board (PIC-SB),<sup>16</sup> since the prospect of EU membership was projected onto BiH, the whole international presence in the country has been working towards a single objective: to help the rapprochement with Brussels and guarantee better prospects for prosperity. Amongst other recent declarations, the Political Directors supervising the peace implementation process stated in this regard that ‘Bosnia and Herzegovina as a “peaceful, viable state irreversibly on



course for European integration” has been the longstanding objective of the PIC Steering Board and achieving this objective has been [also] the focus of OHR’s work’ (PIC-SB 2008).

Explicit references to the idea of prosperity have become common features of EU statements and communiqués issued by the PIC. In an effort to encourage Bosnian political and economic elites to increase their commitment to EU integration, in June 2007 HR/EUSR Schwarz-Schilling asked for ‘a new pragmatism to the business of enacting and implementing economic reforms’ as the only way ‘to turn the promise of prosperity into reality’ (OHR 2007t). Similar references are made by the Commission in relation to BiH and the rest of the Western Balkans. Whenever the Commission tries to clarify what are the main pillars that sustain the EU integration process for the region, the idea of ‘raising prosperity’ is listed (European Commission 2006). More recently, on the occasion of their joint visit to Sarajevo, US Vice-President Joe Biden and the then EU High Representative for Common Foreign and Security Policy (CFSP) Javier Solana expressed their support for those local ‘leaders who have the courage to reach across the ethnic divide to find compromise, build trust, foster stability and bring prosperity to Bosnia and Herzegovina’ (US Government 2009).

The economic benefits of the European integration process are also emphasized by political elites in the country. For instance, the link between ‘integration with the rest of Europe’ and the opportunity to ‘deliver a better standard of living for all [Bosnian] citizens’ was chosen as a starting point of the Bjelasnica Declaration (OHR 2003b), co-signed by the representatives of the domestic political arena at the time of the 2003 EU/Western Balkans Thessaloniki Summit.

Turning from the general population to local elites, the paradox within the paradox of sovereignty resulting from EU-driven statebuilding has yet another dimension. As will be demonstrated in the two empirical chapters that follow, policy-making in Brussels has been strongly influenced by the conviction that most (if not all) Bosnian political frictions and sources of instability arising from ethno-religious tensions will be successfully diluted within the wider European context. EU accession represents the culmination of what could metaphorically be referred to as ‘a shredding sovereignty process’. By joining the EU, Bosnian ruling elites will be deprived of several sovereign prerogatives that today constitute sources of tension amongst them. For this reason, a definitive solution to the internal sovereignty struggle has been for the most part omitted from the priority list by EU policy-makers.

An analysis of the two main reform areas that have dominated political debate in BiH will also demonstrate that, in spite of this idealistic understanding of the EU integration process, Brussels has nevertheless been pushing for a technical anchorage of BiH. This takes place through the SAA agreement, which is designed to produce a series of positive and self-driven reforms, as well as to impact positively on the overall political process in the country. In the opinion of EU personnel serving in Brussels and Sarajevo, technical progress within the framework of the SAA should put BiH ‘automatically’ on the path to European integration and politico-institutional harmonization. The deadlines, the conditionality, and the reforms attached to the SAA have been conceived in Brussels as the only feasible means of overcoming political instability in BiH. Interviewed on this issue, the Desk Officer for BiH at the EU Commission has openly acknowledged this strategic choice.

Obviously, the constitutional reform is at the basis of all. But I believe that with the SAA we should succeed to produce a chain reaction. Slowly – at least I hope – the Bosnians will understand that the state they have does not work and they will start to change it, piece by piece and without our direct impositions.<sup>17</sup>

## **2.1. Ownership and sovereignty in the Bosnian stabilization process**

BiH demonstrates specific characteristics if compared with the legal regimes established by the UN in pre-independence Kosovo or East Timor. At least formally, Sarajevo was not a protectorate of the international community, such as those established with UNSC resolutions 1244 and 1272 (1999a; 1999b) in Pristina and Dili respectively. In these cases, an international administration was established, with UN authorities in the field formally tasked with overseeing the countries. However, the prolonged presence of the international community in BiH leaves little ground for doubt: this country was and continues to be heavily influenced by external actors, as it was in the very early stages of the DPA implementation phase.

To be sure, the international presence in the country has changed its configuration if compared, for example, with early 1996. At present, BiH is predominantly under the tutelage and guidance of EU policy-makers. Nevertheless, as has been emphasized by Gerald Knaus and Felix Martin (2003: 61) ‘in BiH, outsiders actually *set* that agenda, *impose* it, and *punish with sanctions* those who refuse to implement it’. Moreover, as these two former OHR

officials have warned, so long as the Western intervention in BiH continues to resemble the behavior of an ‘imperial power over its colonial possessions’ the risk that the Bosnian statebuilding experiment will fail remains (Knaus and Martin 2003: 62).

This *de facto* protectorate status is maintaining the fragile (and for the most part inefficient) central state institutions but, at the same time, it can also be seen as a source of instability. Institution-building and democratization initiatives have been continuously carried out by first the UN and later the EU, under the watchful eyes of NATO. However, the ethno-religious fractures that are negatively affecting political and social stability in the country as a whole have not been tackled directly. The risk that too much time has been wasted without implementing proper reconciliation strategies or facilitating a solution to the domestic sovereignty struggle has eventually started to be recognized also by high-ranking EU officials. Amongst other voices of criticism, a diplomat who spent four years working in the COWEB openly questioned both the management of this post-conflict space by the international community and the tendency, specific to the EU, to duplicate in BiH the model and pre-enlargement policies experimented with in the Eastern European countries that joined the EU in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) and in 2007 (Bulgaria and Romania).

The problem is that in BiH we tried to go quicker than the reality of statebuilding and post-conflict consolidation allows. And in this context we have a sort of intellectual responsibility. We did not focus on the real problems of BiH. We saw our sick man, we saw we had a medicine that had kind of worked in Central Europe and we

took that medicine again from our shelves to give it to BiH. We did not play the good doctor. The attentive doctor tries to see what specific sicknesses his patient really has.<sup>18</sup>

Stability is a vague term, which can be exploited, politicized, and developed in many ways. The analysis of the Bosnian context proposed here develops from a relatively simple and general understanding of stabilization, which does not hide its normative construction: post-conflict stability in a country that has gone through civil war, ethnic cleansing and clear cases of genocide cannot be considered consolidated until there is a reorganization of sovereign powers among domestic political authorities that allows efficient interactions between well-functioning multi-ethnic institutions, and provides incentives for substantial participation and responsiveness of society as a whole.

The last part of this definition is the most delicate. HR Wolfgang Petritsch emphasized that the socio-political aspects of a stabilization process are by far more important than the technical achievements registered through meticulous institution-building engineering. In the words of the former Austrian HR: ‘only once all citizens – and I stress citizens, not peoples, or ethnic groups, or collective bodies – only once all individuals can accept and respect the state of Bosnia and Herzegovina as a reality, then and only then the project of state-building will have succeeded’ (Petritsch 2006: 6).

This indirect criticism of the international approach in BiH is valid. However, what is surely positive is that at least, for the past eight years, the international presence in the country has been put on the path to ‘rationalization’ thanks to the establishment of EU oversight. The system of so-called ‘inter-locking’ international institutions is in its twilight phase. Today, the key to

Bosnia's future lies mainly in the hands of the EU. Brussels has become the 'magnetic centre' that holds the weak central organization of the Bosnian state together: the prospect of European integration works as an incentive that impedes the numerous centripetal forces characterizing the Bosnian political environment from provoking critical shocks. Scholars widely acknowledge that there has been a clear switch from the Dayton phase to 'the era of Brussels' (European Stability Initiative 2002; Ducasse-Rogier 2004; Chandler 2005a; Kerr 2005; Ó Tuathail 2005; Bebler 2006; Hays 2006).

But it is not merely the European perspective that is making the Bosnian state work. The EU is controlling the most crucial aspects of what has now become the Bosnian member-statebuilding process. After ten years of NATO-led missions (first IFOR and later SFOR), Bosnia's military security is now almost exclusively managed by an ESDP Mission renamed 'EUFOR/Operation Althea'. However, in spite of the presence of Operation Althea, the United States maintains its military base in Tuzla, and NATO keeps a small backup force at the Butmir base on the outskirts of Sarajevo. The residual NATO personnel maintain responsibilities in the areas of defense reform, counter-terrorism, information sharing with the EU, and investigations against suspected war criminals.<sup>19</sup> The EU Police Mission has undertaken since 2002 the task of creating a multi-ethnic police force, which was previously handled by the UN. Finally, and most importantly, the EUSR in Sarajevo has since 2002 been 'double-hatted' and is simultaneously serving as head of the OHR.

In general, observers have enthusiastically welcomed all of these handovers of responsibility from various international organizations to the EU and they have moved, as has been rightly pointed out by Bickerton (2005b: 4), from

‘excoriating the state-builders in Bosnia’ when they were not fully under the umbrella of the EU, to ‘supporting the EU’s own state-building policy’. Enthusiasm for the increased role of the EU apart, it is nevertheless possible to say that moving from the Dayton era to that of European integration requires those working in BiH to rethink strategy and objectives. This process of rethinking practical methods of intervention and concrete goals can be undertaken only by re-opening a very broad and theoretical debate: who should actually be sovereign?

As has been emphasized in the previous literature review, sovereignty has internal and international dimensions, both of which are relevant to the discourse on statebuilding. The international dimension is useful in identifying the legal and normative foundations of statebuilding initiatives. Internationally, ‘sovereignty has been and remains the cornerstone of an entire, evolving system of diplomatic practices, conferring international status and enabling states to interact and cooperate on the basis of agreed methods and common understandings’ (Heller 2001: 30). Internally, the discourse might be more complicated. Quoting from John Boli (2001: 54), it is advisable to highlight the distinction between the polity, which consists in a ‘social unit constituted by a body politic’, and the state as an institutional complex, which is ‘the structure by which central authority is organized within that unit’. To have a stable state, one might normatively claim, it is necessary that the individuals constituting the national body recognize the legitimacy and support the activity of the governing authority, at all levels of governance.

Against this backdrop, it becomes clear that in an external statebuilding effort, international institutions are responsible for this process of identification

(which in BiH has been particularly arduous due to the war legacies and the multiethnic nature of the population), especially if they have strenuously advocated for the consolidation of the multiethnic nature of the state. Hence, external actors working on the reconstruction of a post-conflict multiethnic state must distinguish between the polity and the state; moreover, they must address the crucial question of whether it is the people, the parliament or, more generally, the central government that are the holders of supreme authority. Different answers inevitably produce different evaluations of the post-conflict peacebuilding agenda and statebuilding priorities, and provide different lessons for future interventions of this nature.

## **2.2. The DPA: strengths and weaknesses, criticism and appreciation**

Dayton's flexibility has been very important, especially since it has allowed for a series of substantial changes and institutional developments in BiH. The agreement has been rightly labeled as 'the most impressive example of conflict resolution' in contemporary history (Woodward 2001: 258). When the main terms of the DPA were being discussed, international policy-makers had the immediate objective of bringing to an end the violent conflict between the three ethno-religious factions that fought in the civil war, and creating the proper political and strategic conditions to consolidate security on the ground and prevent any possible recurrence of hostilities. Using a formula lying half-way between Clausewitz and Foucault, an observer stressed that the DPA and its very first implementation



phases were ‘the continuation of the conflict by other means’ (David 2001: 10). Even if its architecture clearly was a ‘construction of necessity’ (Keane 2001: 61), it can be argued that it worked well at the end of the civil war.

Beyond the immediate requirements of structuring an international presence to supervise the peace process, establishing the conditions to obtain and then consolidate hard security, and providing continuity to the existence of the Bosnian state, the agreement soon started to reveal some of its limitations. Firstly, the international presence legitimized on the basis of the DPA behavior typical of a protectorate regime, without any formal agreement acknowledging the particular status of dependence. As has been stressed by David Chandler (2005a: 336), the DPA ‘has enabled international actors, unaccountable to the people of BiH, to shape and reshape the agenda of post-war transition’.

Secondly, the agreement left each constituent people with its own particular grievances. At the beginning for instance, Bosnian Serbs were reluctant to accept the deal, in spite of the fact that the territorial partition imposed through Dayton was, at least in statistical terms, clearly favorable to them. Dayton awarded 49% of the territory to the Bosnian Serbs and 51% to the Croat/Muslim Federation, while pre-war data showed that the Serbs accounted for no more than 31.4% of the total population of BiH. Serbs also strongly opposed the incorporation of the city of Brčko into the territory of the FBiH. Brčko – which has always been considered a strategic area by both sides – remained under Serb jurisdiction from the end of the hostilities until 1999, when an international arbitration eventually oversaw its demilitarization and paved the way for the creation of a special district.

As far as the Bosniak side was concerned, the text negotiated in Ohio and signed in Paris was particularly disappointing for the lack of any condemnation of war crimes and mass murders. Bosniaks found it unacceptable that the gross violations of human rights and ethnic cleansing committed by Serbs and Bosnian Serbs against the Muslim communities (like in Srebrenica and Prijedor) as well as the cruel repression exercised by the Croats were completely ignored in the peace treaty. If the episode of Srebrenica represents the most tragic moment in the history of Europe since World War II, it should not be forgotten that the Croat army was also responsible for acts of repression or violence against Muslims, especially in central BiH. The lack of any reference to these crimes created among Bosniak elites the anxiety to receive justice through the International Criminal Tribunal for Former Yugoslavia (ICTY) based in The Hague.

The peace settlement was not completely satisfactory for the Croats either; mainly because they did not get entity status, which was instead granted to RS. In addition, Croats share with the Muslims a common fear. Their respective minority groups still living in RS are the object of marginalization: they are excluded from playing an active role in the RS National Assembly and other key institutions of the Serb Entity. However, the marriage of convenience between Bosniaks and Croats ends here; the latter have worked for the exclusion of Muslims from political life in the cantons of the FBiH where they are in the majority with the same intensity that Bosnian Serbs have devoted to a similar objective in RS.

When it comes to the confederal structure created by the DPA, the agreement has one major flaw. The excessive emphasis on territoriality in the institutional framework is unlikely to be overcome, also because since its establishment, it has automatically favored the perpetuation of ethno-nationalist

politics. As has been emphasized by Sumantra Bose (2007: 140), the institutional architecture created on the basis of the DPA can 'provide the basis for democratic stability in moderately segmented societies like Switzerland and Belgium' but it is unlikely to work 'in deeply divided postwar societies like Bosnia'.

### **2.3. The High Representative and the Bonn Powers**

The role of the High Representative and his intrusiveness in Bosnian political life can be justified by making reference to the idea of conditional sovereignty. When national authorities are unable to undertake their key responsibilities towards the domestic constituency, they can be legitimately confined by an international intervention (Etzioni 2006). However, for how long and how deeply can international institutions exercise their intrusiveness without creating excessive distortions in the domestic political environment?

Under the DPA and the so-called Bonn Powers, the HR was given an undisputedly dominant position in Bosnian political life. At its meeting in Bonn in December 1997, the Peace Implementation Council (PIC) requested the HR: firstly, to adopt binding decisions when local parties seemed unable or unwilling to act; and secondly, to remove from office public officials who violated legal commitments or, in general, the DPA. The section of the PIC conclusions that invested the HR with these powers proceeds as follows:

The Council welcomes the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to

*facilitate the resolution of difficulties by making binding decisions, as he judges necessary*, on the following issues: a. timing, location and chairmanship of meetings of the common institutions; b. interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned; c. other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation (PIC 1997: chapter 11 para 2, emphasis added).

From the beginning of his mandate, the HR has intervened substantially and repeatedly in the institutional life of the country. In Annex 10, as agreed upon at Dayton, the HR was given just a general responsibility for the civilian implementation of the peace settlement and was envisaged as a sort of ‘father figure’ (Keane 2001: 74). A few years later, when Carlos Westendorp took up office as HR in 1997, he openly admitted: ‘[a]nnex 10 even gives me the possibility to interpret my own authorities and powers’ (as quoted in Chandler 2000: 52).

Amongst several other processes, one striking example of the HR’s massive intrusiveness concerned defense reform. This was launched in April 2003 through the adoption of a series of measures which impacted deeply on the pillars of the Bosnian military structure. In order to overcome the well-known limitations of weak civilian control over the two entities armed forces and strengthen state-

level command and control, the HR opted –autonomously and virtually in the absence of any kind of cooperation from the Bosnian political authorities – for the suppression of the Supreme Defense Council of RS (the HR justified this decision pointing to the Council’s failure to prevent the violation of some UN resolutions in RS) and passed a series of decisions amending articles of the RS Laws on Defense, the Army and the Federation Law on Defense and even some provisions of the Entity constitutions. In line with the requests made by the Council of Europe (CoE 2004), these decisions aimed to strengthen state-level command and control of BiH’s armed forces and to harmonize the entity constitutional provisions with the BiH constitution on all military matters.

This example illustrates the degree of influence and power developed by the HR over the years. Observers have claimed that most Bosnians share the same criticism against the HR: ‘unelected [and] with the right to legislate and remove officials without any right to appeal’ (Moore 2004). What critics find unacceptable are the immediate executive effects of his decisions regarding removals or suspensions. These decisions are regularly adopted and implemented without a previous hearing of the person accused, and they cannot be appealed before any court in BiH or elsewhere, even if in some cases removals imply a ban for life from holding any public office.

But the HR does not just send ‘inappropriate’ officers home. After the 2002 general elections, Lord Paddy Ashdown also decided to submit all candidates proposed by the political parties for major ministerial positions, both at Entity and state level, to an *ad hoc* evaluation process. The HR has also nominated high-ranking officers for key judicial functions, state prosecutors included. This brief look at the effects and implications of the HR’s decision is

helpful in understanding how domestic politics has been influenced since the very first use of the *Bonn Powers*.

What is of particular interest is that in recent years the main assaults against the practices of the HR have come not only from local elites and NGOs, but also from the Parliamentary Assembly of the CoE. BiH joined this international organization on April 2002. Since then, the Strasbourg-based institution has on several occasions complained about the powers exercised by the HR. The main issue raised by the CoE has always concerned the apparent incapacity of the HR to relinquish responsibilities in favor of Bosnian domestic elites as rapidly as possible. It is interesting that already in 2004 Strasbourg was claiming that:

More than two years after accession to the Council of Europe, the time has come to define a clear strategy for transferring responsibilities from the High Representative to domestic authorities. The question indeed arises as to the extent to which the current role of the HR is compatible with membership of BiH in the Council of Europe. Full ownership is crucial for the country becoming a credible candidate for further integration into European structures (CoE 2004).

Pressure from the CoE (combined with the growing involvement of the EU in BiH) had an effect: slowly, the HR has become less intrusive. In recent years, the number of laws directly imposed by the HR and the number of public officials dismissed has substantially decreased. This appears to indirectly confirm that progress towards local ownership is intensifying. As we will see later in this chapter, the assessment elaborated by the Venice Commission (another institution working under the CoE umbrella), became a term of reference in the process for

the closure of the OHR, abolition of the regime established under the Bonn Powers, and the creation of a reinforced EUSR Office (cf. section 4.3. in this chapter).

The presence of the OHR is not seen in the same way by politicians from different ethno-religious groups. As emphasized by a correspondent of ISN Security Watch in Sarajevo, when in mid 2006 the PIC-SB announced that the process for the closure of the OHR had formally been launched and was probably going to be completed in one year, several Croats and Bosniak representatives expressed doubts and concerns. In particular, Bosniak politicians have repeatedly declared that they would prefer the OHR to keep its presence, activities, and the right to make use of the Bonn Powers at least until the EU formalizes the acceptance of BiH as a full candidate member (Alic 2006: 5).

On the contrary, Bosnian Serbs have engaged in a permanent struggle with the international envoy to BiH. Several episodes of this confrontation will be highlighted in the following two empirical chapters. In particular, extensive reference will be made to the struggle between the current RS leadership and the OHR. This confrontation has been clearly political in nature. However, in recent times, the struggle has become so sophisticated that the RS Government has even tried to question the legitimacy of the Bonn Powers on legal grounds. Relying on complex juridical arguments, the current RS leadership has defined the Bonn Powers as a violation of international law (RS Government 2009: 12-13).

Continuing their polemic against the legitimacy of the OHR as it evolved after Bonn in 1997, RS leaders have labeled BiH ‘a deeply divided and *terrified* state’ (RS Government 2009: 10), an ‘unproclaimed protectorate and captive state’. In launching this accusation, they are also clear in saying that ‘the

instruments for creation and maintenance of such a situation are so-called „Bonn Powers“ and [externally] installed judiciary, which prevents self-sustainability and progress of BiH’ (RS Government 2009: 5). The most recent attacks from Banja Luka have focused on the supposedly biased approach by the OHR in dealing with each of the three constituent peoples and on the argument that keeping the international protectorate through the OHR informal and unproclaimed has allowed international policy-makers to avoid their responsibilities for the government of the country.

From the beginning of the mission of the international community in BiH, its civilian part – High Representative and his numerous offices, created and cherished with great care the culture of dependence, helplessness and fear. It was not equally distributed to all three constituent peoples. Dependence was reserved for the Bosniaks ... The protectorate in BiH has never been declared, as that would mean full nullification of the Dayton Agreement, and its Annex 4 as the BiH Constitution would particularly be superseded. Apart from that, declaring protectorate also implies responsibility of the protector for the overall condition, relations and results of such a foreign administration (RS Government 2009: 6, 8).

It is beyond the scope of this dissertation to analyze the validity of the arguments put forward by the RS Government in its attempt to challenge both the moral and legal authority of the OHR and the use of the Bonn Powers. It is relevant here to quote again the Yugoslav writer Ivo Andrić, winner of the Nobel Prize for literature in 1961. In his *Bosnian Chronicle*, Andrić attributes to a citizen living in his hometown of Travnik at the beginning of the Nineteenth Century a comment that, to some extent, perfectly describes the endemic adversion of



Bosnians towards foreign rulers: ‘the Best vizier<sup>20</sup> we ever had ... was the one who got as far as the frontier, then went straight back to Istanbul and never even set foot in Bosnia’ (Andrić 1963: 9).

#### **2.4. Participation and nationalist partitions in BiH**

Without necessarily supporting the severe criticism and claims made by the RS Bosnian Serb leadership against the OHR, it nevertheless seems fair to say that the prolonged interference of the HR in Bosnian political life inevitably results in distortions of the democratic development of the country. Despite this, if we turn our attention from the OHR to certain concrete achievements in the democratization process of the country, there are arguments for optimism. Ongoing progress in the effective running of elections has been made since 1997 (the year that Bosnians were allowed to exercise their vote for the first time following the entry into force of the DPA). The OSCE, CoE, and the UN – using personnel on the ground and the deployment of short-term observers – have invested significant efforts in this area. Implementing Annex 3 of the DPA, the OSCE has given a decisive contribution to the establishment of the Bosnian voting system. Given the institutional and structural complexity of the Bosnian context, the rules issued by the experts sent from Vienna and from the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE resulted in an extremely articulated system. For instance, refugees retain the right to vote in their communities of origin and thus have continued to be represented in their pre-war hometowns, often a considerable distance from their actual place of residence.

The early years of democratic experimentation were not easy ones for the competent international organizations. For example, the election in September 1998 of the ultranationalist Serb leader Nikola Poplašen as President of RS demonstrated the limitations of the OSCE operating beyond the purely technical aspects of the electoral process in BiH. Poplašen became President at the expense of the moderate candidate Biljana Plavšić, who had been RS President for the previous two years and was clearly the favoured candidate of Western observers.<sup>21</sup> Analysing the 1998 RS elections *ex post*, it is possible to conclude that the election of Poplašen – who was removed from his post by the HR only six months after the electoral victory (OHR 1999) – was favoured by the OSCE guidelines, which established a majority system based on a single direct ballot of registered voters (OSCE 1998: 6) despite the fact that other international observers operating in the country had warned against the risks associated with this system.<sup>22</sup>

Technical and political complexities apart, it is possible to identify some encouraging signs regarding the improvement of the democratic system in BiH. For instance, since October 2002 the Bosnian authorities have been in a position to organize and run elections independently. A report from the CoE (2004: 21) confirmed that ‘for the first time since the end of the war, the October 2002 general elections were administered by the domestic authorities themselves and not by the OSCE. Given the country’s unique constitutional framework, they were largely in line with international standards for democratic elections’.

When this transfer of responsibilities took place, it was welcomed by the Ambassadors of the PIC-SB as ‘a great success for the democratic institutions of Bosnia and Herzegovina’, especially because – they noted – the Bosnians ‘performed that role with commendable competence and professionalism’ (as

quoted in OHR 2003a). Practically speaking, things went even better at the following 2004 municipal elections. In fact, these were the very first elections completely organized, run and even fully financed by domestic means. The municipal commissions worked independently, as the OSCE limited its intervention to the pre-electoral phase, instructing its experts to focus their work on increasing citizens' trust and participation in the whole electoral process (OSCE 2004).

Was the ODIHR successful in this complex undertaking? In spite of considerably expanded efforts, data collected in the field appears to confirm that trust and participation remain points of weakness. Unfortunately, lack of participation and, more generally, of confidence in the Bosnian political establishment remain sources of concern. As observers have stressed, 'low voter turnout ... signals a growing disillusionment among voters with the political process, and a growing popular disgust with political leaders of all stripes' (Donais and Pickel 2003: 3). If one focuses on the specific details that emerge from available statistics, the picture appears even less encouraging. At the 2004 municipal elections there were two million and several hundred thousand voters registered. Of these, only 45.52% actually went in the electoral booth to exercise their vote. Moreover, this percentage falls significantly if the specific participation of young people is taken into account. Data demonstrate that, among the million people that went to vote, only 7-10% were in the 18 to 30 year old category (Alic 2006: 2).

Representatives of the international community hope that the above trend will fade over time. The 2006 general election already registered a significant rise in participation, which reached the more encouraging level of 54.48% (OSCE

2006). However, years of very low interest in politics and inconsistent participation appears to show that something in the very expensive outside-in democratization project has not worked properly. Leaving aside for a moment the impact of the OHR on Bosnian democratic development, one can identify several disincentives that are not directly connected with the presence of the international community in BiH, but that are endemic to the domestic political environment. For instance, political analyst Tanja Topic stressed that in post-war BiH elections are repeated very frequently – perhaps too often – thus becoming a routine that induced people to lose interest (as quoted in Associated Press 2004). Moreover, this local analyst also added: ‘nobody elected so far has managed to solve any of the problems poisoning people’s everyday life, and in the eyes of the average citizen, all parties have become the same’ (Associated Press 2004).

In addition to these factors, one can hypothesize that in recent years low people’s confidence in political parties may have been exasperated by three other elements. Firstly, politicians have been opportunistically moving from one party to another: 370 out of 450 top party list leaders have changed their allegiance even up to four or five times. Secondly, the presence of young people in the electoral competition is virtually non-existent, since the same old political class has prevented young candidates from finding their political space and running for election. Thirdly, recent domestic confrontation has confirmed that there are still few alternatives to nationalism.

After the DPA brought the conflict to an end, the three national parties formerly at war ‘managed to remain the central points of reference for the security and political identities of the sections of the population they represent’ (Alic 2006: 2). These parties – SDA, the Bosniak Party founded by Alija Izetbegović in

1990; HDZ-BiH, the Croatian Democratic Union of Bosnia and Herzegovina created in 1990; and the SDS, the Serbian Democratic Party founded by Radovan Karadžić in 1992 – were to a large extent defeated at the last general elections in 2006. However, the parties that won the elections systematically continued to feed their constituency with nationalism and hatred. While ‘old’ nationalist parties lost a high share of their support, it is also true that the supposedly ‘moderate’ parties that won the elections have thus far confirmed – in their strategies, interactions, and *modus operandi* – that confrontation based on ethnicity remains a crucial factor in the Bosnian political arena.

This came as something of surprise to the international community, as a top-ranking official serving at EUPM in Sarajevo candidly admitted when interviewed on the issue exactly one year after the elections. It is worth quoting him in details.

Not even one year had passed after the 2006 elections and I realized that internationals missed nationalist parties. This became clear especially in the last months of crisis. There were great expectations on the supposedly social democrat or moderate parties that won last elections. We were not prepared to handle a renewal of the ethnic tension and an accentuation of the ethno-nationalist rhetoric, at all. Paradoxically that this might sound, we miss the nationalists! Look at what is happening in Republika Srpska. The SNSD is a totally RS-based party. They are Social-democrats in their name and mottos, but at the end of the day they are nationalist and they feed their constituencies with nationalism. So you might wonder: what is the difference with SDS? Leaving aside pointless consideration on right and left wing, there is one answer that matters: the old SDS was a party that maintained its action on the whole territory of BiH. Or, at least, it tried to do so. After all, it was one of the founding parties of

BiH in 1991. SNSD is an RS party, and that's it. They have no orientation towards Sarajevo.<sup>23</sup>

The three negative trends in the Bosnian political arena outlined above are particular features of the domestic environment; nonetheless, as critics have repeatedly pointed out, the international authorities might also bear a certain degree of responsibility for the low levels of interest and participation in national politics. Amongst other scholars who focused on the responsibilities of the international community, David Chandler (2005c: 308) has emphasized that basically all the international institutions involved in the reconstruction of the Bosnian state have dangerously tended to keep statebuilding strategies separated from politics: 'there is a tendency to see state-building as a technical or administrative process, one which does not require building a popular consensus for policy-making'. This assessment can be fully endorsed. As the analysis in the following chapters reveals, the EU member-statebuilding exercise has been characterized by the marginalization of politics on the one hand, and an excessive focus on institutional and technical process rather than societal ones on the other.

In line with Chandler's analysis, Ivan Krastev (2002: 43) has complained about the growing tendency amongst international institutions (and Western states in general, which are also the most active with regards to their bilateral cooperation initiatives in the region) to dangerously perceive democracy 'less as a matter of relations between leaders and led than as a set of institutions whose existence and effectiveness can be measured in concrete ways that are commensurate across cases'. Such a technocratic approach to democracy is flawed, since it reveals the tendency to overlook 'the internal logic of politics and the ways in which citizens view their governments' (Krastev 2002: 44).

In this specific regard, an interesting analysis and at the same time a clear policy proposal has been offered by Roland Paris (2004), who expressed disappointment at the tendency of multilateral peacebuilding mission to organize elections in a post-conflict environment as soon as a minimum degree of security has been achieved. To be precise, Paris expressed concern at the tendency to deploy significant international resources – both human and financial – to organize elections in realities that are still not ready for democracy. This general criticism can be supported. As the Bosnian case reveals, if the political environment is still suffering from a recent conflict, political stability can be hard to achieve within a short time frame and elections end up being held too often, to the point of becoming a routine for which people lose their enthusiasm. On closer examination, Paris takes an even more radical stand on the issue of elections in post-conflict societies, when he claims that peace-builders should actually refrain from running any elections at all, at least until they have clear evidence that moderate parties enjoy sufficient support ‘to prevail over immoderate parties at the polls’ (Paris 2004: 189-90).

### **3. The statebuilding dilemmas and the Bosnian case**

The history of the Bosnian breakup and the ethnic war that took place between 1992 and 1995 represents a classic example of state failure. As recognized by the State Failure Task Force (SFTF 2000: 23), ‘state failure is a new term for a type of serious political crisis exemplified by events that occurred in the 1990s in Somalia, Bosnia and Herzegovina, Liberia, and Afghanistan’. Given the

complexity of its socio-political environment, the legacy of the ethnic conflict, and the pervasive and prolonged interferences of the international community at all levels of governance in the country, BiH has now also become a key case in understanding the dynamics of internationally-driven statebuilding and assessing the effectiveness of post-conflict stabilization policies. The reconstruction process launched on the basis of the DPA offers a unique perspective on all the three dilemmas of statebuilding elaborated in the previous chapter.

Moreover, the case of BiH offers a unique perspective on the difficult transition from international to EU-driven statebuilding. Commenting on the UN methodology for early statebuilding efforts in BiH, an official in the Enlargement DG of the Commission used a powerful metaphor in this regard, when he spoke about '*Rolls-Royce statebuilding*'. His analysis of the challenges of the handover from internationally-led to EU-driven statebuilding proceeds as follows:

The EU, and particularly the Commission, committed to the Bosnian statebuilding project with the idea that the old 'international' methodology had to be abandoned. Before the EU-driven statebuilding was launched, BiH was subject to what we used to refer to as *Rolls-Royce statebuilding*. Basically we tolerated the following approach: whoever thinks to have a good idea, model, example from its own national experience, is entitled to work on the specific reform (obviously, also by putting the money and the necessary expertise). In this way, we copied and pasted many institutions, so that most institutions in BiH resembles ours back home. Basically, this is the way we created the state level from the late nineties until the end of the Ashdown era. Unfortunately, everything has taken place without rationalization and turned out to be expensive and tremendously inextricable. This is why today we speak in terms of conditionalities and technical progress.<sup>24</sup>



### **3.1. From the Western Balkans towards Western Europe: the good-neighborhood effect on BiH**

Maintaining the momentum and the credibility of the EU membership prospective in the Western Balkans is of the utmost importance, in particular, with a view to promoting what, paraphrasing Keohane, can be referred to as ‘the good-neighborhood effect’. Even in relatively recent times, there have been worrying signs of a tendency for violence to erupt and episodes demonstrating that even simple political tensions can spillover state borders within the region.

An example of how easily violence can still erupt in the Western Balkans can be found by looking back at early 2004. In that year, the riots that affected Kosovo provided clear evidence that the whole regional architecture was still based on very fragile balances and was still deeply affected by inter-ethnic and religious tensions. The violence that erupted in Kosovo was followed, within only a few days, by outbreaks of tension in parts of BiH, both in the FBiH and RS: the burning of a Serbian Orthodox Church in Bugojno (a city of the Bosnia Federation very close to the Inter-Entity Boundary Line, IEBL) was followed by the stoning of the Islamic Community’s building in Banja Luka, the capital of RS.

Apart from being permeable to violence, intra-regional borders in the Western Balkans have tended to prove ineffectual also when political tensions related to ethno-religious fractures re-emerge. This happened, for instance, in the critical days following the Kosovo Declaration of Independence. On 17 February 2008 the Kosovo Assembly eventually formalized its separation from the Republic of Serbia. Pristina made the announcement on a Sunday following the

presidential elections in Serbia, thus respecting the timetable that had been suggested by its most supportive European partners and, crucial for the Kosovars, by Washington. The following day, the US recognized Kosovo as an independent state while instead, on the other side of the Atlantic, no common EU position could be reached on the matter. The EU General Affairs and External Relations Council (GAERC) was concluded with the announcement that ‘Member States will decide, *in accordance with national practice and international law*, on their relations with Kosovo’ (European Council 2008a). On the ground, there were security incidents involving Kosovar Serbs in Mitrovica and in the city outskirts, which induced KFOR to temporarily close off all communication roads with Serbia. With the full backing of Russia, Serbia urged the UNSC to reject the *fait accompli* as an unacceptable attempt of illegal secession. At the same time, the Prime Minister Vojislav Koštunica recalled one by one the Serbian ambassadors from those countries that recognized Kosovo as a sovereign state and had opened diplomatic relations with the government in Pristina.

The situation was promptly exploited by nationalist elites in other agitated provinces of the region. Amongst the various reactions from other areas experiencing sovereignty struggles, that from neighboring BiH was again the most worrisome for the international community. Following the announcement by Pristina, the RS Prime Minister Milorad Dodik announced that the Serb entity of BiH had entered into a ‘state of democratic rebellion’ (Media Intelligence Agency 2008). This statement was followed by a resolution adopted by the RS National Assembly reiterating the admissibility of a referendum for separation of the Serb Entity from the rest of BiH.

### 3.2. One, two or three BiH?

The DPA, which was agreed at a US military air force base in Ohio and signed in Paris at the end of 1995, has simply ‘taped together’ the pieces of BiH that emerged from the civil war. However, the political entities that make up this multiethnic experiment have been left separated by an IEBL and by a series of institutional asymmetries that make the work of the central government extremely difficult. The asymmetries are particularly striking if one compares, for instance, the relatively simple structure of RS with the complex institutional castle that has been installed in the FBiH. Ironically, the same international elites that have drafted the DPA and then worked on its implementation have become the most vocal critics of the current structure. For instance, speaking at the UN in Geneva and advocating for the EU’s member-statebuilding in BiH, the then EU Enlargement Commissioner Olli Rehn commented on the excessive complexity and fiscal unsustainability of Dayton BiH asking ‘with only a small dose of sarcasm ... how anyone can call a country ungovernable if it has as many as 13 governments for just over four million people? Which other country of the size of Bosnia and Herzegovina has over 700 members of several parliaments, over 180 Ministers, 13 Prime Ministers and three Presidents?’ (Rehn 2005).

Building on Barry Buzan’s four ideal models of possible nation-state architecture, it can be argued that the Dayton experiment perfectly reflected the ambition of modeling a *multination-state* with a *federative* structural design. Distinct from a state with a federal political organization, *federative* refers to

States which contain two or more nations without trying to impose an artificial state-nation over them. Separate nations are allowed, even encouraged to pursue their own identities, and attempts are

made to structure that state in such a way that no one nationality comes to dominate the whole state structure (Buzan 1991: 76).

In addition to this structural weakness, two other problems have negatively influenced the initiatives for the stabilization of a multiethnic polity that followed the DPA. On the one hand, the Bosnian political context remained dominated for too long by the old nationalist factions. While these were partially defeated in the 2006 general elections, the supposed moderate parties that emerged have continued to feed their constituency with ethno-nationalist rhetoric. Added to this, state-weakening parallel structures (and illegal economic practices) appear to have resisted the numerous counter initiatives undertaken by governmental and non-governmental international actors. Corruption and organized crime thus remain a major obstacle on Bosnia's path towards full integration into Euro-Atlantic structures (Petritsch 2008).

In BiH, central authorities are weak and hindered by both the *de facto* ethnical partition of the state and the *de jure* repartition of responsibilities between Sarajevo, the entities, and the myriad peripheral centers of governance within the entities.<sup>25</sup> In common with other countries of the Western Balkans, external statebuilding in BiH has produced a complex situation: 'elites and constituencies throughout the region increasingly share a European orientation, but indigenous political and structural constraints tend to run counter to European priorities and conditionalities' (van Meurs 2004: 5). Therefore, while the EU works on institutional stabilization and privileges a technical approach to its member-statebuilding, underlying fractures remain dangerously ignored.

The principal draw back of this approach is that it leads to a dangerous marginalization of reconciliation. For a long time in the post-Dayton stabilization

process international statebuilders overlooked evidence that ‘the fear of becoming a minority in someone else’s nation-state was exactly what was (and still is) motivating each community fight, from Croatia to Macedonia’ (Woodward 1997: 63). Only recently, the ‘minority complex’ has started to be taken into consideration by the international community. Addressing the OSCE Permanent Council in Vienna on June 2008, HR/EUSR Miroslav Lajčák openly talked about the persistence of ‘competitive nationalist agendas’, and made the following points:

The fundamental problem is that each of the country’s constituent peoples still has widely different visions of the country’s history, current status and future constitutional structure ... To a large extent, the problems of BiH stem from an exceptionally developed and persistent sense of communal insecurity. This is the twin legacy of the war and the old the Yugoslav system, in which each people had its “own” republic or autonomous province – except, of course, the citizens of multiethnic BiH. Now, in an independent Bosnia and Herzegovina, everybody seems to want a unit, if not a state, of their own. *Nobody wants to be a minority*. As a result, significant numbers of citizens still tolerate – rather than embrace – the idea and fact of BiH statehood (OHR 2008b: emphasis added).

### **3.3. Reconciled people in a stable state: complexity in the Bosnian statebuilding project**

The international statebuilding effort, which has now become the EU-led member-statebuilding effort for BiH seems to respect the traditional view of both

sovereignty and power. The Bosnian stabilization process is pursued by contrasting the dispersions of sovereignty originated by the DPA. The problem with this approach is that it tries to build a state in a top-down manner, while the grass-root work is left to NGOs and only sometimes, in the best case scenario, to the limited resources made available through the OSCE channel. To overlook the tensions that characterize a complex society like post-Dayton BiH can be critical. Especially because, as stressed by Sumantra Bose (2002: 3, 10), 'Bosnia is not just a society divided but a society polarized on the most basic of issues – the question of legitimacy of the state, its common institutions and its borders ... understanding Bosnia necessarily involves an appreciation of complexity'. Critics of the strategies for BiH that are agreed in Brussels, argue that being 'informed by a vision of *technocratic efficiency* [the EU approach] is not directly aiming at bridging the gap between citizens and institution' (Bechev 2005: 3).

The debate over the appropriate degree of international intrusiveness in post-conflict reconstruction projects dominated peacebuilding studies for several years after the end of the Cold War. Assessing the Bosnian statebuilding project from its very initial phases, Roberto Belloni (2007) has attempted to move beyond this debate. Making a series of interesting observations, he successfully overcomes a long-standing dispute among three groups of scholars. In his volume on *State Building and International Intervention in Bosnia*, Belloni unhinges the confrontation between historical determinists (those who argue that only the creation of ethnically homogenous states is sustainable in the long run), interventionists (those who advocate invasive and protracted international intervention) and autonomists (those who adopt radical standpoints against international intervention but without offering alternative forms of regulation).

Building on an analysis of societal, institutional, political, and strategic factors, Belloni proposes a simple but convincing methodology. In his opinion, the literature on peace- and statebuilding should be less centered on what degree of intervention and intrusiveness is 'desirable' in post-conflict stabilization projects. This 'quantitative' focal point should be abandoned, in favor of an approach which asks what type of interaction need to be established between peacekeepers and statebuilders on the one hand, and local actors on the other. Marginalizing the 'how much intervention' question, the key problems that experts on BiH should address becomes more qualitative and policy-oriented: 'why intervention has been somewhat disappointing and how it could be restructured to meet the expectations and needs of other similar cases of multilateral intervention in weak and failing states' (Belloni 2007: 5). In line with this methodological suggestion, the following two empirical chapters analyze the developments in the overall constitutional reform process and the reorganization of the Bosnian police with a view to assessing the quality of EU-driven statebuilding.

Fifteen years of international presence in BiH suggests that foreign statebuilders should approach their mission with better articulated bottom-up strategies and enhanced coordination between different agencies, thus minimizing the risk of creating phantom states that are not self-sustaining and need to be babied for decades with continuous injections of external financial aid. Specifically, Belloni argues in favor of policies oriented towards grass-root reconciliation, and criticizes international agencies for their prolonged tendency to 'consider Bosnia as a blank slate' (2007: 97).

To be sure, such a criticism is not new in the academic literature or in policy analysis. However, Belloni moves beyond previous contributions by

extending his investigation to the reconstruction of the, so to speak, ‘psychology’ of international statebuilding institutions. He successfully demonstrates that international agencies have not been able to facilitate the emergence of a truly stable BiH since they have failed to focus on a specific operational direction. An analysis of the different priorities and operational difficulties faced by main international actors in BiH (namely, the US and the EU) will confirm this assessment.

The empirical findings of this thesis confirm that, not only has the *modus operandi* of the international community in BiH lacked coordination; more critically, international and EU efforts have not been backed up by a clear and definitive acceptance of an institutionalized separation of the three ethno-religious factions formerly at war, nor by a resolute promotion of pluralism, multi-ethnicity, and affective (but costly) strategies for reconciliation. External actors have failed to find an appropriate solution to the statebuilding operational dilemmas. Even the launch of EU member-statebuilding has not helped a substantial switch of *modus operandi*. The vertical dilemma has been for the most part resolved by privileging a top-down policy orientation, in other words, by focusing attention and resources on the interactions with the local elites. As a result, statebuilders have regularly been dragged into the blame games of domestic political confrontation, for which they were not always prepared. Similarly, there has been a lack of rationalization of financial and human resources for different stabilization efforts. The character and quality of external intervention – which have metaphorically been encapsulated in the idea of the horizontal statebuilding dilemma – have been predominantly technocratic.



International agencies can therefore be criticized for having a ‘bias towards maintaining the status quo’ and for procrastinating over a definitive solution to the Bosnian ‘stateness problem’ (Belloni 2007: 173, 17-19). This mental predisposition has induced internationals to overlook the need for structured, coherent, and stabilizing changes. As will be shown, this predisposition has not changed since the EU integration became the primary focus of all international efforts in BiH. One of the most particular features of the EU’s member-statebuilding in BiH has been a tendency to procrastinate on finding a solution to the internal sovereignty struggle, in the conviction that once integrated into the larger European family, this struggle would be diluted and subsequently resolved by systematic interaction in the post-nation state union. It is possible that one day we will witness the success of this strategy. However, the continued ethnic confrontation in the country indicates that the risks of separation are still very real (Parish 2009) and all the financial, political, and diplomatic efforts to preserve a unified multiethnic BiH may come to nothing after fifteen years.

Partially in line with what has been suggested by Stephen Krasner (2004), Belloni also advocates for the formalization of shared-sovereignty institutions from the initial stages of statebuilding projects. These arrangements represent fair and more transparent alternatives to both massive and intrusive international missions on the one hand, and ‘naive calls for domestic autonomy’ on the other (Belloni 2007: 6). The experience in BiH has shown that while international post-conflict initiatives are systematically accompanied by proclamations on ownership, capacity-building, and domestic autonomy, they clearly maintain neo-colonial attitudes and end up compromising self-governance and democracy.

Arguing in favor of transparent and well-structured shared-institutional arrangements, it is possible to lift up that cloak of naivety that has often characterized the literature on post-conflict intervention and the role of multilateral institutions in crisis areas. Moreover, this policy prescription is also relevant to addressing another crucial aspect of intervention today. While the prolonged interference and external regulation of post-conflict societies is justified by making reference to the idea that sovereignty is an internationally-shared responsibility, international missions tend to encounter difficulties in dealing with all the implications of such reinterpretation of sovereignty once they are actually on the ground.

While calling for a better definition of roles and mission objectives and for the formal appointment of international experts in domestic institutions of the recipient state, Belloni does not overlook the inevitable dichotomy between the objective needs of the domestic environment and the institutional interests of both multilateral organizations and their most important sponsoring states. As he points out, regardless of the type of mission they undertake or the extent to which their personnel can be integrated into local institutions, international agencies remain 'organisations with their own institutional interests, priorities and objectives resulting from the self-interest of their member states. Because self-interest is not necessarily in tune with the needs of a country recovering from war, the overall coherence and effectiveness of international intervention will always be difficult to ensure' (Belloni 2007: 175-76).

An analysis of the two main reform processes underway in BiH at present supports this assessment. However, the tension created by conflicting national interests and their impact on multilateral policy-making is not new. Even

practitioners have openly recognized the limitations of multilateralism. For instance, examining the performance of the OSCE in BiH, Robert Barry (2002: 11), an American diplomat with a consolidated experience in multilateral settings, has pointed out that ‘the Bosnia mission evolved into a truly multinational mix reflecting the interest of OSCE member governments that paid the basic salaries of seconded mission members’.

Apart from resulting in organizational ambiguities that stem from the conflicting interests of member states, international multilateral institutions are often characterized by policies and, in the most extreme cases, even by an open competition to legitimize their primacy one over the other. For example, when the post-conflict reconstruction of the Western Balkans was launched, a joke spread among Western diplomats. Commenting on the way in which the numerous international agencies and organizations were trying to carve out a proper space in the region, practitioners observed that the various missions ideally designed to produce a system of ‘inter-locking’ actors were too often working as ‘inter-blocking’ institutions. An example is the reaction to the UN announcement that it was about to pull out the police training mission in BiH. The EU and the OSCE competed to take over the UN mission. Ultimately, Brussels prevailed over the Vienna-based pan-European organization, despite the fact that back then the latter had a more consolidated experience in this specific field and already established strategic Police-Matter Unit coordinating similar exercises from Vienna.

Notwithstanding this often negative aspect of international missions, the EU retains the specific potentials to exert a stabilizing influence: “[t]he long term policy of the Europeanisation of Bosnia and the surrounding region is an important step forwards from short-term, ad hoc conflict management strategies’

(Belloni 2007: 174). The long term perspective provided by the prospect of EU membership undoubtedly represents a positive qualitative difference from the predominantly short- and medium-term objectives that normally drive institution-building initiatives in crisis areas and post-conflict scenarios.

#### **4. Beyond the sovereignty paradox: EU member-statebuilding in BiH**

Looking at the websites of the EUSR or of the Delegation of the European Commission in BiH, one is struck by the series of animated images and banners that have been developed to symbolize ‘the EU commitment to BiH’. One particular feature stands out that each time that the webpage is reloaded, the stars of the Bosnian flag start to spin in a circle, until they inscribe a drawing of the Bosnian state boundaries into a crown of twelve stars on a blue background, which evidently recalls the flag of the EU. This rather particular ‘e-marketing’ of the EU prospect of membership arrives in one of the most delicate moments of post-Dayton BiH. Spinning stars apart, this section highlights the main strategic peculiarities of the EU’s member statebuilding in BiH, thus paving the way for the empirical analysis that will be developed in Chapters III and V, where it will be shown that, despite its more sophisticated mindset and self-serving goal, in common with UN statebuilding missions, the EU also tends to technify the relationship with the target state and dangerously marginalize politics and reconciliation in its strategic policy-making.

#### **4.1. Peculiarities of EU-driven statebuilding**

International multilateral organizations working on statebuilding projects generate a paradox of sovereignty: the outside-in promotion of good domestic governance in failed or failing states takes place while sovereignty is subject to constraints. As Christophe Solioz has stressed (2007: 87), it is rather peculiar that ‘outside intervention, which has as its declared objective the establishment of an autonomous state, is also simultaneously the origin of reforms, with the negative consequence of marginalising the sovereignty of the state and the responsibility of the politicians of the designated state’.

Often, international missions enjoy the right to adopt legislative acts, or they are granted corrective powers. Sometimes, even when these prerogatives have been officially dismissed and the administrative and legislative functions have been formally delegated to autochthon elites and institutions, international offices continue to condition heavily the actions of local governments, even if indirectly. However, such constraints on self-governance and the temporary absence of local ownership in domestic reform process are justifiable. As Dominik Zaum (2007: 27) points out, ‘international administrations compromise a fundamental aspect of a political community’s sovereignty by violating its right to self-governance, but do so with the aim of making it sovereign with regards to the relations between state and society’.

Criticizing the prolonged intrusiveness of the international community in BiH, David Chandler (2006: 45) has depicted post-Dayton BiH as a mere projection of an international agenda rather than ‘a collective political expression of Bosnian interests – expressing self-government and autonomy’. When the highly-intrusive statebuilding project was initially launched, the foreign actors

involved in the early reconstruction of post-war BiH compromised crucial aspects of what Stephen Krasner (2004: 87) refers to as ‘Westphalian/Vattelien’ sovereignty with a view to fostering a reorganization of sovereign powers among the domestic political authorities. This reorganization aimed to establish functional interactions between multi-ethnic institutions, in full accordance with the consociational institutional design and procedures established by the DPA.

Until the prospect of EU membership was extended to BiH, the OHR represented the leading civilian agency of an ‘ordinary’ sovereignty-paradox type administration, which was reinforced with the adoption of the Bonn Powers in 1997. However, a further paradox has resulted from having a post-nation state organization, the EU, hold the reins of the Bosnian multiethnic experiment. Paraphrasing Zaum, it is possible to state that, through the enlargement project, the EU has its own way of enabling weak or unstable states in its neighbourhood to regain sovereignty in their relations with their respective domestic societies. Amongst the countries of the Western Balkans, it is in BiH that the peculiarities of the EU’s member-statebuilding are most evident. While Brussels helps the reorganization of the state by containing the dispersions and the asymmetries of sovereignty produced by the DPA and its implementation, it prepares the state to give up certain sovereign prerogatives when the appropriate time to join the Union arrives.

The interferences inherent in EU-driven statebuilding cannot be justified simply with the goal of rehabilitating the Bosnian authorities to the full and legitimate exercise of their empirical statehood. As the findings in the following chapters confirm, these interferences can be traced back to the latent conviction that the various internal fractures and wounds of BiH will be healed only when

Bosnian sovereignty is diluted in the greater EU institutional arrangement. For this reason, it can be argued that the ‘ethics’ underpinning the EU’s member-statebuilding is different from the one identified by the sovereignty paradox literature for ‘ordinary’ statebuilding projects.

Opening a window on policy analysis, it can be stressed that strategic policy-making in Brussels is strongly influenced by the objective of integration and the ideals related to it. In other words, the idea that Europe is indeed a reconciliation process in itself – which is not contested here – induces EU policy-makers to focus on the aim of integration and marginalize the means, which have not been properly adapted to the various different realities that the EU enlargement project encounters. A message that has characterized the evolution of European integration process since the very beginning is that the supranational construction that gravitates around the Brussels-based institutions ultimately represents an innovative way of relating the citizenry with the institutions governing the *res publica*.

The European project was designed since its inception as an evolving architecture that should be adjusted to transcend national ‘particularisms’ and other sources of unconstructive confrontation among people. Commenting on the dichotomy between nation states and supranational institutions in the aftermath of the entry into force of the treaties establishing the European Coal and Steel Community, one of the founding fathers of the European Communities commented that ‘Europe will exist, but nothing will be lost of all that gave glory and happiness to every nation. It is indeed in a wider society, *in a more powerful harmony*, that the human being can affirm himself and determine the extent of his intellect’ (De Gasperi 1953: my translation).

Needless to say, at the beginning of the European project, in the late 1940s and early 1950s, integration was evolved through symmetric concessions by the states involved, which were all consolidated sovereign units and equal partners. The original supranational ambition stemmed from a negotiation process between nation states that symmetrically converged towards a set of common goals. The initial European construction came into being via a series of symmetric and converging moves. The picture today is different. The set of core institutions representing the Union have been consolidated and Brussels projects its influence and operational capabilities abroad through via both political decisions of the European Council and the technical assistance and capacity-building initiatives of the Commission directly in the target states in-the-making.

This exercise is more intense in countries that have been offered the concrete prospect of membership, which at the moment are all the Western Balkans countries and Turkey. However, similar influence and efforts are carried out in those countries that come under the umbrella of the European Neighborhood Policy (ENP), which was formally established in 2004 (European Commission 2004a). This initiative involves all the countries on the southern shore of the Mediterranean basin, the Caucasus region, as well as Belarus, Moldova, and Ukraine.<sup>26</sup> The initiatives and, more generally, the degree of interference of the EU in these countries differ from case to case, and its intensity tends to vary depending on the degree of governing capacities of the domestic authorities.

Going back to the enlargement process, it can be argued that Brussels presents itself as a very peculiar state-builder. In the parallel implementation of its statebuilding and enlargement agenda, the EU imitates a neo-medieval empire



training peripheral units towards full membership, since it considers inclusion and participation in its formal and informal networks as definitive indicators of rehabilitation. Among those who support this neo-medievalist understanding of the EU, Jan Zielonka (2006: 170, 43) defines the Union as ‘a civilian power enlarging its territory by consent and diplomatic bargaining’, which however – no different to past empires – is ‘more preoccupied with maintaining its internal cohesion than in solving external problems on the ground’.

A further consideration completes the picture. The peculiarities of the EU-driven statebuilding are neither just theoretical, nor are they confined to the sphere of normative principles and policy-makers strategic intentions. The ‘paradox within the paradox’ cannot be explained simply by trying to reconstruct how Brussels envisages stability for the Bosnian state. EU-driven statebuilding differs profoundly also in the methodology and the choices made for field initiatives if compared with ‘ordinary’ UN-led operations of the same type. A practitioner serving in Sarajevo and previously involved in the work of the ICISS, has summarized this idea as follows:

If the operations currently in place in BiH were still of an *internationally-driven statebuilding* the trajectory of sovereignty would look very differently. International statebuilding means: we put in place institutions; we stimulate a shift of the political culture in order to go beyond the rhetoric of wartimes – which unfortunately is still far than accomplished in today’s BiH; we implement structured confidence-building measures at all levels. This should help to re-establish a sovereign society and state. Only then, at an appropriate point, when reconciliation is achieved at all levels, this society can autonomously start to debate on what strategic and

political decisions/directions should be taken, both domestically and internationally.<sup>27</sup>

Brussels has offered BiH (and the rest of the Western Balkans) a political model that is notably different from that thus far experienced in the region. Following the disintegration of Yugoslavia, the Western Balkans was characterized by two ideas that were inevitably sources of political tension. The first is that boundaries matter; the second is that ethnicity also matters. These two predominant perceptions of politics are interconnected. The history of the region over the past century demonstrates that ethno-religious majorities constantly try to consolidate their preeminence, while minorities try to counter by endeavoring to push borders to that point where they become a majority. The war in BiH was the most tragic consequence in the last two decades of these two dynamics. The recent experience of Kosovo is also emblematic, not only for the path that led Pristina to full independence from Belgrade, but also for the subsequent attempts by the Serb population living north of the Ibar river to return to Serbia and avoid 'the minority complex'.

In contrast, the European integration model is based on three ideal political principles that are in complete opposition with the feelings, dynamics, and history of the former Yugoslavia. The project pursued by the EU through its efforts at supranational integration is instead grounded in reconciliation, dilution of boundaries of any kind, and the persistent promotion of a spirit of compromise. This last aspect actually permeates the EU's institutional life at all levels and in all contexts, whether technical or political. To better understand how these three principles are implemented by the EU, reference can be made to several strategic processes and initiatives elaborated by Brussels for its near abroad. In the specific

case of BiH, one interesting example is the attempt to consolidate economic regions that transcend ethnic boundaries within the state.

The EU funded a project called European Regional Economic Development in Bosnia and Herzegovina (EURED), which contributed to the creation of five economic regions cutting across the IEBL and all other internal administrative boundaries above the municipal level. A first tranche of financial aid for the establishment of these five spaces of economic integration was provided via the EURED I framework, which was launched in April 2003 and was concluded in October 2005. A second financial package, labelled EURED II, was inaugurated in December 2005 and concluded in August 2007.

The five economic regions promoted by the EU with this initiative are the following: the Northwest Economic Region (ARDA),<sup>28</sup> the Northeast Economic Region (NERDA),<sup>29</sup> the Herzegovina Economic Region (REDAH),<sup>30</sup> the Central B&H Economic Region (REZ),<sup>31</sup> and the Sarajevo Macro Region (SERDA).<sup>32</sup> Integration in each of these five geographic spaces is supervised by a Regional Development Agency (RDA). The five RDAs are responsible for the coordination and implementation of specific projects (for the most part financed through EU funding) and, more broadly, they are tasked with the promotion of regional development strategies. The main 'partner' for the five RDAs at central state level is the national Foreign Investment Promotion Agency (FIPA).

The emphasis on the elimination of ethnic boundaries through economic integration appears to show the EU attempting to replicate at micro level, in BiH, the technical economic integration process experienced by EU member states in the early stages of their cooperation. Observers have confirmed that the reconfiguration of BiH beyond the two-entity model could indeed be based on the

project of transforming the five economic regions established through EURED into five multiethnic administrative shells that would replace the current middle level of governance and possibly also allow the elimination of the complex and financially unsustainable cantonal system of the FBiH (Metiljevic 2005).

#### **4.2. The EU prospect of membership as a benevolent imperial projection**

Thanks to the initial strength of the EU prospect of membership, BiH was launched on a peculiar rehabilitation track: some of the steps of the ‘ideal’ post-conflict rehabilitation track as outlined in the previous quotation by an ICISS member were not achieved and, perhaps, not tackled with direct policies (Gori 2007). Following the experiments of the past few years, two main questions need to be addressed. Firstly, can the EU prospect of membership, a merely indirect perspective, truly create incentives for fluid political cooperation amongst the elites representing the three ethno-religious factions previously at war? Secondly, does the EU perspective reflect strategic imperial designs or has it merely developed as a consequence of a ‘cold and distancing’ technocratism?

Looking at Kosovo, Macedonia, Bosnia, and the degree of involvement of the EU in the stabilization processes of these complex realities, Sergio Romano (2003: 23), an Italian diplomat and historian, talked about the emergence of new ‘European protectorates’. The word protectorate has a negative connotation; however, in contemporary international relations it can also take on other meanings. The term protectorate can be used to describe those contexts in which

international institutions (and/or coalitions of states working under an international mandate) take over responsibilities and financial burdens of unstable states, with the aim of containing potential security threats – regionally or even globally.

This a positive understanding of the term protectorate can be applied to the current EU commitment to the troubled countries of the Western Balkans, even though some observers continue to criticize the EU for engaging in ‘a new colonialism’. For instance, when the handover from NATO to the EU in BiH took place, several critics questioned whether Operation Althea would substantially contribute to the improvement of security in BiH. By deploying a European force in BiH, skeptics in the international press claimed that the EU was trying to affirm itself as an exclusive regional player: the European troops (EUFOR) would have indeed ‘less to do with Bosnia’s needs than the EU’s ambitions as a military power’ (Wood 2004).

#### **4.2.1. Empire ‘through’ or ‘on’ states**

Can the label of imperialism, often attached to both statebuilding and the EU enlargement, be dismissed completely? The answer is at best uncertain. Some scholars claim that these two processes are easily distinguished from a supposed post-modern imperialism. While the rationale underpinning imperialist logic used to develop along pre-defined ideological tracks, statebuilding and European integration appears to be ‘organized along purely technocratic, administrative lines’ (Bickerton 2005a: 1). In contrast with this view, other scholars depict the EU precisely as a neo-medieval realm: Brussels as the capital of a benevolent

empire with fuzzy borders, exporting rules and procedures in its neighborhood (Zielonka 2006), establishing protectorates (e.g. BiH and Kosovo), and sometimes even pushing forms of constitutional reorganization that may suit European idealizations but that in the end may result in complex institutional ‘straitjackets’ (Malic 2007).

In this regard, it might be interesting to replicate in the EU context, an exercise carried out on the US by Hendrik Spruyt (2008), who applied the definition of empire as ‘effective control, formal or informal, of a subordinated society by an imperial society’ – a definition provided by Michael Doyle (1996: 30-47) – to the current network of overseas relations established by US diplomacy. Spruyt summarizes the main features of Doyle’s definition using four attributes. Center/periphery relations are imperial in nature when: they are based on systematic interactions; they are based on asymmetric power; they are directly correlated to the degree of cohesion in the centre; and they are sustained by the presence of groups at the centre that have a stake in the maintenance of the imperial projection towards the periphery. Further to these four aspects, Spruyt (2008: 293) complements the work of Doyle by adding two additional attributes. On the one hand, empires are characterized by heterogeneous relations between the center and the different units at the periphery. On the other hand, the establishment of unequal relations must be based on a qualitative justification of why the centre is superior to the periphery.

Using this premise, Spruyt concludes that, while employing imperial practices worldwide, US foreign policy lacks the structural features that are typical of formal empires. Specifically, these features coincide with: institutionalization of hierarchical relations between the periphery and the center,

the perspective that opposite poles in the empire can develop their relations up to the point of becoming ‘an integrated whole’ (Spruyt 2008: 298). In other words, statebuilding projects promoted by US policy-makers represent attempts to consolidate sovereign units and increase global power *through* them rather than *on* them (Spruyt 2008: 291).

This can be compared with the key characteristics of the EU imperial member-statebuilding activities. First of all, there is a quantitative difference between the ambitions pursued by the EU and those pursued by the US. While the latter seeks a network to further the consolidation of influence on a global scale, the former is still mainly focused on the completion of a regional project. If the enlargement process is a way to consolidate the borders of the empire, the ENP has resulted in policies and instruments through which Brussels tries to establish a security-belt right beyond its fuzzy boundaries. Secondly, the EU expansion project is qualitatively different because it is a way of consolidating control by containing sovereignty. The main logic of the EU member-statebuilding process is to exercise control from the center to the periphery through imposing limitations ‘on’ the sovereign state. Quite on the contrary, US statebuilding initiatives place the emphasis on restoration of sovereignty according to a classical understanding of the term, and demonstrate that Washington seeks to increase power through the establishment of stable friendly but independent governments.

#### **4.2.2. The EU perspective: successes and failures**

Through the power of the prospect of membership, the imperial stabilizing influence of the EU in the Balkans continues to function. The prospect of membership has already revealed some of its stabilizing effects in Croatia, is at present being critically tested in BiH, and is expected to be the key element of the overall stabilization of the Western Balkan region. This indirect statebuilding tool can be situated mid-way between traditional externally-driven statebuilding and the formal procedures typical of the EU enlargement process based on the Copenhagen criteria. It is worth stressing that this concept is relatively new in the scholarly literature: it was practitioners who first coined and developed it.

Amongst others, the former Head of the OSCE Mission in what was then Serbia and Montenegro provided a clear description of the Euro-Atlantic prospective shared among key Western Balkans states (Massari 2005). Giuliano Amato, head of the International Commission on the Balkans, has stressed that the idea of becoming an EU member state is a widespread aspiration throughout the Western Balkans, and that this 'dream is by far [the] most powerful force driving positive change' (Amato 2005). Amongst the first scholars to pioneer the study of the relatively uncharted area of the European prospect of membership and its indirect appeal, David Chandler has argued that this tool increased the regulatory power of the EU; however, he has remarked that this new mechanism of indirect stabilization cannot alone solve the delicate problem of accountability:

The long process of negotiating European membership, through 'Partnership' agreements and the Stability and Association process, is the form international statebuilding takes; this process distances the potential accession states at the same time as giving the EU greater



regulatory authority. The decision-making power lies with Brussels but the accountability rests with the governments of the Balkan states (Chandler 2005b: 5).

Unfortunately, the issue of accountability is not the only problem associated with the process of harmonization between the Western Balkans and the EU. If we really want to evaluate the EU prospect of membership as a stabilization tool, the Bosnian test case is quite revealing. On the one hand, it cannot be denied that the prospect of European integration has so far successfully reined in the centripetal forces characterizing the Bosnian political environment and prevented them from producing critical institutional shocks. Bosnian political elites are divided on all of the most sensitive issues, but the European integration project is the one area on which they can all agree. A political advisor who served at office of the Bosnian Chief Negotiator for the EU SAA declared:

Everybody in Bosnia considers the EU as ‘the’ anchor. Currently, the idea of working for the EU accession is the only issue on which all parties agree. Elites unanimously share the idea that our place is in the EU. Personally, I see Europeanization as a key component if not the sole engine of this complex statebuilding and normalization process.<sup>33</sup>

On the other hand, Bosnian political life over the past three to four years has been characterized by a series of worrying signs, two of which are worth mentioning in some detail. Firstly, the political rhetoric – not only in the proximity of elections – sometimes resembles the type of confrontation that often precedes wars: the fear of reverting to the pre-war time atmosphere is recurrent

among average Bosnian citizens. Secondly, another source of preoccupation is that key parties have not agreed on a concrete plan for constitutional reform, nor have they pursued any constitutional consolidation of the changes that were put in place under the influence of the international community in the implementation process of the DPA.

As Chapter III will show in more detail, this last point is particularly significant: the structural and institutional changes that have been put in place so far (mostly through the direct imposition or in some case through soft interferences of the OHR) have not being given any kind of constitutional formalization. This is a clear sign that the EU prospect of membership cannot substantially stimulate a domestic constitutional debate if it is not backed up by a constant and active mediation that aims to, so to speak, ‘round off the angles’ between the various extremist lines taken by the representatives of the three main ethno-religious groups.

In the words of a scholar from the University of Sarajevo, ‘if the EU technocratic approach was the right way to produce positive change on the Bosnian political environment, then constitutional consolidation would have already taken place long time ago’.<sup>34</sup> Perhaps this statement overlooks the fact that Bosnian politicians also have a degree of responsibility for this failure. However, it would also be an exaggeration to state that the EU has always acted as the ‘anchor for the process of inter-ethnic and inter-state reconciliation’, as Dimitar Bechev and Svetlozar Andreev (2005: 4) have claimed. As Chapter IV will demonstrate, the Bosnian police reform process represents a specific area where the EU has not been able to handle the frictions between its own technocratism and rigid schemes on the one hand, and political rhetoric and inter-

ethnic confrontation on the ground on the other. As clarified on the OHR website when the process was officially launched:

The European Union has made police restructuring one of the priority criteria for the start of negotiations on a BiH Stabilisation and Association Agreement ... [T]his reform must: place exclusive competence for police legislation and budget at the State level; recast regional police areas on the basis of functional police criteria; and, help protect the police from improper political interference (OHR 2005c).

As will be demonstrated in detail later, apart from a few technical adjustments adopted by the Bosnian legislator, at present, there is still no agreement among the main Bosnian political parties on the core aspects of the reform package. It should be noted, however, that in 2006 an agreement was almost reached. The failure occurred when the Bosniak leader Haris Silajdžić and the RS Prime Minister Milorad Dodik transformed police restructuring into a battlefield for their personal sovereignty struggle. The EU did not contribute to an easing of confrontation. Brussels tried to obfuscate the more ideological purposes of the reform and instead pushed the idea that police restructuring was a necessary step in the adoption of European standards. Dodik strenuously defended the integrity of the RS Police as a sovereign prerogative of his Entity that could not be surrendered.

It is worth noting that the fight for the integrity of the RS entity status was not a political battle pursued merely by Dodik – who in his capacity as RS premier has also repeatedly threatened to hold a referendum on secession. In Banja Luka, the RS has priority over BiH across the entire political spectrum. In

the political programs of many parties it is possible to find formulas like ‘the X party is committed to the integration of RS and BiH in the European Union’. Formulas that are very similar to this one are encompassed in the program and the rhetoric of the RS premier’s party, the Alliance of Independent Social Democrats (SNSD), but are made explicit also by other political groups. For instance, the Party of Democratic Progress (PDP), founded by and still run under the guidance of Dragan Ivanić, has identified the motto ‘Europe, the house of the future’ as first pillar of its new political strategy. Commenting on this choice, a member of the party’s executive board admitted: ‘The first point of our new strategy makes explicit what is actually clear since 1999, which was the beginning of our activity. We defined ourselves as an EU-party, whose main objective is the integration of RS and BiH into European networks and the EU’.<sup>35</sup>

Interestingly enough, in 2006 the RS president Milan Jelić used the celebrations for the statehood day as an opportunity to launch a polemic against the international community. Jelić argued that the ‘non-existent Bosnian statehood day’ represented a breach of the sovereignty of BiH, ‘a state of two *equal* and *integral* entities’ (Slobodanka 2006: emphasis added). Since this national recurrence has formally been introduced only one Entity (obviously the FBiH) celebrates it. The situation is particularly pronounced in Sarajevo, where every November 25 ministries and other institutions of the central government are only half empty. Bosnian-Serb civil servants refuse to take a day off from work, while all Bosniaks and most Croats celebrate the national day. The differences in approach to this celebration are evident also in the streets of Sarajevo. While nothing changes in the Serb Eastern part of town, almost every activity in the Bosniak-dominated historical centre of the city, Baščaršija, shuts down.

Interestingly, the city centre of Bašćaršija is decorated with both the new and the old Bosnian state flags as well as, sporadically, with the symbols of the Bosniak-dominated *Armja* that defended the city during the siege.<sup>36</sup>

#### **4.3. The OHR-EUSR transition: from the Venice Commission assessment to the ‘five-plus-two’ test (2005-2009)**

The plans for the closure of the OHR have for some time been on the agenda of the PIC. To some extent, the end of the OHR era and the creation of a reinforced EUSR Office represent a key turning point in the full installation of the EU-driven statebuilding in BiH. The issue erupted on the international agenda in March 2005, following the release of a detailed report by the ‘European Commission for Democracy through Law’ – a working group established within the CoE framework and also known as the ‘Venice Commission’. Providing a detailed ‘opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative’, the Venice Commission (2005: 20-25) examined the impact of the HR on both Bosnian political and institutional life. Evaluating the compatibility of this institution and its prerogatives with CoE standards in the field of democracy, the Venice Commission concluded its work with some detailed policy prescriptions that were submitted for the attention of the PIC.

An examination of this document reveals a clear recommendation by the Venice Commission in favor of a substantial reorganization of the international community presence in BiH. In a straightforward assessment, the report advocates in particular for the elimination of the regime determined by the Bonn Powers, as well as for the subsequent transformation of the double-hatted HR/EUSR into a

less intrusive and impartial mediator, responsible only to European institutions, and therefore fully committed to promoting the consolidation of the European perspective of BiH. Moreover, the Venice Commission has argued in favor of a further rationalization of the same EU presence in BiH: with the political input from the EUSR offices and the technical activities of the Commission Delegation to be headed by the same person. The proposal elaborated by the five rapporteurs<sup>37</sup> on the role of the EUSR proceeds as follows:

While BiH may still need more guidance from the international community, this could be provided by more subtle means. At present, the High Representative is at the same time the EU Special Representative. If he were to retain only the role of EU Special Representative comparable to the practice in “the former Yugoslav Republic of Macedonia”, this would allow the transformation of the role of the High Representative from a decision-maker into that of a mediator. The interest of the people of BiH in European integration should ensure the effectiveness of this role (§100).

It is interesting to note that the experts from the Venice Commission made specific reference to the experience of the EU’s representative to FYROM. The political envoy sent from Brussels to Skopje in October 2005 was also installed as Head of the Commission Delegation in FYROM. An argument in favor of this choice can be made. As recent history confirms, the process of European integration has mostly developed along the same lines: the efforts for the socio-economic harmonization of the European space have been accompanied by attempts to generate political convergence, consolidate common values, and standardize good-governance practices. Hence, integration has taken place through supranational institutional developments, but also through a redefinition

of the institutional and legal structures inherent to the states that are taking part to the process. In view of this experience, it can be argued that the most substantial and tangible added value of EU-driven statebuilding has been precisely this unique link between political stabilization on the one hand, and promotion of welfare and multiplication of economic opportunities on the other. The experience in FYROM has shown that a EUSR that channels political inputs, while at the same time coordinating the technical efforts pursued by the Commission, can better manage the EU prospect of membership, intended in its broadest sense.

Moving from policy analysis back to the specific critique launched in 2005 by the Venice Commission on the prolonged presence of the HR in BiH, it should be noted that the argument for the elimination of the Bonn Powers was built on two sets of considerations, which converged towards one basic idea: the prerogatives that were granted by the PIC to the HR back in 1997 could then be justified by the existence of a state of emergency, ‘emergency powers have however to cease together with the emergency originally justifying their use’ (§86). The excessive activism of the HR was examined both as a source of legislation by decree and as an instrument of censorship in the political and administrative life of the country, in view of his authority to dismiss officials that, in his eyes, were guilty of creating obstacles to the peace implementation process.

The extended use of the Bonn Powers beyond a clear state of emergency have been recognized as being in breach of the very principle of popular sovereignty, which ‘requires that legislation is adopted by a body elected by the people’ (§88). Apart from the domestic dimension of democratic responsibility of the government, the report has also highlighted the international aspects related to the participation by BiH in the human rights regime established by the CoE: ‘as a

member state ... BiH is responsible for the commitments with respect to the Organisation and this responsibility has to be fulfilled by the country and not by the international community' (§88).

At the centre of this complex picture of responsibilities and democratic dynamics, the OHR has been depicted as an element of division, especially with regard to its legislative activism. As pointed out by the Venice Commission, politically, the chain of responsibility of the HR goes directly to the PIC and cannot in any way be referred to the Bosnian population, 'although the personal commitment of the present High Representative and his predecessors to the well-being of the people of BiH is beyond doubt' (§89). The situation does not become more 'democratic' if analyzed in a purely juridical way. The Bosnian Constitutional Court 'exercises judicial control of the constitutionality of the content of legislation enacted by the High Representative in the same way as for legislation adopted by the Parliamentary Assembly of BiH' (§89). However, the existence of such control *ex post* does not counter balance the fact that the right to adopt binding decisions is purely at the discretion of the HR: the Bosnian Constitutional Court indeed 'does not examine whether there was enough justification for the High Representative to enact the legislation instead of leaving it to the democratically elected organs of BiH' (§89).

The discretionary right to remove public officials (civil servants or democratically elected politicians that they might be) has also been strongly criticized by the Venice Commission. The report has looked at this praxis starting from a social consideration: 'the termination of the employment of a public official is *a serious interference with the rights of the person concerned*' (§94, emphasis added). Based on this evaluation, the Venice Commission has also



warned that, 'in order to meet democratic standards, it should follow a fair hearing, be based on serious grounds with sufficient proof and the possibility of a legal appeal' (§94).

Needless to say, in examining the direct interference in the democratic relationship between the constituent people and governing elites, the actions initiated by the HR for the removal of elected representatives have been characterized by an additional element of concern if compared with cases where the career of unelected civil servants were at stake. In the cases involving politicians who have been democratically elected, it is not only the life of the removed officials (and maybe that of his family) that is directly affected by the decisions of the international envoy, 'the rights of their voters are also concerned and particularly serious justification for such interference is required' (§89). The report concludes with a broader negative assessment on the impact of the HR on the consolidation of the Bosnian state as a fully democratic system, which is worth reporting extensively:

The High Representative is not an independent judge and he has no democratic legitimacy deriving from the people of BiH. He pursues a political agenda, agreed by the international community ... As a matter of principle, it seems unacceptable that decisions directly affecting the rights of individuals taken by a political body are not subject to a fair hearing or at least the minimum of due process and scrutiny by an independent court (§96). [The Bonn Powers do] not correspond to democratic principles when exercised without due process and the possibility of judicial control. Its justification becomes more questionable over time (§100).

#### **4.3.1. The call for ownership and the issue of the Bonn Powers heritage**

This strong and clearly articulated call for democracy launched by the Venice Commission served as a catalyst to rethink the structure of the international presence in BiH and promote a transfer of responsibilities from the OHR to domestic authorities. In the words of Olli Rehn, the presence of an institution equipped with the Bonn Powers represents a serious limitation on the country's 'ownership for decision-making and reform'; therefore – continued the EU Enlargement Commissioner in his speech at the UN in Geneva – the 'time has now come for Bosnia and Herzegovina to assume more responsibility for its own future' (Rehn 2005).

Published only a few months from the 2006 general elections, the call from the Venice Commission and the plea made by Olli Rehn were temporarily left in stand-by. However, important political signals were given by the PIC-SB. In June 2006 the PIC-SB Political Directors adopted a communiqué titled: 'Towards Ownership: From Peace Implementation to Euro-Atlantic Integration', which clarified that the process for the closure of the OHR had to start immediately, in order to be completed within at most one year and therefore allow BiH 'to take full responsibility for its own affairs' (PIC-SB 2006c). Moreover, the PIC-SB Political Directors formally welcomed the commitment made by the EU to the establishment of a reinforced EUSR Office (PIC-SB 2006b), and they encouraged the politicians that were about to run at the general elections to engage, once elected, in constitutional reform as 'a top priority in order to build a sustainable democracy and to make governmental and parliamentary institutions efficient and effective' (PIC-SB 2006b).

Following the October 2006 general elections, witnessing the defeat of the old nationalist parties and the emergence of what back then appeared as relatively new and more moderate forces in the country, the main body supervising the implementation of the DPA in BiH began to consider more seriously the possibility of bringing to an end the experience of the OHR by June 2007 and the related abolition of the Bonn Powers. Already at the last meeting in 2006, only a few weeks after the October general elections, the PIC-SB adopted with unanimous consensus a communiqué that represented an explicit exhortation to the recently elected government and Parliament: ‘Time to Meet the Ownership Challenge’ (PIC-SB 2006a). This document was the outcome of a two-day retreat of the PIC-SB Political Directors in Brussels, which was also attended by some representatives from the newly installed Bosnian Parliament and government, including the Prime Minister.

The document put clear emphasis on the responsibilities of Bosnian elites for the realization of the Euroatlantic future of the country. The PIC-SB Political directors urged local elites ‘to live up to their responsibilities to the people of Bosnia and Herzegovina ... and to return to the reform agenda in line with the European Partnership priorities. In their actions and through their political activities, they must keep in mind the need to make Bosnia and Herzegovina a factor of stability in the region’ (PIC-SB 2006a).

However, an interesting note of caution was introduced in the conclusions of the document. PIC-SB Political Directors welcomed ‘Spain’s willingness to take on the role of OHR’s successor in interest and invited Spain to join the PIC Steering Board as an observer’ (PIC-SB 2006a). This formula was overlooked by international observers and scholars, but it reveals that while preparing the way

for the closure of the OHR, the international community was at the same time debating possible legal mechanisms to resume rapidly the Bonn Powers if required. What can be referred to as ‘the issue of the Bonn Powers heritage’,<sup>38</sup> is confirmation that, probably from within the same OHR, international legal experts identified Spain as a reasonable candidate to take on responsibility for the Bonn Powers using a legal fiction. The government in Madrid could indeed have the right to assume at any time the exercise of those powers in the event of new emergencies arising after the formal closure of the OHR.

The interpretation of this signal as a cautelative legal measure was confirmed by the lack of concrete progress in the OHR-EUSR transition. Despite a general consensus in the PIC-SB on the need to implement substantial changes to the international presence in BiH, the closure of the OHR and the installation of a reinforced EUSR (not equipped with any kind of authority that could resemble the Bonn Powers) remained practically frozen for over a year. The reluctance of some members of the PIC-SB (in particular the US and the UK) to push for more concrete moves in this direction stemmed from the political crisis determined by the difficult EU-sponsored police reform process and the related delay in the finalization of the SAA between BiH and the EU, which eventually carried in December 2007.

#### **4.3.2. The ‘5+2’ test**

At the first meeting of the PIC-SB after the initialing of the SAA, five objectives and two conditions were identified as a final mandatory test for Bosnian political elites prior to giving the green light for the OHR closure. At the end of a two-day

meeting in Brussels, the PIC-SB Political Directors carefully remarked that local ‘politicians must end the practice of threatening unilateral changes to the constitutional structure of the country’ (PIC-SB 2008). Moreover, the following objectives were listed: acceptable and sustainable resolution of the issue of apportionment of property between state and other levels of government; acceptable and sustainable resolution of defense property issues; completion of the Brčko Final Award; fiscal sustainability (promoted through an Agreement on a Permanent ITA co-efficient methodology and establishment of a National Fiscal Council); entrenchment of the rule of law (demonstrated through adoption of National War Crimes Strategy, passage of Law on Aliens and Asylum, and adoption of National Justice Sector Reform Strategy). This list of five objectives was complemented with two further conditions: the signing of the SAA and a positive assessment of the situation in BiH by the PIC-SB based on full compliance with the Dayton Peace Agreement (PIC-SB 2008). As has been also stressed by international policy analysts (ICG 2009b: 16), this last political condition undoubtedly represented a sort of safety clause, which has enabled the PIC-SB to exercise a degree of flexibility prior to formalizing the OHR closure on the basis of purely technical developments.

In their joint report on the status and perspectives of the international presence in BiH – which was circulated amongst relevant governmental and non-governmental actors on 31 October 2008 with the title ‘Bosnia and Herzegovina: the International Mission at a Turning Point’ – Javier Solana and Olli Rehn provided a convincing argument for the need to reach agreement on the closure of the OHR by the end of 2009. According to the assessment of the High representative for CFSP and the EU Enlargement Commissioner, ‘if the OHR is

still around in 2010, then the High Representative, his role, and that of the IC presence could once again become central campaign themes in the 2010 general elections' (as quoted in ICG 2009b: 15).

At the moment of writing, however, the transition from the OHR to a reinforced EUSR Office has not definitely started. Therefore, it is highly probable that the prophecy made by Javier Solana and Olli Rehn will actually be fulfilled. As general elections are now only a few months away, it seems unlikely that the PIC will be able to reach a consensus and finally launch the transition process. The impasse is also connected to the difficulties in planning for a reinforced EUSR presence. The EU Council is exploring possible ways to associate three non-European countries – the US, Russia, and Turkey – with the EUSR Offices. If the presence of the latter has received an obvious veto by Greece and Cyprus, also the possible presence of the US has resulted in a lively debate in Brussels.

In concluding this section, it is worth referring to a recent analysis made by Florian Bieber (2009), who attentively emphasized both the weaknesses of the EU strategies for BiH and labeled as completely 'out of date' the presence and role of the OHR:

International, and first and foremost EU, policy in Bosnia has been inconsistent and counterproductive. The High Representative, OHR, as an institution has outlived its usefulness. However, instead of leaving the scene with a bang, the OHR has been reduced to a whimper. Marginalized, excluded from key decisions, without the backing of key states in the Peace Implementation Council and at times the EU, the institution has been allowed to become an institution with great powers, high expectations and little ability to make use of them.

## 5. Conclusions

BiH is a complex multiethnic polity where socio-political reconciliation is still lacking and the three main ethno-religious constituent people are still fed a nationalist and inflammatory rhetoric. The following two chapters will explain extensively the EU approach to the reorganization of the Bosnian state and the normative principles informing such a complex undertaking. There inevitably be criticism of certain attitudes and strategic choices made by the EU for the stabilization of its most delicate potential candidate member. However, the aim of this thesis is neither to produce a sterile critique of the EU's approach to the Bosnian stabilization process, nor to indirectly imply that the strategies developed in Brussels and tested in BiH, in the very long run, are destined to result in inevitable failure.

As has been shown, this thesis sheds light on two grounds of analysis. On the one hand, it examines the normative understanding of sovereignty and post-conflict stabilization underpinning EU policies; on the other hand, it reconstructs the actual *modus operandi* of the EU and how European policy-makers interact with local elites. The point of contact between these two spheres of inquiry is the issue of responsibility. The following two empirical chapters will thus serve two purposes: firstly, to measure the distance between the ideal of sharing responsibilities and the systematic disregard in the actual practice of multilateral cooperation on a statebuilding project; secondly, to understand why, at the moment of writing, the Bosnian statebuilding process seems to be at a standstill.

To be precise, there is substantial evidence that most of the conditions exist to declare BiH a striking case of ‘failed international statebuilding’.

Based on the analysis of the Bosnian context presented above, the following pages approach symmetrical aspects of what can be metaphorically referred to as the ‘responsibility coin’ of post-conflict reconstruction. Chapter III highlights the main characteristics of what will be symbolically referred to as the EU’s ‘hands-up’ approach to political reconciliation and constitution-making in BiH. Analyzing the problems related to a structured reorganization of the Bosnian constitutional architecture, and the particular reluctance of the EU to invest in such a delicate project, reveals the predominance in Brussels of a risk-avoidance mentality. Interviews with international personnel in both Brussels and Sarajevo and an analysis of official documents demonstrate the general tendency of EU policy-makers to technify the relationship with the target state – exercising what resembles a neo-medieval imperial projection – while they encourage it on the path to Euro-Atlantic integration.

The EU’s reluctance to launch a proper debate on constitutional reform and implement policies aimed specifically targeted at resolving the domestic multilevel sovereignty struggle confirms that Brussels is still conditioned by the residual statebuilding influence exercised by Washington. An analysis of the timid approach to constitutional change, however, demonstrates only one aspect of the ‘troubled’ relationship that Brussels has developed vis-à-vis its responsibilities in the neighboring Western Balkans region and, in particular, in BiH. The other side of the ‘responsibility coin’ will be investigated in Chapter V, by examining the genesis and developments of police reform in BiH.



For four years (2004-2008) the challenge of reorganizing the Bosnian police was 'the' EU's top priority. The way in which this reform was launched, sustained, and transformed into the key condition for the signing of the SAA with BiH, but then subsequently dropped from the negotiation table reflects a tendency, typical of multilateral institutions operating in crisis areas, to create a fictional 'no mistake policy'. This expression is typically employed by practitioners when referring to their systematic denial of objective miscalculations, mistaken politico-diplomatic and reform strategies.

## **(Chapter III)**

# **The Buck Stops Where? Responsibilities in the Bosnian Constitutional Reform Process**

### **1. Introduction**

More than six years have passed since the (then 15) EU member states gathered in Thessaloniki with the countries of SEE and agreed that ‘the future of the Balkans is within the EU’ (European Council 2003). Since then, BiH has had four different HR/EUSRs (the British Paddy Ashdown, the German Christian Schwarz-Schilling, the Slovak Miroslav Lajčák, and the Austrian Valentin Inzko, who is currently in office) held a general election, signed the SAA with the EU following a year of serious political crisis, experienced renewed ethnic tensions, and faced critical uncertainties.

The SAA was signed in June 2008. By agreeing to proceed with the signature, Brussels rewarded the elites representing the three ethno-religious factions formerly at war for their adoption of two technical laws that were expected to form the basis of a more comprehensive police reform. The reorganization of the Bosnian police structure was introduced as part of the pre-

SAA EU conditionality package when Paddy Ashdown became double-hatted HR/EUSR and, over four years, was assigned ‘absolute priority’ status by EU policy-makers. In addition to the reform of the police structures, the EU’s pre-SAA conditionality package required the Bosnian authorities to strengthen ICTY co-operation, reform public broadcasting, and reorganize the public administration.

While we can say that there has been some progress in the area of police reform, it is also true to say that most questions related to the broader constitutional reform have been left unanswered. Since the signing of the DPA, there have been several attempts to institutional restructuring, mostly driven by the international community. However, to date there has been no process of constitutional consolidation and the problem of a general constitutional reform has for a long time been neglected by EU policy-makers. As a result, with the country in the fifteenth year of its troubled post-Dayton history, a definitive stabilization and reorganization process of the Bosnia’s costly, inefficient, asymmetric, and fragmented state structures seems far from being achieved. At time of writing, the Bosnian statebuilding process can be considered as dangerously stalled. Even if the difficult period that preceded the signing of the SAA has now come to an end, in concrete terms, it seems that the passage ‘from Bonn to Brussels’ envisaged four years ago by the International Commission on the Balkans (ICWB 2005: 37) is far from being completed.

The renewed activism of US diplomacy, following the installation of the Obama Administration in Washington, has reopened the domestic confrontation on constitutional reform. However, the prospects for a smooth mediation are still very limited. Years of inconsistent policies promoted by Washington and Brussels

contributed to the exacerbation of nationalist rhetoric in the country. The prolonged lack of transatlantic convergence over the Bosnian stabilization process has contributed to a crystallization of the conflicting positions that each ethnic group adopts with regard to the reconfiguration of the central Bosnian state and reform of the constitution.

Focusing on the attitude of the EU vis-à-vis the Bosnian constitution-making process, this chapter sheds light on the peculiarities of what I refer to as EU's *hands-up statebuilding*. While keeping its feet in BiH, the strategic thinking in Brussels reflects something that goes beyond a subtle and indirect denial of responsibilities: a refusal to interfere that is inconsistent with the massive field presence and the promises developed on the basis of the Thessaloniki agenda. Interviewed on what strategies could best facilitate reconciliation and constitutional reform, EU officials have tended to systematically throw their hands up, denying that they have any right to interfere and that the EU does not 'deal' with sovereignty.

It thus appears that the EU has taken a step back from the implicit *Empire in Denial* proposed by David Chandler (2006) towards an explicit – but even more incoherent – denial of *having the right to act*, which has allowed Brussels to avoid undertaking a constructive role in the Bosnian reconciliation project. Based on extensive interviews and archival research in both Brussels and Sarajevo, this chapter shows that the attitude of most EU actors towards Bosnian elites is based on the fiction of a 'quasi-sacred respect for sovereignty' that hides a substantial shortcoming: without the support of the US, the EU proved unable to provide clear strategic direction to the Bosnian constitution-making process.

The ambiguity of the *hands-up* attitude has thus far allowed Brussels to escape the two crucial dilemmas of statebuilding: bottom-up vs. top-down approach, and technical presence vs. complex post-war stabilization. Moreover, this particular stance has allowed EU officials to put on hold two other strategic issues. Firstly, the *hands-up* attitude provided Brussels to arrive at a comfortable *modus vivendi* with the US and cope with its residual influence on the OHR. Secondly, by distancing itself from structured constitutional reform and reconciliation policies, the EU has avoided a difficult internal confrontation on methods, principles, and issues to be pursued on the ground in BiH.

## **2. The EU's 'hands-up' statebuilding of BiH**

The prolonged stalemate in the constitutional talks is revealing in what it tells us about the EU's attitude towards the politico-institutional dynamics of its most troubled 'potential candidate member'. According to Joseph Marko (2005: 16) – former international judge at the Bosnian Constitutional Court – what is evident in BiH is that '[t]oo often, the IC and even the EU does not speak with one voice but is divided along national lines and spheres of interest'. International divisions, determined by both national fracture lines and intra-EU institutional tensions, affect the ability of the EU to exert a constructive influence on the Bosnian constitutional reform talks. This was particularly striking in the period between October 2006 and September 2009. During this time span Brussels, lacking the 'pull' of Washington, intensified its efforts to technify the relationship with the Bosnian government and public administration. The US had become trapped in its

attempts to promote the so-called ‘April package’ for constitutional reform, and later maintained a certain disengagement from BiH, at least until the new administration was installed in Washington following the 2008 Presidential elections.

However the usual limitations of the intra-EU multilateralism and the inevitable dependence on the evolving attitude of its transatlantic ally are not the only explanation behind Brussels’ detached approach towards the reform process of the Dayton constitution and the constitutions of the two entities (FBiH and RS). Elaborating on a series of interviews with participants and observers of the EU decision-making processes with regard to BiH,<sup>39</sup> it is possible to construct the ideal picture of a very specific ‘EU’s hands-up statebuilding approach in BiH’ that is a step back from the more promising reconstructions made on the basis of the sovereignty paradox literature.

Quoting again from Dominik Zaum (2007: 41), the sovereignty paradox is described in the following terms: ‘the international community compromises one important norm associated with sovereignty – self-governance – to create the conditions for full empirical statehood and sovereign authority in the country it intervenes in, by establishing the capacity of the state to fulfill its international and domestic obligations’. On the basis of this understanding, all contemporary statebuilding efforts share the same ethic and ideology. This ‘ethic’ has as its normative core the idea that sovereignty cannot be intended merely in negative terms, as an obstacle. Internally, governments have duties and responsibilities both of *facere* and *non facere* towards the population under their jurisdiction.

The inability of local authorities to fulfill fundamental governance requirements allows the international community to undertake initiatives aimed at

preventing the population of a failing or failed state from experiencing insecurity and suffering. In the jargon of the ICISS, this idea can be identified as a generalized *commitment to prevent*. When catastrophes and forms of instability strike, it is the duty of the international community to intervene for *the protection* of the affected population. A last, but nevertheless crucial corollary that completes this logic is the idea of a *responsibility to rebuild* (ICISS 2001: 19-28, 39-46). The normative idea at the basis of this series of commitments is the understanding of sovereignty as an internationally shared responsibility.

## **2.1. The EU's step back from the *Empire in Denial***

Some doubts concerning the genuine diffusion of the sovereignty as responsibility ideal have already been raised in the literature review. But here another question arises: looking at the prolonged reluctance of the EU to have any role in the reform process of the Bosnian constitution(s), it seems that we are facing a particular approach to responsibility. Building on Chandler, we might look at Brussels and wonder whether we are making a step back from the implicit *Empire in Denial* (that according to Chandler can be generalized to the West) towards an explicit but even more incoherent *denial of having the right to act* that has thus far being predominant in the EU member-statebuilding of BiH?

Relocating statebuilding 'in the broader context of international politics today' (2006: 189) Chandler has argued that the centrality of the external regulation of failing and failed states in the international political debate perfectly serves the rationale of an *Empire in Denial*. What he has presented is an innovative challenge. On the one hand, he has targeted interventionists and

capacity-building enthusiasts; on the other hand, he has opposed those who criticize Western governments for merely implementing neo-colonial practices, even when they operate under the legitimizing umbrella of relevant multilateral organizations. Building on Zaki Laïdi's idea that power in the post-ideological era is just exercised with the sole aim of avoiding responsibility and accountability, Chandler (2006: 18) has argued that contemporary statebuilding initiatives 'are driven less by the desire to extend and enforce Western power than they are by the desire to deny it'. Developing this critical assessment in more detailed terms, he has specified that 'the new international institutional focus on the non-Western state ... is driven by western elites' desire to avoid political responsibility for their relationships with large areas of the world' (Chandler 2006: 30).

The blame attached on the elites from the developed world is as resolute as it is clear: '[r]ather than grasping the opportunities to reshape positively a new international order in the wake of Cold War division, Western states and international institutions would appear to be *embarrassed by their power and influence*' (Chandler 2006: 73, emphasis added). Amongst other practices that compose the toolbox of contemporary statebuilding missions, the outside-in promotion of democracy and good governance practices in the developing world is identified as 'a distancing operation, designed to exercise influence without assuming direct formal responsibilities of power' (Chandler 2006: 70).

Moving from the international arena to the specific experience of the EU, Chandler has focused on the principles informing Brussels-based statebuilders who work on the stabilization of the Western Balkans and regulate the modalities of the next EU enlargement. *Empire in Denial* has offered an articulated (and sometimes radical) critique of the regulative mechanisms that have been tested in



failing or failed states. Chandler has distanced himself from previous contributions in this field for two reasons. The first relates to sovereignty. Chandler has traced the attempts to redefine sovereignty as an internationally shared responsibility back to the needs of the *Empire in Denial*. Generally, scholars and practitioners have welcomed the *sovereignty as responsibility* ideal as a watershed, since it represents a normative innovation that interconnects the exercise of sovereignty to the fulfillment of an articulated set of responsibilities. Such a re-conceptualization sheds light on both the international and domestic accountability of national governments.

While Chandler has not dismissed all the positive implications that could stem from these elaborations, he has nevertheless warned that this update of the concept of sovereignty might have been, so to speak, ‘exploited’ to justify mechanisms and modalities of intervention that keep the *Empire in Denial* at work. To his eyes, the new normative understanding of sovereignty has been presented in a way that constitutes ‘a medium through which non-Western states and societies become integrated into networks of external regulation’; moreover, this conceptualization ‘off-load[s] responsibility onto the non-Western state at the same time as these states increasingly lose their policy-making authority’ (Chandler 2006: 37, 31).

The second point that has allowed Chandler to distance himself from the recent literature on internationally-driven peace- and statebuilding concerns the problematic relationship between populations and their domestic political elites, in both the developed and the developing world: Western governments today tend to engage in crisis areas due to a ‘shifting away from the antagonistic and divisive ethics of the ‘interventionist’ 1990s’ (Chandler 2006: 80). This attitude

supposedly stems from a lack of self-confidence: Western elites are no longer ‘convinced of their ability to justify their power openly to their own publics’ (Chandler 2006: 107). Paradoxically, also the policies exported to the developing world (or in crisis areas in general) disconnect domestic constituencies from autochthon rulers. The result is a proliferation of ‘phantom states’ composed of technical administrative shells, sustained mainly through external policy-making and resources, and dangerously detached from their constituent population, over which they are expected to exercise their political powers.

The picture emerging from *Empire in Denial* is that of an international community where Western states rationally engage in statebuilding initiatives in troubled regions of the world with a view to transferring responsibilities to local governments and, therefore, avoiding accountability for the impact of their main international policies. By multiplying the number of states and facilitating the installation of ‘somehow’ legitimate governments, Western countries consciously minimize the risk to be held accountable for the developments in troubled areas. Such a goal justifies two recurrent peculiarities of statebuilding missions: the emphasis on institution-building and the systematic hurry to organize domestic elections, even when the stabilization of peace in war-torn societies is still uncertain and hard security has not been guaranteed yet.

If this last critique can be shared, when focusing on the EU approach towards BiH it seems that the terms of the *Empire in Denial* are not so evident. To a certain extent, it seems that Chandler overstates the capacity of Western countries (and the EU in particular) to think so strategically and act so coordinated. The specific attitude of the EU with regards to the reorganization of the Bosnian state and the constitutional order in that country seems instead to

move beyond a subtle, strategically planned, and indirect transfer of responsibilities. Quite on the contrary, the approach of the EU resembles an *a priori* refusal of interference that is totally incongruent with the massive field presence, especially if we analyze in detail the 2006-2009 timeframe. In the course of this period, the EU reached the apex of its technical approach to statebuilding, which proved to be unsatisfactory, up to the point of inducing Brussels to a drastic change of policy and to follow the US in their recent efforts for constitutional change in BiH. The ambiguity of throwing the hands up with respect to the constitutional reform process, for such a long time, hides the strategic decision to avoid direct responsibilities and initiatives in the Bosnian reconciliation project, something that EU officials interviewed on the matter have had no hesitation about confirming.

A voice from the Policy Unit of the EU Council who spoke on the condition of anonymity has openly admitted: ‘we are not doing reconciliation in BiH. This has been evident since the EU stabilization project was launched. We are not in a position to face complex political issues as the harmonization of the Bosnian state pillars’.<sup>40</sup> On the same line, a diplomat interviewed right at the end of a four-year posting in Brussels and service at the COWEB provided an interesting answer to the question ‘what is the first thing that comes to your mind thinking at the stabilization of the Bosnian state?’:

Reconciliation. Sovereignty is indeed about reconciliation. This actually stems from the fact that there is no will among elites to form a functional state in BiH. This lack mostly can be traced back to the fact that we have not been able to reconcile elites and population, truly, on the war. A successful reconciliation scheme at elite level is vital for the future of Bosnia as a stable state. But to be successful,

the reconciliation process has to be owned by the Bosnians themselves. In a sense we could speak about ownership of the reconciliation process.<sup>41</sup>

More or less the same comment could be heard at the Commission, even though the personnel of the Enlargement DG takes more care to emphasize that something positive has still happened, also with regards to reconciliation. Approached in mid-2007 (when the idea ‘no police reform equals to no SAA’ became a mantra amongst EU policy-makers and constitutional reform was completely obfuscated in the EU agenda for BiH) a practitioner from the Commission with more than ten years of experience on the Bosnian file has admitted that, even if randomly, ‘things are moving. Surely, we are not tackling directly the constitutional deadlock because this would mean involving the Commission in a difficult effort for reconciliation. Still, I believe that we are doing reconciliation our own way, step by step, progressively, sometimes indirectly, with different programs and means’.<sup>42</sup>

Doubts about the effectiveness of this ‘unstructured’ approach and vague commitment were raised, even by the European Parliament (EP). However, it seems that voices from the EP, even when they underline legitimate concerns, do not reach other European institutions so easily. In June 2007, disappointment was raised from the EP against the inability of EU agencies to elaborate, agree, and promote clear and sustainable instruments of reconciliation in all the divided societies at the periphery of the Union. Amongst other voices of dissent, speaking specifically on the deadlocks of the Bosnian constitutional reform, a MEP from multiethnic Süd-Tirol questioned: ‘until we clarify the problem of guilt, how can people get together in a pluriethnic solution?’<sup>43</sup>

As will be further clarified in the next section, what is truly paradoxical is that the attitude of most EU actors towards the Bosnian elites has been based on the claim of ‘a quasi-sacred respect for sovereignty’. This justification was constructed to hide a substantial inefficiency: in the attempt to distance itself from difficult political processes, the EU refrained to approach the Bosnian constitution-making process. Differently than the US, the EU tried to experiment a statebuilding methodology based on technocratic relationships and indirect pressures. To use another metaphor, we could talk about a ‘statebuilding by the backdoor’ strategy.

## **2.2. Evading responsibilities, avoiding risks ... and sovereignty is said to be again sacrosanct**

The EU entered the Bosnian field in 2003 when it took over the responsibilities of the international police mission that had been previously directed by the UN and installed its own mission (EUPM), which was the first field deployment under the framework of the ESDP. However, the first concrete sign that inaugurated ‘the EU commitment to Bosnia’ was the Road Map drafted by the European Commission in 2000. Through this Road Map the Commission identified 18 areas of reform (divided into three fields: political steps, economic steps, and steps in the fields of democracy, human rights and the rule of law) that the Bosnian government was asked to adopt in order to allow the Commission launching a Feasibility Study for the Stabilisation and Association Process.<sup>44</sup>

Since then, the EU presence in BiH has gone through a constant and significant ‘escalation’. A EUFOR Mission ‘Operation Althea’ jumped into the shoes of SFOR (the second NATO mission to BiH after IFOR);<sup>45</sup> the EU

Commission consolidated its field delegation;<sup>46</sup> but most important, with the adoption of Lord Ashdown's mandate, the HR was given a 'double hat' and his office was thus renamed OHR/EUSR.<sup>47</sup> Since five years, thanks to the initiative of five leading European countries (France, Italy, The Netherlands, Portugal and Spain) also a newly created *European Gendarmerie Force* has been testing its field capabilities in BiH. Known also as Eurogendfor, this initiative has allowed 'MSU/Carabinieri' forces to take over the Integrated Police Unit within the EUFOR framework.

In spite of this dominant position in the Bosnian field, the mentioned initial successes, and the potentials of its prospect of membership, Brussels has tried not to directly engage in the constitutional challenge. Initiatives in this field have been mostly left to the US, which, regardless of its changed geopolitical perspectives and renewed field activism in Iraq and Afghanistan, has continued to prove a relatively active diplomacy in BiH. Washington was behind the 'April Package' of reforms, which was voted down by the Bosnian parliament in spring 2006 (The Dayton Project 2006).<sup>48</sup> Following the parliamentary stalemate – and with the EU focused exclusively on police reform – in 2007 the US remained the most active mediator between the leaders of RS and their Bosniak opponents, as shown by the attempt (unfortunately unsuccessful) to bring the Bosnian Serb leader Milorad Dodik and the Bosniak politician Haris Silajdžić to the same table in Washington (Associated Press 2007b).

Once also this mediation seemed at dusk, several actors in the US started to call for a greater involvement of the EU on the constitutional dossier. The reluctance to tackle the constitutional issue in a structured way was also criticized by the Dayton Project (i.e. the American NGO that together with the US Institute

of Peace structured, supervised, and promoted the constitutional talks that led to the informal political approval of the April Package in 2006). Observers from the other side of the Atlantic recognized that only a greater and structured involvement by the EU might have helped overcoming stagnation. A reasonable call has explicitly been made in favor of a revitalization of this process through the establishment of clearer links with the SAA and through greater involvement by the EU in the difficult mediation. The experts working for the Dayton Project suggested:

one option to consider is for the EC and US to meet in Brussels with the leaders of the State, the entities, and representatives of Mostar, Tuzla, Sarajevo, and Banja Luka to discuss this issue and indicate that, although completely abandoning the Dayton institutions may not be necessary, nevertheless without significant change in the constitution and the way in which Bosnian governmental entities function, there will be little if any chance for Bosnia to obtain EU membership (The Dayton Project 2007).

However, the EU tried as much as possible to refrain from intervening on the matter of constitutional change, and it did not manage to develop in Brussels a framework that could facilitate the domestic confrontation on constitutional issues. Up until summer 2009, the main priority in Brussels remained the reform of the police. After the summer, insisting on the necessity of a joint effort for constitutional change in BiH, the new US Administration succeeded to involve the EU in the debate. How to explain the prolonged reluctance of the EU? The current impasse over the constitutional reform was seen as a mine field, too risky and too complex to be approached. In spite of the prolonged externally-facilitated

institutional restructuring and the EU membership perspective, there is no agreement among Bosnian elites on how to replace the constitution attached to the DPA. Interestingly, party leaders have refrained from formalizing in a process of 'constitutional consolidation' the institutional developments already achieved over the years (largely through the actions of the international community and the OHR). As in the immediate aftermath of the peace settlement in 1995, the three constituent people still have conflicting views on how the central Bosnian state should be organized. In particular, Serbs and Bosniak have antithetic positions. The latter consider the main structure established through the DPA as a starting ground for progressive centralization; the former instead strenuously defend the division of labour between the central state and the Entities, thus pointing at the constitutional framework of the DPA as to an insurmountable ceiling.

In spite of the clear difficulties, a process of constitutional reform and, in parallel, a definitive decision by the international community to relinquish the Bonn Powers still represent the only possible combination through which BiH can be regenerated as a truly sovereign and multiethnic state. As Philip Roeder (2007: 63) has pointed out, 'the sovereign state is distinguished from other jurisdictions by its authority to allocate and reallocate decision rights within its border'. Against this backdrop, it seems clear that a successful constitutional process is an inescapable moment of sovereign reallocation of powers and prerogatives.

Rumors from the DG Enlargement confirmed that in 2007 at least fundraising was undertaken. According to one EU official, at that time the Commission had gathered adequate financial resources designed specifically to support the process of constitutional reform. From the information obtained from a top-ranking EU official, the Commission apparently was ready to send to BiH



up to one million euro for this purpose. The same source further specified: ‘people in BiH have been informed about this. If they want to start talking about the constitution we put the money in, and perhaps some of our expertise. We are ready to set up proper frameworks and bureau for this. For the rest, we keep going with the SAP’.<sup>49</sup>

Undoubtedly, the readiness of the Commission (at least on the financial level) has to be appreciated. But to stimulate complex processes like constitutional reform in a post-war fragmented state, unfortunately, does not only depend on the availability of financial resources. Clearer political decisions on strategies to be implemented and paths to be chosen and pursued are probably more relevant in such cases; this is particularly important for the international community when it is clear that autochthon elites do not yet cooperate in a climate of reconciliation.

Up until mid-2009, no common European strategy was adopted on the matter. As emphasized above, the frictions were institutional and diplomatic, normative and methodological, and in several respects, they had a lot to do with sovereignty. The flag of sovereignty was indeed often raised by EU officials when they were asked to elaborate on the shortcomings of the international community in BiH. The ‘sovereignty excuse’ was manipulated and presented systematically, often to the extent of depicting paradoxical explanations. According to a diplomat who completed a four-year mandate in the COWEB and has a prolonged field experience in the Western Balkans, it should be clear that

...the EU does not have its own vision of the Bosnian sovereignty and does not intend to produce direct policies related to the reorganization of sovereignty. There is not indeed a design for the redefinition of the Bosnian sovereignty. Who is dealing with

sovereignty is the UN. Probably Kosovo will be an exception to this EU reluctance, but it is too early to say. The interference with sovereignty in BiH takes place with the use of the Bonn Powers, not with the hat of the EUSR.<sup>50</sup>

Even if it addresses only indirectly the problem of the current constitutional impasse of BiH, this statement provides a series of significant hints. Prior to elaborating on them, a preliminary clarification has to be made. After an extensive series of interviews (undertaken between late 2006 and 2008) with other diplomats attached to national permanent missions to the EU and serving as delegates to the COWEB, the statement above represents a synthesis of the vision of sovereignty and EU responsibilities shared by diplomatic elites sitting in Brussels and working on BiH and the Western Balkans.

The constitution is identified by definition as the maximum expression of the sovereignty of a state, so that – in the eyes of basically all delegates in the COWEB – it would be too much not only to intervene formally but also to provide targeted external incentives to stimulate the process for the revision of the constitutional architecture. Perhaps forgetting that the Bosnian constitutional arrangement in force was agreed at a US air force base and signed in Paris (not to talk of the implication of EU integration on national legislative and governing systems), EU elites depict the constitution as the final test for the maturation of the country that should not be ‘changed or distorted’ by any kind of European carrot or stick.

A further element of interest has emerged when, specifically asked to elaborate on the massive EU field presence, practitioners in Brussels made no direct or indirect reference to the idea of sovereignty as an internationally shared

responsibility; at best, they produced general statements about guilt and the EU mistakes of the early 1990s or they referred to a vague idea of a ‘European family’ based on common history. Surprisingly often, EU officials openly admitted that BiH provided a context with optimal conditions for the EU to test its operational capabilities. The EU should have indeed experimented its potentials in neighboring areas prior to engage with large scale missions also in more delicate scenarios, far beyond its near abroad. Finally, the connection between stability in BiH and security throughout Europe represents another equation to which EU officials normally referred to. This mix of strategic considerations, contingent evaluations, and feelings has been spelled out in an interesting overview by an official from the Commission:

BiH should be an EU country. Our coming into the scene has been partially determined by the disengagement of the US but not only. Suddenly we realized that we should not have allowed having a tumor in the heart of Europe and also that only EU countries were entitled to help the transition of another European country. Now it is all our challenge to Europeanize BiH.<sup>51</sup>

When asked to explain the EU reluctance to intervene on the constitutional field and the obstinacy to focus on police reform and technically-driven changes, the diplomats interviewed have pointed their fingers merely to the prolonged indifference of the Commission – presented as the *Deus ex machina* of the EU enlargement process<sup>52</sup> – apparently forgetting that also what happens in the Council and among the permanent missions in Brussels is relevant for the EU

policy-making processes. At least on paper, a first timid sign from the Council was actually given at the beginning of 2007. Precisely, this arrived in February 2007 when a renewed mandate of the EUSR was officially adopted. According to article 3(p) of the updated EUSR mandate, amongst many other tasks, the latter should 'provide political advice and facilitation in the process of constitutional reform' (European Council 2007).

The criticism made by the Council against the Commission, could also be sensed at the EP; even though, at a closer look, the disapproval from the EP targeted the work and initiatives of both the Council and the Commission. For instance, interviewed on this specific matter at the time when both the Commission and the Council showed an exasperated attention for police reform and the US was the only actor trying to mediate on constitutional reform, the MEP Doris Pack had no hesitation to declare:

I didn't understand why Dodik and Silajdžić went to Washington. Anyway, this has been a failure of the Commission and mostly of Solana to change the political climate in BiH. The Bosnians need people who really understand them. In particular, I have the impression that the Commission is too technically oriented. You have to go there and speak to politicians. The Commission sees itself as a technical body.<sup>53</sup>

Unfortunately, as it will be explained in the coming sections, the facilitation for the constitutional reform has been hindered by the lack of coordinated and unequivocal political support from the Council to the HR/EUSR. While the German HR/EUSR Schwarz-Schilling had initially received a blessing to operate on the matter and was then left isolated in the difficult undertaking, the story that

regards his successor turned out to be quite different. The Slovak HR/EUSR Miroslav Lajčák<sup>54</sup> was sent to Sarajevo with the idea to restore that gradualism in the reform agenda that had been peculiar at the time of Ashdown's tenure. To serve this purpose, during summer 2007, the police reform was re-attached priority status. Actually, Lajčák had been properly instructed to make appear in his daily work that this specific reform had not much to do with the constitutional architecture of the state.

Witnessing how Schwarz-Schilling slowly lost support to stimulate the constitutional debate (and how he ended up not being backed at all by any political will even to simply promote structured discussions amongst local elites on how to consolidate the institutional changes *de facto* in place) a voice of criticism from within the OHR/EUSR has claimed that Lajčák's instructions depended on the following factors:

In Europe there is no shared model; no pre-determined understanding of what is a state or a constitution. Moreover, there is no shared vision over democracy, the rule of law, the idea of nation, or even the idea of rights. Evidently, there cannot be smooth political convergence at the Council that would allow overcoming these normative clashes. The problem is that only by solving these divergences it will be possible to choose a path between the nation-building approach and the technical approach. The former is a latent idea that is always there at the Commission, mostly because of the national background of the people that are currently on the Bosnian file. But the latter remains a predominant vision, based on the idea that all countries are the same and that there is not so much difference between Bosnia and the other former Communist states that already went through the enlargement process.<sup>55</sup>

To continue with the reconstruction of the *hands-up* attitude shown by the EU towards the Bosnian constitutional impasse between 2006 and 2009, another look at the work of the EP is needed. Clearly, the Brussels- and Strasbourg-based institution does not have any direct or substantial impact on the CFSP or the enlargement process; nevertheless, it remains a relevant forum for discussion and political inputs.<sup>56</sup> In March 2007, in a recommendation from the EP to the Council, the Bosnian constitutional issue was analyzed with particular attention. The EP recognized that ‘deep reflection should be undertaken among the different components of society in BiH on how to transcend the rigid ethnic division of the country so as to reform its structures and make it more flexible and compatible with the European democracies’ (European Parliament 2007). But what were the responsibilities on the part of the EU to properly stimulate a similar process for reconciliation? Not much was said on the matter. Even if indirectly, an answer came during the closing session of the yearly EP-BiH Inter-Parliamentary Meeting. Talking to her colleagues from BiH about constitutional reform, the German MEP chairing the meeting (who was then also Chair of the EP delegation for the relations with SEE countries) made the following points clear:

We have the money, we have the know-how and we could put it. But we have no responsibilities. You have to find the compromise ... It is your constitution ... Moreover, note that I do not like that there is someone who goes to Washington to discuss his own constitution. You do not want to become members of the United States of America, so come here to us! Let’s stay home, doing homework without taking this long trips to Washington, that is so far away!<sup>57</sup>

On the same line, the vice-president of the EP delegation for SEE countries, declared in that occasion: while ‘it is true that the Americans are the ones who made peace happen, we cannot accept anymore an abstract concept of constitution to be imposed. We want a process and I hope that people understand that Washington is not the right address to make this happen’.<sup>58</sup> Both these interventions confirm that while at the EU level it is easy to find positions against excessive American intrusiveness into the Bosnian constitutional reform process, it is equally difficult to propose clear strategies and launch political initiatives that enjoy wide political consensus amongst member states. This was so evident to the eyes of the Bosnian MPs invited to Brussels that one of them replied to the exhortation above with a rather sarcastic analysis:

Bosnia cannot survive as a state based on two separate entities and three people. Dayton is an unfair and unpractical constitution. I could even accept another external imposition if it is fair. Obviously, it would not be good if the US breaks the constitutional deadlock. We would be pleased if the EU takes over more responsibilities in the constitution reform process. I speak as a citizen prior to launching this proposal as a Bosnian MP. It is a long and difficult process, but the EU has to allow us to make it.<sup>59</sup>

### **3. Conflicting methodologies for the constitutional reform process (2005-2007)**

The intra-EU institutional divergences presented in the previous section cannot explain alone why Brussels has not yet developed a coordinated effort to help

Bosnian elites cleaning up their internationally established constitutional (dis)order. This analysis has to be completed with additional elements gathered on the Bosnian field, particularly at the OHR/EUSR offices, as well as with the elaboration of a series of elements acquired from various members of the diplomatic circle in Sarajevo.

Looking at the past three years, it is possible to sum up two main different approaches to constitutional reform that were discussed among international elites in Sarajevo. Some of them were timidly presented and pursued, while some others were accompanied by more vigorous diplomatic sponsorships and political initiatives. The two main approaches have taken the form of the American sponsored April Package (an externally designed and introduced reform plan) and a law-based commission supported by some (but not all) EU member states and somehow negotiated by the HR/EUSR Christian Schwarz-Schilling at a very preliminary stage. It will be made clear in the following paragraphs that the position of the EU, other than suffering from the lack of cohesion and coherence among its member states, has suffered from the attempt to ‘technify’ the relationship with this potential candidate member and emphasize police reform and gradual institutional changes.

Section 4 will close this chapter with the analysis of the so-called ‘Butmir process’, which took place in late Fall 2009. The recent convergence of the US and the EU eventually made possible the creation of a framework for confrontation over constitutional reform, which has involved the key actors of the Bosnian domestic political environment. However, already during the very early stages of the process, it became clear that the debate was too negatively



conditioned by the precedent prolonged marginalization of constitutional change from the EU reform agenda.

### **3.1. The negotiations for the ‘April Package’ and the US diplomatic initiative (November 2005 - June 2007)**

The first concrete attempts to reach a structured and comprehensive constitutional reform in Bosnia have to be attributed to the US diplomacy. These initiatives were pursued through the persistent commitment of the (now ex-) US Ambassador to BiH, Douglas L. McElhaney, who headed the US mission in Sarajevo between September 2004 and September 2007 (when he left his post to Amb. Charles L. English). Throughout his mandate, McElhaney constantly sought to build, on a bilateral basis, close relationships with leaders of main political parties, with a view to push them towards a common project for constitutional reform. The methodology blessed by Washington and put in practice in Sarajevo was clear: party leaders should be convinced with targeted efforts to grant their personal commitment to a schematic reform plan; once the plan was drafted by the expertise identified by the US and approved in Washington, leaders were asked to subscribe it as a common proposal for constitutional change.

The process was launched by the US Embassy in Sarajevo in mid-2005. A few months away from the tenth anniversary of the DPA, US diplomatic representatives in BiH started to explore what initiatives could be organized by the end of the year, possibly in Sarajevo. As confirmed by a high-ranking US official ‘we had an important anniversary on the way, but the mood in the country was not celebratory at all. So we thought it was us who, in a professional way, had

to do something that could have pushed things at least a bit forward. Otherwise the tenth anniversary of Dayton would have just underscored the total lack of progresses'.<sup>60</sup> As clarified by the same source, Amb. McElhaney sent to Washington a list of deliverables (in which the goal of broad constitutional change was only one amongst other possible items on which to focus) and confirmed his readiness to 'take advantage' from the tenth anniversary of Dayton in order to push local elites to move forward on the reform agenda.

The proposal was particularly welcomed by the Under Secretary of State (USoS) for Political Affairs, R. Nicholas Burns, who between 1995 and 1997, had developed lots of experience on the Bosnian peace-making process, working closely to Madeleine Albright as Spokesman of the Department of State and Acting Assistant Secretary for Public Affairs. By welcoming McElhaney's activism, Burns proposed the organization of some events in Washington. The meetings should have gathered Bosnian top governmental officials (e.g. the Chairman of the tripartite Presidency of BiH Ivo Miro Jović and the RS President Dragan Čavić) other relevant members of the domestic political community (eventually, these included: Mate Bandur, the back then 'rising' RS social democrat politician Milorad Dodik, the former FBiH President Safet Halilović, and the SDP leader and former Foreign Minister Zlatko Lagumdžija), as well as key representatives from relevant Transatlantic institutions and organizations.

On 21-22 November 2005, a series of celebratory events were organized in Washington. On November 21, the United States Institute of Peace (USIP) hosted a conference titled 'Beyond Dayton: The Balkans and Euro-Atlantic Integration', where Bosnian political representatives met at the presence of USoS Burns, Amb. Richard Holbrooke, the HR/EUSR Paddy Ashdown, and other representatives of

the international community in BiH (US Department of State 2005b). In his opening speech, Burns made a clear call for political commitment towards constitutional reform; moreover, he reminded to the Bosnian politicians attending the meeting that their presence in Washington had to be intended as an opportunity ‘to consider the future of Bosnia, the modernization of the Dayton Accords themselves, and to agree on a new, more unified Bosnia-Herzegovina for the generations ahead ... The Dayton Accords need to be modernized. Bosnia needs to create new national institutions that can chart a new future for the country’ (US Department of State 2005a).

On the following day, three additional events took place. The first was a conference of religious leaders from BiH (US Department of State 2005f). The second was a commemorative ceremony, in honour of Amb. Robert Frasure, Nelson Drew, and Joseph Kruzel, three American diplomats who were killed in BiH in 1995 (US Department of State 2005d). The third was a meeting between the US SoS Condoleezza Rice and President Jović (US Department of State 2005c) for the signing of two agreement, one in the field of defence (a bilateral agreement on Status Protections and Access to and Use of Facilities and Areas in BiH) and one on the field of civil aviation (a bilateral Open Skies Civil Aviation agreement). On this last occasion, SoS Rice called on Bosnian leaders to start working on institutional centralization and create a ‘stronger energetic state’. Ms. Rice stressed that ‘to advance the promise of peace and progress, we must now move beyond the framework constructed a decade ago. A weak, divided state was appropriate in 1995, but today in 2005, the country needs a stronger energetic state capable of advancing the public good and securing the national interest’ (US Department of State 2005e).

At the end of the two-day celebrations, the most important outcome was a joint statement, signed by all Bosnian leaders gathered in Washington, in which a general (not to say timid) commitment to constitutional reform was highlighted. At the final press conference the US leadership was challenged on the substantial strategic objectives of the project and the real goal pursued by the American government. Confronted with the idea that 'constitutional reform' had been put on the table as a rather vague concept, USoS Burns provided a detailed clarification of the US diplomatic strategy, which is worth quoting extensively:

Actually, the concept of constitutional reform is quite specific. It's not vague ... When I proposed six weeks ago that they ought to agree to constitutional reform that was considered a rather radical notion because constitutional reform implies that the Dayton Accords are not immutable. It implies, specifically to the Bosnian Serbs, that there has to be a process of strengthening the state and not just the entities that, of course, received most of the power at the Dayton negotiations. And it assumes – constitutional reform – that there will be a narrowing from three presidents to one and assumes the development of a strong prime minister and it assumes the development of a strong speaker of the parliament and strong parliament. So it's very specific in that sense. What we hope they'll agree to tomorrow is, as political party leaders in the country, that they will dedicate themselves to this process of constitutional reform, that they will pursue that over the coming months in advance of the 2006 elections. We would hope that's what they propose -- commit themselves tomorrow. I don't think you'll find specific language in the agreement about the elements -- the type of presidency, the type of prime ministership, the type of parliament -- because that has to be worked out subsequent to any agreement tomorrow. That would have to be worked out in the parliament of Bosnia-Herzegovina, we hope, over the next few months. But when

they say they're agreeing to constitutional reform and to agree on the elements of it in the next few months, that is a very specific process. It's not vague at all. I just wanted to make that note (US Department of State 2005a).

In Washington, Bosnian leaders made only a general commitment and confirmed in principle their readiness to contribute to a process that 'will enhance the authorities of the state government and streamline parliament and the office of the presidency' (as quoted in McMahon 2005). Party leaders also agreed that the process should have been concluded at the last by the end of March 2006. This deadline was identified by the US mediators with the date of the next general elections in mind (which were scheduled to be held in October 2006). According to the expertise in Washington, at least six months would be necessary to implement a first structured reform scheme of the Dayton constitution. Based on this shared political will, the US Embassy in Sarajevo launched a process of domestic political confrontation on key issues related to constitutional change and tried to promote a draft agreement that could serve as a common minimum basis for reform.

Respecting the deadline set up in Washington, in late March 2006, the commitment to pursue on the path of constitutional reform was turned into a reform package, which later would be labeled as 'April Package'. The package was for the main part prepared on the other side of the Atlantic, by American intellectuals and former practitioners who worked under the guidance of the US government. Formally however, the main preparatory discussion forums, workshops, and negotiations took place outside the Department of State. The initiative of the Department of State converged into the activities of USIP, which

at that time had a large program on BiH, thanks to the leadership of former Deputy HR in BiH, Amb. Donald S. Hays, who then led the USIP Center for Post-Conflict Peace and Stability Operations.<sup>61</sup> At the same time, the drafting exercise was carried out back-to-back with a prolonged multilateral confrontation in Sarajevo. After the meetings in Washington, Amb. McElhaney started to gather main party leaders on a regular basis (at least once a week from December 2005 until April 2006). A source from the US Department of State confirmed that Ambassadors from relevant EU countries attended only on some occasions those working sessions among local politicians, but they remained merely sporadic observers.<sup>62</sup>

Considering that this chapter focuses on the methodological, normative, and political frictions underpinning the international debate for constitutional change in BiH, detailed references to the specific content of the April Package (as well as to the other technical institutional changes that have so far been discussed on the various negotiation tables) are not relevant. However, the main proposals encompassed in the April Package can be summarized as follows: definition of a set of competences to be formally assigned to state level institutions; abolishment of the bicameral system; reform of the tripartite Presidency at state level; changes to the structure, electoral modalities, and working procedures of the Council of Ministers.<sup>63</sup>

Once the Package was ready, the US diplomacy intensified its lobbying activities in BiH, with a view to consolidating the final consensus among key Bosnian political leaders on the main lines of the proposed reform. This process consisted mainly in bilateral contacts and negotiations, as well as in a series of multilateral working sessions with representatives from main parties. Despite all

these initiatives, however, the focus on party leaders did not paid entirely off. Certainly, the adoption of the reform plan was affected by some contingent factors; in particular, the tensions typical of the pre-election environment had a negative impact on the debate. But the main weakness of the Package probably lay in its conception and negotiation modalities. Since no talks were undertaken with broader delegations of Bosnian MPs and no contribution was sought from the representatives of the domestic cultural establishment, the Package did not pass the crucial test in the Parliament, which voted down the reform project with a tight majority. The fate of the Package was affected by the decision to rely on targeted external pressure from Washington and from the American Embassy in Sarajevo on key party leaders, thus avoiding a broader and more open debate with the rest of the political establishment.

The decision to persist with this approach was probably reinforced by the promise reiterated by some politicians – e.g. Haris Silajdžić and Sulejman Tihić, who for clear opportunistic reasons at the beginning of the process were strongly in favour of the proposed reform – to further promote the package in the domestic arena. These two politicians, together with other leaders belonging to the Bosniak political community, saw the institutional and procedural changes outlined in the April Package as a good starting point to promote further centralization, from the Entities to the national government. In contrast with this approach, Bosnian Serb leaders have been historically for the maintenance of a highly decentralized system based on the recognition of strong prerogatives to the Entities.

It should not be disregarded however, that the dismissal of the April Package in the Bosnian Parliament shall also be attributed to key Bosniak MPs. The two/third majority was not reached only for two votes, and it is not a mystery that

the six Bosniak representatives belonging to Silajdžić's SBiH were among the sixteen MPs who voted against the approval of the April Package (Marko 2006: 213). The vote in the House of People confirms that, probably hoping to achieve even a better deal in the sense of centralization, Silajdžić did not push until the end for the approval of the proposed reform within his same party.

### **3.1.1. The issues of entity voting and the vital national interest clause**

Following the dismissal of the reform plan by the Bosnian Parliament, the US Ambassador nevertheless continued systematically to develop consensus around the Package. Amb. McElhaney actually pursued in this attempt until June 2007, when the end of his mandate approached. Essentially, in the time frame between the negative vote of the Parliament and the beginning of summer 2008, there was a quiet but constant negotiation on the main terms of the Package. Several problematic issues on the reconfiguration of the central Bosnian institutions were at stake; however, the hinge of all discussions in this period was mostly entity voting and the revision of the so-called 'vital national clause', which allows the representative of each constituent people to block legislation. On the issue of entity voting, the text of Bosnian constitution attached to the Dayton agreement reads as follows:

All decisions in both chambers shall be by majority of those present and voting. The Delegates and Members shall make their best efforts to see that the majority includes at least one-third of the votes of Delegates or Members from the territory of each Entity. If a majority vote does not include one-third of the votes of Delegates or Members from the territory of each Entity, the Chair and Deputy Chairs shall



meet as a commission and attempt to obtain approval within three days of the vote. If those efforts fail, decisions shall be taken by a majority of those present and voting, provided that the dissenting votes do not include two-thirds or more of the Delegates or Members elected from either Entity' (US Department of State 1995).

Still today, these norms represent the most critical points of friction between political leaders with different ethnic and religious backgrounds. The CoE has repeatedly criticized these norms, calling for a radical reform that should deprive nationalist political leaders of a powerful tool for legislative obstructionism. For instance, in one of the latest resolution dealing with this particular issue, the Parliamentary Assembly of the Strasbourg-based organization has emphasized the following points:

The entity voting system in the House of Representatives and the excessively broad scope of the "vital national interests" clause, together with the related veto mechanism in the House of Peoples, must be reformed for Bosnia and Herzegovina to become a genuine civic state for all those living in it. Members of Parliament should act as free and democratically elected representatives of all the citizens of Bosnia and Herzegovina and not as defenders of purely ethnic interests. The so-called "Others" should be given an effective opportunity to participate fully in political life, by running in the election for members of the presidency and participating in the designation of delegates to the House of Peoples' (CoE 2008: para. 4).

On the very same line, the latest country progress report released by the European Commission in October 2009 has stressed the following critical issues:

While progress has been made under the current constitutional structure, it still offers too many possibilities for political obstructionism. The misuse of provisions such the “entity voting” [Article IV 4 (d) of the Constitution of Bosnia and Herzegovina] and complex rules on quorums prevents swift decision-making and, therefore, hinders reform and the country's capacity to make rapid progress towards the EU. Among other things, the problem of blockages due to the entity voting rules needs to be addressed, and a stricter definition of the vital national clause in the Constitution is necessary’ (European Commission 2009)

From its part, the HR/EUSR has repeatedly pointed at this issue as one of the most critical deadlock hindering the political and legislative life of BiH. In the report to the UNSC presented by HR/EUSR Valentin Inzko last November (2009a), it has been reiterated that still today:

One of the key problems related to the work of the Bosnia and Herzegovina Parliamentary Assembly is the trend by which the political parties support draft legislation in the Council of Ministers, only then to oppose the same draft laws in one or both houses of the Parliament ... Overall the performance of the Council of Ministers and the Bosnia and Herzegovina Parliamentary Assembly has been poor, with ethnic and entity agendas prevailing over the State’s intentions to fulfill requirements for EU and NATO membership.

Apart from the technical and political criticalities related to the reform of the entity voting procedure and the vital interest clause, the defeat of the April Package in the National Parliament was depending on excessive confidence that the ‘party leaders approach’ could work. A US diplomat who was directly involved in the negotiations for the April Package admitted: ‘our focus on leaders

was justified with the idea that in fractured courtiers like BiH, to get change you need to force “the big boys” in the political arena to accept it. The problem in Sarajevo was that the same big boys who signed the Declaration in Washington did not lobby their party members sitting in the Parliament at home’.<sup>64</sup>

As this statement confirms, to a certain extent, the process that led to the debate on the April Package in the Bosnian Parliament represents a manifestation of the Holbrook and, more in general, standard American diplomatic practices in post-conflict areas. This could be summarized as follows: subsequent to the identification of key political actors, these must be brought around a negotiation table; once some kind of general consensus is reached, the compromise is wrapped and presented without much alternative choices, and in the absence of broader and more open multilateral discussions. Looking at this attitude from Brussels, a diplomat from an EU member state commented: ‘the US confirmed that they have no problem in substituting themselves to local elites. The April Package failed precisely for this reason. If the EUSR launches a process with shared political support, he could probably achieve some results. But today support for such initiatives is at the minimum’.<sup>65</sup>

### **3.2. Schwarz-Schilling’s convention approach (2006-2007)**

The saga of the so far unsuccessful constitutional reform process reveals other nuances if we look at what happened in Brussels and at the OHR/EUSR, especially during the tenure of Schwarz-Schilling. The appointment of the German HR/EUSR – known in the diplomatic environment in Sarajevo as the ‘quiet’ High Representative – was promoted by some EU member states (with

Germany at the forefront and Austria supporting) with two ambitious goals in mind. On the one hand, Schwarz-Schilling was expected to be able to re-enter the Bosnian arena (where he had already experience) and promote as much local ownership of the reform agenda as possible. On the other hand, the unwritten mandate (supported only by some member states) was to pave the way for both the closure of the OHR structure within a year and the inauguration of a reinforced EUSR Office.

In his inaugural TV address to the Bosnian people, while reiterating the crucial importance of the SAA and the strategic implications of a possible participation of Bosnia in NATO's Partnership-for-Peace Programme, the German HR/EUSR clarified that '[t]he steps that must be taken in order to reach these milestones are known – and these will form the agenda of my work. But to take these steps, Bosnia and Herzegovina must be fully sovereign. That means that I must step back' (Schwarz-Schilling 2006). Appreciated for his consolidated experience as a mediator in the Western Balkans, Schwarz-Schilling was seen by a relevant (but not decisive) section of the EU Council as someone who could have completed the installation of EU-driven statebuilding, while encouraging recalcitrant political factions into a discussion on key reforms of constitutional relevance.

During the tenure of Lord Paddy Ashdown, the prevailing methodology chosen by the HR/EUSR resembled the one sponsored by the US, at least in its tendency to focus on key party leaders. Moreover, it was clear that back then the HR/EUSR benefited mostly from the support of the Anglo-Saxon axis in the Steering Board of the PIC. Methods and objectives changed drastically as soon as Schwarz-Schilling took office. Contrary to his British predecessor, he tried to limit

intrusiveness through the exercise of the Bonn Powers and started to deal more directly with the issue of constitutional reform. Emphasizing the importance of inclusive and systematic multilateral dialogue, he started to deal more directly with the issue of constitutional reform. In practice, Schwarz-Schilling put on the table what could be referred to as ‘the constitutional convention approach’. In the opinion of the German HR/EUSR, a Nice-style convention – open as much as possible, also to the civil society and cultural establishment – should have been convened to debate over the constitutional future of BiH.

However, the tensed political climate induced Schwarz-Schilling to believe that, even if the convention was launched, openness and inclusiveness would only result in endless talks. At the same time, as soon as the plan for a broad convention appeared too unrealistic, from the legal department of the EUSR a new proposal was launched under Schwarz-Schilling’s supervision: a narrower law-based constitutional commission could be nominated passing through the Bosnian Parliament. According to information obtained at the OHR legal department, this commission was to be composed of one main council gathering only representatives from the political environment (mostly chosen from amongst the Bosnian MPs) and supported by a technical secretariat.

This approach was not welcome in Brussels, where it was seen as a process without full ownership. Criticism from Brussels targeted in particular the excessive involvement of internationals in the offices designed to support the work of the commission and its steering troika. The idea launched by Schwarz-Schilling was indeed to nominate three co-chairs: one from Washington, one chosen by the EU, and only one selected from amongst national politicians or within the Bosnian cultural community. Moreover, the prevailing opinion was that the secretariat had

to be equally composed of locals and internationals. Several possible ways to organize such a secretariat were considered; however, the idea of the HR/EUSR was to divide it *ratione materiae* into three sub-sections (economy, legal affairs, and security-related reforms), which had to be supported by a joint administrative unit.

On several occasions (both in Brussels and at the meetings of the PIC-SB) Germany confirmed its readiness to take on the main financial burden for the creation of the structure (which potentially, could have also been supported with the previously mentioned 1 million euro extra-budget allocated in mid-2007 by the Commission for BiH). In principle, all Bosnian parties expressed their appreciation for the initiative and confirmed to be in favor of a similar exercise. But no concrete politico-diplomatic support came from the EU Council. The feasibility of this project started to fade as summer 2007 approached, for the reluctance of most EU member states. More or less in the same days, the US failed in Washington their last strenuous attempt to mediate between Dodik and Silajdžić in view of revitalizing the April Package.<sup>66</sup>

### **3.3. The last round of exploratory talks under the tenure of Schwarz-Schilling (April/June 2007)**

Following this double defeat, the HR/EUSR facilitated some rounds of exploratory talks. Once again, the result was uncertainty: while most parties confirmed their willingness to accept a law-based commission, some started to reconsider their support. The position of the Croatian Democratic Union (HDZ-BiH) was particularly interesting. Initially, the critical issue was mostly related to

what kind of legal basis should be granted to the commission. HDZ-BiH, the Croatian Democratic Union 1990 (HDZ 1990), the Alliance of Independent Social Democrats (SNSD), the Party for Democratic Progress (PDP) and even the Serbian Democratic Party (SDS) were in favour of a law-based commission. However, Sulejman Tihić succeeded to convince HDZ-BiH to change side. The strategy pursued by the leader of the Party of Democratic Action (SDA) was driven by a desire to obstruct the creation of a constitutional commission, hoping that an opportunity to re-launch the April Package would come. Tihić was indeed one of the main sponsors of the Package.

When at the beginning of summer 2007 HDZ-BiH withdrew its support from the project, also the exploratory talks were considered as closed. The idea of persisting in rounds of debate was pursued by Schwarz-Schilling on the basis of the conviction that only through structured dialogue could it have been possible to launch a comprehensive process. The HR/EUSR probably thought that only within the framework of a dynamic process could the different visions promoted by Dodik (Prime Minister of Republika Srpska who supports the maintenance of a highly decentralized system based on the recognition of strong prerogatives to the Entities) and Silajdžić (who is in favour of the centralization of the state) be eventually reconciled.<sup>67</sup>

Beyond Schwarz-Schilling's personal commitment, what was the role of the EU in these talks? Several OHR/EUSR officials have confirmed that, while the EU Council started to focus increasingly on the issue of the upcoming independence of Kosovo, the Commission turned out to be reluctant to support these consultations. As confirmed by a representative on the ground, the

Commission prioritized the debate on police reform alone, which had become a key prerequisite for the signature of the SAA between BiH and the EU:

The funny thing of the Commission is that they always make lots of objections but they never openly say no and take responsibility for their refusals. The Police reform is part of the conditionality package that was put on the table for the formalization of the SAA. The Commission is afraid that emphasis on constitutional reform might spoil their circumscribed and technical efforts. In light of this, I am afraid that Mr. Lange<sup>68</sup> and his team at the Commission lack completely a proper understanding of the Bosnian environment and its dynamics.<sup>69</sup>

As we will see more extensively in the next chapter, with the arrival of Miroslav Lajčák the reform priorities of the international community were switched again. The change respected the input of the Commission, paving the way for one of the most delicate crises experienced in BiH since the implementation of the Dayton agreement has started. Clearly, the Commission's 'technical understanding' of EU-driven statebuilding is based on the idea that the countries of the Western Balkans are like all others that have already gone through the enlargement process; therefore, they are equally expected to strive to take over the *acquis communautaire* and implement it line by line.

The critique that can be moved against this view is simple: BiH is a rather peculiar country. To certain extent, it is possible to state that in BiH there is the absence of a social contract between different ethnic communities. There is not one political BiH, but a state divided into three political ethno-religious groups. Pre-requisite for the construction of the state is sufficient cohesion at the socio-political level. Currently, BiH resembles a mere assemblage of ethnic group that



do not share the same commitment to the state. However, the attitude of the Commission is justified in Brussels by making reference to the idea that, while technocratism can be slow to induce political and institutional development, it should nevertheless be privileged because it preserves local ownership of changes.

#### **4. The 2009 attempt at the finalization of a ‘Dayton II’ constitutional compromise: from the Prud process to Butmir retreat**

On 8 November 2008, the presidents of three key parties from the Bosnian political arena (the Croat Dragan Čović for HDZ, the Serb Milorad Dodik for SNSD, and the Bosniak Sulejman Tihić for SDA) signed a joint statement on key reforms, which followed another prolonged period of paralysis. According to the text of this agreement, which was finalized in the Bosnian village of Prud, constitutional reform should be placed at the very top of the domestic reform agenda. The three leaders presented themselves as ready to play a pivotal role in this difficult area of reform and expressed hope that other parties would also commit to bringing a positive input to the process.

The final statement agreed in Prud stated that all efforts at constitutional reform would seek progress in four main areas: harmonization of the BiH Constitution with the European Convention on Human Rights and Fundamental Freedoms (ECHR); responsibilities of the State; more functional BiH institutions; and territorial organization of the mid-level of government (OHR 2008a: 1). Moreover, the Prud Declaration encompassed a reference to the resolution of the

impasse on the legal status of the Brčko district, to be 'regulated by a Constitutional Act, or by a Law with a constitutional two-third majority' (OHR 2008a: 2).

While this agreement lacked broader consensus across the wide and complex Bosnian political environment – contrary to what was initially hoped for by its three original signatories – it did contain a number of interesting points. Amongst these, it is worth noting that the three aforementioned leaders, at the moment of launching the Prud process, explicitly called for direct international assistance in a possible structured process of constitutional reform. Čović, Dodik, and Tihčić openly stated that: the 'Constitution should be changed by operation of amendments to the current Constitution and that they will use expert assistance of international institutions' (OHR 2008a: 1).

Based on the initial entente signed at Prud, the three leaders continued to meet in tripartite format for a few months after their first rendezvous, gathering on average once a month. According to the analysis proposed by the International Crisis Group (ICG 2009b: 4-5), when they met on 26 January 2009 Čović, Dodik, and Tihčić apparently reached agreement on one of the most sensitive issues related to the reorganization of sovereignty in the country: the opportunity to redesign the middle-level of governance by overcoming the current structure through the creation of four entities. This promising agreement, however, reflected a very low common denominator. No consensus was reached on how the boundaries of these four new entities would actually be designed, structured, and put to work in terms of institutional arrangements.

On the one hand, Čović and Tihčić stressed the idea that the reorganization of governance in the country should be based on completely new internal

boundaries. The IEBL would be rendered obsolete through the creation of the four new entities. More specifically, Čović and Tihić shared the view that this internal reorganization should also be based on the abolition of RS as it currently stands. On the other hand, the RS premier Milorad Dodik made clear that the boundaries of the Serb Entity would never be modified. Dodik later clarified that his support for the general idea of creating four entities to manage the middle level of governance was conditional on acceptance by the other two leaders of the right of RS to secede from the Bosnian state and become independent by popular referendum, after a ‘probationary’ period of three years within the new state structure (ICG 2009b: 5).

Only a few weeks following the launch of the Prud initiative, the emergence of such a substantial disagreement revealed that the process was destined for early failure. Despite witnessing this stalemate, US and EU diplomats maintained a belief that an opportunity existed (this time) for joint and coordinated efforts to promote constitutional improvements in the Bosnian institutional scheme. The three leaders of the Prud process were hosted in Brussels by Javier Solana for bilateral meetings at the end of March 2009. Following this initiative, a first important sign of convergence between the US and EU on the Bosnian dossier arrived on 20 May 2009, with visits to Sarajevo by both the US Vice-President Joe Biden<sup>70</sup> and the EU High Representative for CFSP Javier Solana.

These visits by the two high-level representatives were intended as a public diplomacy initiative, in other words, an occasion to demonstrate to Bosnian politicians that Washington and Brussels were singing from the same hymn sheet. Biden and Solana also announced unequivocally that they were prepared to devote a high level of attention to BiH again, in order to facilitate its transatlantic

integration and, to that end, would work together on joint EU-US initiatives. In the words of the two leaders, ‘movement on the path to EU and NATO membership will bring genuine benefits ... this will require *concerted efforts* and compromise to achieve needed reform, including a functioning BiH constitution. The United States and the EU will support this process of growth and reform’ (US Government 2009: emphasis added).

Renewed US activism on the Bosnian dossier had been called for by several EU member states, especially following the difficulties encountered with regard to police reform and finalization of the SAA. For example, at the beginning of 2009, witnessing the initial slow development of the Prud process and the slow pace of other countries in the region in their respective attempts to get closer to the EU, Rome-based policy-makers elaborated an eight-point roadmap for the Western Balkans.

This document, which was presented first at EU level, opened with a short but significant message to other EU member states: ‘The European Union needs to send a reassuring message to the Countries of the [Western Balkans] region on their European perspective, whilst exacting from them a renewed commitment towards reforms’ (Italian Ministry of Foreign Affairs 2009). Elaborating its eight policy proposals, Italy stressed that cooperation with the US was of the utmost importance, especially on the Bosnian dossier. The role of Washington in BiH was defined as literally ‘crucial’, also with reference to ‘the future international civil presence based on a reinforced EUSR’ (Italian Ministry of Foreign Affairs 2009: §4). Italy also proposed the organization of a new EU-Western Balkans Summit in the first half of 2010, ten years after the Zagreb summit, and suggested that the event should be held ‘with the participation of the US’ (Italian Ministry of

Foreign Affairs 2009: §8). Moreover, the convergence between Washington and Brussels was also identified as ‘vital ... to support Kosovo both in terms of direct commitment on the ground and of financial aid’ (Italian Ministry of Foreign Affairs 2009: §7).

#### **4.1. US diplomacy focuses again on the Bosnian dossier**

The call for renewed American activism on the Bosnian stabilization process did not pass unheeded. The Biden/Solana declaration of May 2009 was just the starting point of what could be referred to as a complex process of strategic and operational ‘recomposition’ between the two sides of the Atlantic. The rapprochement between Washington and Brussels has taken place via a series of intense diplomatic and political contacts. In particular, most of the strategic discussions have taken place within the framework of the ‘Quint’ meetings, thus confirming the leading role played by a block of key European governments on the Bosnian dossier. The Western Balkans ‘Quint’ brings together the United States, France, Germany, Italy, and the United Kingdom.

Two important meetings of the Quint took place following summer 2009. One was held in Brussels on 17 September; and a second at the level of Political Directors was organized on the margins of the UN General Assembly in New York on 22 September. These two meetings served as a crucial point of confrontation on the following two issues: OHR/EUSR transition and possible ways of following up on the commitment solemnly announced a few months earlier by Biden and Solana. The preparatory documents that were exchanged between US and EU diplomats clearly reveal that in mid-September 2009 the

strategic concerns of the two sides of the Atlantic were still quite different. An examination of the organization of a ‘retreat’ for Bosnian political leaders<sup>71</sup> in the Butmir military base (located in the outskirts of Sarajevo) in October 2009 demonstrates that, in the end, the US successfully managed to confirm its leadership role and promoted its strategic vision which ultimately prevailed over the more cautious European plans. An analysis of the two main strategic policy documents that were exchanged by Brussels and Washington leave no grounds for doubt.

On 16 September the four EU member states represented on the Quint sent to their US counterpart an articulated series of policy proposals entitled: ‘First Ideas for a “Package” Solution to the Transition in Bosnia and Herzegovina by the End of 2009’ (EU 2009). The document was based on the broader discussion held within the EU framework at COPS level and also included a draft ‘Road-map for BiH and EU involvement’. The schedule drafted in Brussels encompassed the possible organization of ‘a retreat of BiH political leaders’ in early October, but it specified that this exercise should allow Bosnian politicians ‘to consolidate ideas as their final input’ to the broad package of measures presented by the EU. The retreat was intended as a lengthy brainstorming exercise and not as an occasion to exert pressure for a deal on constitutional reform. For its part, the US presented a non-paper with a more specific focus on constitutional reform. It is revealing that the document drafted in Washington (in response to the EU proposal) was entitled: ‘The Why of Constitutional Reform’ (US Department of State 2009).

#### **4.1.1. The EU's 'package solution' deal**

The EU position can be reconstructed by referring to the report jointly presented by Solana and Olli Rehn to the European Council in November 2008. This document made a series of suggestions on the priorities that the EU should pursue in the months to come in its targeted member-statebuilding efforts, without opening the Pandora's Box of the constitution. As noted by the High Representative for CFSP and the then EU Enlargement Commissioner, the time had come to make 'active and comprehensive use of all the EU's tools and mechanisms available: A *comprehensive EU approach* should mobilise all the possible EU instruments with consistency and determination' (EU 2008: 2, emphasis added).

The formula arrived at by Brussels can be explained in the following terms: as EU integration was the only macro strategic issue on which different representatives from the Bosnian political environment could agree, the EU should launch a renewed (and clear) commitment to the Bosnian stabilization process; all EU policy-makers were expected to involve key Bosnian elites in the technical reforms necessary for the future implementation of the SAA. As explained in the summary note of the Solana/Rehn report (that was only partially released to the press by the European Council) it should be clear that: 'EU integration represents a policy area that all BiH leaders agree on. This gives the EU unique leverage and responsibility'; in other words, the European Partnership and the SAA implementation should be the only 'drivers of reform' (EU 2008).

The report – which was handed to the Bosnian Prime Minister Nikola Špirić during an ad hoc ceremony in Sarajevo by the Head of the Commission Delegation to BiH, Ambassador Dimitris Kourkoulas, and the HR/EUSR

Miroslav Lajčák (EC Delegation to BiH 2008) – concluded with the following text, which is indicative of the cautious EU approach to constitutional reform:

Constitutional reform is neither a requirement for OHR closure nor for BiH's further journey towards the EU. Nevertheless, the constitutional framework must evolve to ensure effective state structures capable of delivering on EU integration, including the requirement to speak with one voice. The EU can support constitutional reform with expertise and funds, but the process must be led by BiH itself (EU 2008: 2).

In spite of strong signals from Washington and initiatives by US diplomats in BiH, a belief that constitutional reform should be marginalized as much as possible was maintained by the EU up until September 2009. This is confirmed by the structure and content of the previously mentioned policy paper that summarized the EU position on BiH prior to the WB Quint meeting of September 2009 in Brussels. The document opened with the acknowledgment that the 'imperfect Dayton constitution complemented by international oversight and a degree of international rule ... has clearly reached its limits' (EU 2009: 1). In keeping with this pessimistic assessment of the status quo, the EU position proceeded with the observation that 'to apply for membership of the EU and NATO, Bosnia and Herzegovina needs to recover its full sovereignty' (EU 2009: 1).

Interestingly however, the limited sovereign capacities of the Bosnian authorities were not linked to the inefficiencies of domestic multiethnic institutions. No reference was made to the nationalist elites and their prolonged dispute on the reconfiguration of the Bosnian state. The document elaborated in



Brussels emphasized mostly the international dimension of the Bosnian conditional sovereignty, since it presented sovereignty primarily as a matter of formality: ‘only after a decision has been taken to close the Office of the High representative and relinquish the Bonn powers can BiH sensibly hand in its application for EU and NATO membership’. This approach confirms: firstly, the tendency of EU policy-makers to emphasise formal ownership over actual sovereign capacities; secondly, the willingness by the EU to prolong its hands-up statebuilding stance over reconciliation and constitutional reorganization in BiH; thirdly, the preference for technically-driven change and a step-by-step approach; and fourthly, the necessity to present Bosnian elites with ‘a package solution ... combining reforms and incentives’, in which constitutional reform was just one of a number of issues to be addressed and would therefore continue to be procrastinated over. In other words, the strategy proposed by the EU indirectly attached emphasis to the idea that the rehabilitation of the formal Bosnian sovereignty would be followed by a *de facto* restoration of sovereignty through assimilating the country into Euroatlantic supranational structures. As previously mentioned, the EU has consistently presented supranational integration as a panacea to the Bosnian domestic sovereignty struggle.

The assessment above finds more explicit confirmation in the methodological section of the EU policy paper: ‘constitutional reform is not part of the “5+2”, but needed to improve BiH’s functionality to get closer and to join Euro-Atlantic structures (EU 2009: 4). Moreover, the document noted that ‘constitutional reform is not a requirement per se, but *some* constitutional change will be necessary for full membership (speaking with one voice, prompt decisions)’ (EU 2009: 5, emphasis added). These two statements provide a useful

synthesis of the EU's understanding of constitutional change in BiH. In contrast with its transatlantic ally, Brussels intends constitutional reform as a progressive development that follows on from the EU and NATO integration processes and is functional to the future embedding of the country into the formal and informal supranational networks determined by membership of these two organizations.

Only a few carefully calibrated steps in the overall process of constitutional reform were considered feasible by EU policy-makers. These included, first of all, measures for the harmonization of the Bosnian constitution with the ECHR. Having a constitutional order that privileges the rights of three constituent people identified along ethno-religious lines, the Bosnian system is a source of discrimination against those citizens who belong to minorities that do not fit into one of these three categories – e.g. Roma, Jewish or, more simply, citizens who are born of mixed marriages and refuse to identify themselves as members of a defined ethno-religious community. In addition to alignment of the constitution with the basic requirements of the ECHR, EU policy-makers also proposed a revision of the procedures for the election of the BiH Presidency, and an increase in the number of MPs sitting in the House of Representative. This last measure should be connected to a broader reform of the cantonal structure within the FBiH (EU 2009: 4).

#### **4.1.2. The 'constitution first' approach proposed by the US**

The US opposed the EU strategy. Brussels-based policy-makers had focused on the promotion of a broad package deal that only marginally touched upon issues of clear constitutional relevance. Washington's analysis was instead more firmly

based on the conclusions of the report of the Venice Commission (2005), which while providing a detailed analysis of the Dayton institutional order and a negative assessment of the interferences of the OHR in the political life of the Bosnian state, also reached a series of interesting conclusions on issues related to constitutional change in BiH.

Analyzing the complex and precarious Bosnian institutional balances, the Venice Commission offered the following general policy proposal: ‘Constitutional reform is *indispensable* since present arrangements are neither efficient nor rational and lack democratic content’ (2005: 24-25, emphasis added). The report went on to propose a re-allocation of the responsibilities of governance from the Entities to the central state and the undertaking of targeted institutional and procedural changes with a view to better clarifying the prerogatives of the central government in its efforts towards integration into EU structures, as well as a ‘streamlining of decision-making procedures’ (Venice Commission 2005: 25).

The beliefs that constitutional reform is indispensable and that further centralization of the state is equally necessary are the two pillars of the recent US strategic proposal, which formed the basis of the Butmir process. Elaborating on ‘the why of constitutional reform’, US policy-makers raised three main critiques of the EU’s cautious approach. Firstly, further recalling the ideas of the Venice Commission, US analysts reiterated that ‘negotiation of [EU] enlargement would be impossible without constitutional reform and the transfer of competencies to the State’ (US Department of State 2009: 1). Secondly, in a more direct critique of the EU’s member-statebuilding strategy they said: ‘the EU believes the enlargement process (i.e., use of *avis* and *acquis*) will identify legal and constitutional changes and provide a rationale for constitutional reform as

enlargement proceeds. It is unclear whether this process will address the specific structural and institutional changes needed in state government as identified by the Venice Commission' (US Department of State 2009: 1). Thirdly, the analysis described as 'naive' the idea that the closure of the OHR would automatically result in local ownership and a more responsible political attitude on the part of domestic elites. The assumed correlation between closure of the OHR and an increase in local ownership was judged to be unrealistic 'under the current constitutional arrangement. A more realistic outcome will be the continued paralysis of the state' (US Department of State 2009: 1).

The policy prescriptions proposed by the US proceeded with a list of principles and steps designed to favour the establishment of a framework for mediated constitutional change. The success of such a process would depend on the identification of 'parameters for the negotiations and assure the Serbs that we are not undertaking a Dayton 2 exercise, while at the same time convincing the Bosniaks that we are committed to making state institutions more functional' (US Department of State 2009: 3-4). In other words, the document went on, 'we must convince the Bosniaks that the process will conclude with a more functional state and convince the Serbs that a state government need not be either unitary or highly centralized to be functional' (US Department of State 2009: 5). The most interesting principle proposed by Washington was to prioritize NATO-friendly reform (which involves only a few ministers at state level and already enjoys broad local consensus). The promotion of reform related to BiH's NATO accession process was presented as a potential Trojan horse in an effort to break the political deadlock. If this proved successful, the US argued, it should prove

possible to build ‘the institutional basis for EU enlargement negotiations’ (US Department of State 2009: 4).

The urgency demonstrated by the US in pushing for a compromise on constitutional reform was also connected with two other strategic considerations. Firstly, the US preferred that such a comprehensive process would be launched on the first possible occasion following the summer. This would have enabled agreement on a constitutional deal by the end of 2009 and avoided the negative pre-electoral climate of the planned October 2010 general elections. Secondly, as a source from within the EUSR Office has confirmed,<sup>72</sup> the plan to intensify international pressure on Bosnian elites was also connected with a certain ‘ferment’ shared amongst international legal experts working in the country with regard to the imminent ruling of the Strasbourg-based European Court of Human Rights (ECtHR) on the case involving ‘Sejdić and Finci v. Bosnia and Herzegovina’.

The two plaintiffs are Bosnian nationals, who do not belong to any of the three ‘constituent peoples’ as identified in the Bosnian constitution, since their ethnicity is respectively Roma and Jewish. Sejdić and Finci challenged the legitimacy of the Bosnian constitution, which formally recognizes the right to run for the state Presidency and the House of Peoples only for those citizens who identify themselves as belonging to one of the three ‘constituent peoples’.

It was most probably not by chance that the Venice Commission published on the second day of the Butmir retreat an *amicus curiae* brief on the ‘Sejdić and Finci case’, which perfectly anticipated the ECtHR final verdict. Using the same legal basis as the Court, the Venice Commission (2009: §22) made clear that ‘different treatment on the basis of ethnicity can hardly ever be justified’.

Moreover, the Venice Commission (2009: §34) stressed that the emphasis of the DPA constitution on the constituent people is overly complex, since it effects citizens belonging to other nationalities, but also those who cannot identify themselves as members of one ethnic group or another: ‘the “Others” in Bosnia-Herzegovina comprise not only persons who, like the plaintiffs, consider themselves to belong to a specific group (Jews or Roma); they also comprise anyone (including people in ethnically mixed marriages) who refuses to define him or herself as belonging to one of the constituent peoples.

The Grand Chamber of the Court issued its judgement on 22 December 2009. The ECtHR acknowledged that the balance among the three constituent people established under the DPA was appropriate in 1995, in consideration of the urgent necessity at that time to reach a compromise between the three ethno religious factions previously at war (ECtHR 2009).<sup>73</sup> However, observing ‘significant positive developments in Bosnia and Herzegovina since the Dayton Peace Agreement’ the Court also recognized that ‘the applicants’ continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacks an objective and reasonable justification’ (ECtHR 2009: §47, §50).

To understand the potential impact of this judgment, it might be useful to refer – paradoxically though it may seem – to the statement of the dissenting Maltese Judge Giovanni Bonello, who posed a question of competence: ‘does it fall within this Court’s remit to behave as the uninvited guest in peace-keeping multilateral exercises and treaties that have already been signed, ratified and executed?’ (ECtHR 2009: 34). According to Bonello, the ruling had too brusquely divorced Bosnia and Herzegovina from the realities of its own recent past’

(ECtHR 2009: 33). Confirming its prudent approach to constitutional reform, in September 2009 the EU narrowly linked the ‘Sejdić and Finci case’ to the question of discrimination in the Bosnian constitution (EU 2009: 4).

#### **4.2. Joint EU/US pressure and the constitutional project presented at the ‘Butmir retreat’ (October 2009)**

As previously mentioned, in summer 2009 the EU presented a project that proposed different priorities, approach, and methodology if compared with what the US identified as the steps necessary to produce extensive constitutional change in BiH. Nonetheless, when proposing its own ‘package solution approach’, the EU clarified that the main expectation for the weeks to come would be an intensified operational transatlantic cooperation. Brussels expressed the hope that the political platform on which Bosnian elites would be working to consolidate their Euro-Atlantic perspective could be structured on a ‘joint EU-US approach, endorsed at political level on both sides’ (EU 2009: 1).

Amongst other interesting methodological recommendations, Brussels emphasized the need to develop actions that should be ‘clearly explained’ as well as ‘capitals driven’. The first formula encompassed the hope that both the EU and the US would ‘take responsibility for ensuring proper public communication, as well as ensuring proper information and understanding in the IC in Sarajevo’ (EU 2009: 2). Even more interestingly, Brussels expressed the hope that renewed EU-US cooperation would be established at the level of capitals and that these would remain the main strategic and coordination centers for reform initiatives promoted in BiH. The specific formula coined in Brussels was: ‘the EU and US will need to

be in the driving seat; Sarajevo (OHR) should support, but not drive the process' (EU 2009: 2).

When the Butmir process was launched (20 October 2009), the exercise was co-chaired by the Swedish Foreign Minister and former HR in BiH, Carl Bildt<sup>74</sup> and the US Deputy SoS James Steinberg. The ICG labeled the meeting as '*an emergency attempt to push through reform*' (ICG 2009a: 4, emphasis added). Using a similar tone, when news of the preparatory meetings for the Butmir exercise were made public, the international press defined the US-EU convergence as a 'last-ditch effort to drag Bosnia out of the mire' (McLaughlin 2009). The EU high-level participation was reinforced soon after the introductory sessions, when the EU Enlargement Commissioner Olli Rehn joined the meeting. However, it soon became clear that the American methodological approach was going to take precedence: Bosnian leaders were gathered in the military base to be confronted with the broad issue of constitutional change and the reconfiguration of sovereignty in the country, in order to finally move it beyond the Dayton implementation phase towards a concrete and speedy process of transatlantic integration. At the same time, the two specific methodological indicators proposed by the EU were accepted. A degree of public diplomacy was pursued and the ambition of a 'capitals-driven' process was respected, via a certain marginalization of the OHR from the main stage of the talks.

To further confirm the predominance of the US-sponsored objectives, it can be noted that a few sections of the document presented at the Butmir meeting recall the constitutional charter through which Kosovo became independent from Serbia in February 2008 (Assembly of Kosovo 2008). In the document issued by the Kosovo Assembly there are many references to Euroatlantic integration, so



that the charter emerged almost as the formalizing act of a silent shared-sovereignty agreement – mainly between Kosovo and the EU – rather than a classic declaration of independence.

In one move, Pristina dismissed UNMIK, erected a wall with Serbia, and tried to jump into the arms of the EU. Having expressed their gratitude to the UN for both its post-conflict peacekeeping efforts and prolonged administrative activities (§ 7), the members of the Kosovo Assembly went on to ‘invite and welcome’ the international civilian presence and the EU rule-of-law mission (§ 5). Furthermore, the Kosovar representatives solemnly announced: ‘for reasons of culture, geography and history, we believe our future lies with the European family. We therefore declare our intention to take all steps necessary to facilitate full membership in the European Union as soon as feasible and implement the reforms required for European and Euro-Atlantic integration’ (§ 6).

Similar to the text that forms the basis of Kosovo’s independence declaration, the Butmir draft (Anon 2009: 5) included a section (6) on the relations between the Bosnian state and relevant international organizations. The section opens with a paragraph specifying that accession to international organizations is a prerogative of the central Bosnian state. Specifically, the paragraph makes clear that: ‘Bosnia and Herzegovina shall have the responsibility for applying to membership in International Organizations and to conclude treaties ... To that end it may transfer sovereign powers to such organizations’ (§ 6a). The exclusive responsibility of the central level of governance to conduct the negotiations for EU accession was also specified: ‘Bosnia and Herzegovina shall have the responsibility to conclude agreements with the European Union and to undertake legal and political commitments required for the process of accession to the

European Union, including on matters that in accordance with other provisions of this Constitution are the responsibility of the Entities' (§ 6a, emphasis added).

#### **4.2.1. Criticism from Washington**

On the other side of the Atlantic, neo-conservatives did not welcome the efforts of the Obama administration to resume activity on the Bosnian dossier. For instance, Bob Dole criticized the US government for resuming its efforts in BiH under the shadow of the EU. In the opinion of the former majority leader in the US Senate, the reform plan that was proposed at the 'Butmir retreat' was not the most appropriate solution for the country: 'Bosnia is again under threat. This time the threat is not from the brutality and immediacy of genocide. Rather, it is a more subtle menace: the prospect of a state weakened to the extent that it dissolves; leaves its people in separatist, monoethnic conclaves; loses all hope for democratic development; and validates ultranationalism' (Dole 2009).

When rumors began to spread of the imminence of a broad high-level multilateral effort aimed at breaking the Bosnian constitutional deadlock, another interesting critique of the Butmir exercise was launched by USIP by James C. O'Brian – an American lawyer with considerable experiences of constitutional issues in the Western Balkans, having served as a former Special Presidential Envoy for the Balkans and Senior Advisor to SoS Albright. In this capacity, he also gave a direct contribution to the negotiations on the Bosnian constitution that was included in the DPA, assisting in the drafting exercise that was coordinated by Paul Szasz.<sup>75</sup>

O'Brian (2009) proposed a 'new agenda' for the international commitment to BiH, with a series of interesting and concrete methodological proposals. Some of these represented a kind of 'preliminary' warning against the upcoming high-level international effort in Butmir. In general, O'Brian (2009: 1) criticized the tendency of the international community to press for 'big initiatives' that tend to promote a framework institutional solution to complex processes. Building on this critique, he proposed the development of a new gradual approach to reform, mostly led by EU bureaucracies, which should be authorized to 'pick many, many little fights' with the elites ruling in BiH. At the same time, he expressly invited both EU and US policy-makers to avoid complex and structured efforts for the imposition of constitutional change *en bloc*: 'Constitutional reform is not necessary. It can certainly improve Bosnia's governance structures and so should not be discouraged. As long as it is negotiated with leaders who benefit from the current system, however, it will not be enough' (O'Brian 2009: 4).

It is interesting that such a call for gradualism comes from a legal expert that in the past has often participated in international teams that drafted constitutions for post-conflict societies (apart from BiH in 1995, O'Brian played also an advisory role in the preparation of the constitution adopted by the Kosovo Assembly on 17 February 2008). To some extent, however, at the core of O'Brian's new policy plan for reform in BiH there is the idea that the European membership perspective should be exploited in a more concerted way. On the one hand, O'Brian invites EU policy-makers to 'be themselves' and engage Bosnian elites in their responsibilities related to the SAA process. On the other hand, he encourages US diplomacy to accept that the negative cycle that is currently

dragging down the political and institutional life in BiH will not be broken overnight with an agreement on the constitution.

Because the Dayton agreement defines each constituency in ethnic or national terms, the result is a self-reinforcing cycle: politicians reward their voters for approving ethnic appeals, and voters naturally seek more rewards by approving the politicians who make those appeals. As long as this cycle continues, no policy prescription can make the popular parties less nationalistic, or the less nationalistic parties more popular (O'Brian 2009: 2).

This appears to be an accurate analysis of the current stalemate. Further developing on O'Brian's ideas, it can be added that the tendency of US diplomacy to identify externally facilitated constitutional changes and negotiate their approval *en bloc* with key local leaders does not reflect the constitutional tradition of the United States. Constitutional history shows that changes in the founding rules in the American order are for the most part elaborated following macro societal or political developments which are then consolidated in praxis. Moreover, history confirms that macro developments in the community, whether they are relevant for the whole body politic or merely for state institutions, are usually followed only by small amendments to the basic 'rules of the game', which are carefully calibrated by the legislator. To be sure, the Bosnian experience can hardly be compared with other constitutional orders. Amongst other reasons, the most relevant is that the text included in the DPA was not the outcome of a structured process of reconciliation, but it was a construction of necessity that aimed to impose as many checks and balances as possible between the constituent

peoples previously at war. The DPA remains an internationally established constitutional order.

#### **4.2.2. Criticism from Europe**

Criticism of the modus operandi of the Butmir retreat also came from three former HR/EUSRs. Lord Paddy Ashdown, Wolfgang Petritsch and Christian Schwarz-Schilling issued a public statement in which they offered a ‘methodological’ critique of the joint EU/US efforts for constitutional development in BiH.

The most relevant critique proposed by the trio of former international envoys to BiH concerns the limited involvement of the HR/EUSR in the process: ‘the way the Butmir initiative has been prepared has imperiled the international community’s and the future European Union Special Representative’s authority and integrity. It is imperative to integrate the High Representative into the process to allow for a proper and dignified conclusion of the peace implementation process and the opening of a new chapter’ (as quoted in Latal 2009). Furthermore, the three former heads of the OHR/EUSR questioned the absence of an open and more structured process of confrontation:

The West should try new approach...The talks this week must pave the way for a sustainable constitutional reform process anchored in the institutions and civil society of Bosnia and Herzegovina and supported by the European Union and the Council of Europe ... In close cooperation with the United States, Europe should provide financial, structural and organisational support to facilitate a final, effective reform process (as quoted in Latal 2009).

Finally, the three former HR/EUSRs advocated for the maintenance of some form of external ‘power to internationally guarantee Bosnia and Herzegovina’s peace and stability; also after the closure of the Office of the High Representative’ (as quoted in Latal 2009). The reference to the term ‘power’ indirectly evokes one of the most critical issues related to the transition away from the OHR and towards the creation of a ‘reinforced’ EUSR: what will happen to the Bonn Powers? When in 2007 the EU Council started to debate the future of the EUSR office after the closure of the OHR, little attention was paid to the Bonn Powers. To some extent, the Bonn Powers were not even an issue. The closure of the OHR was actually evoked as a step that could have allowed, on the one hand, the end of an era of excessive international interference in Bosnian political and legislative life and the inauguration of the ‘era of Brussels’ on the other. As the experience of the Slovak HR/EUSR Miroslav Lajčák demonstrated, between 2007 and 2008 the Bonn Powers were still a useful tool for the international community, especially in consideration of the tough confrontation that the police reform process entailed between EU representatives on the one side, and local Bosnian politicians trapped in their traditional nationalist rhetoric on the other.

Rumors from the EUSR offices have confirmed that in the aftermath of Lajčák’s tenure, even EU countries started to debate whether or not the Bonn prerogatives should be preserved. One of the proposals considered by the European Council hinted at the hypothesis that Spain could inherit the Bonn Powers. In 1997, these powers were assigned by the PIC with a formula *ad personam* to the Spanish diplomat Carlos Westendorp, who headed the OHR from June 1997 until July 1999.

The recent decision adopted by HR/EUSR Valentin Inzko, which amended the statute of the city of Mostar including the procedure for the election of the mayor, has demonstrated that there are still issues in BiH that the international community tends to resolve by imposing solutions through the Bonn Powers (OHR 2009b). However, the attention that is still paid to the future of the Bonn Powers is mostly related to the possible removal of politicians who are judged to be guilty of obstructing the DPA implementation process. More precisely, the cautiousness of several EU member states in considering the Bonn Powers as ‘out of date’ stems from the ongoing showdown between the RS Prime Minister Milorad Dodik and the HR/EUSR.

### **4.3. The Russian non-variable**

While Brussels and Washington tried to steer political confrontation in BiH towards the constructive acceptance of a new constitutional compromise, Moscow adopted extreme caution. When the Butmir retreat began, the Russian Ambassador in Sarajevo, Alexander Botsan-Kharchenko, distanced himself from the exercise. Firstly, he suggested to RS media representatives that ‘the time is not right to agree on a reform of the DPA’ (as quoted in Vukicevic 2009a: my translation). Secondly, Botsan-Kharchenko stressed that Russia had no role in the preparation of the event and would not be involved in the discussions taking place at the international military base: the initiative ‘seeks to accelerate the convergence of the Bosnian state towards Euroatlantic institutions; since Russia is not a member of those institutions we are not involved in the realization of the initiative, but we monitor what is happening’ (as quoted in Vukicevic 2009b: my translation).

Moreover, Botsan-Kharchenko – who prior to his arrival in Sarajevo served as Russia's special envoy for Kosovo<sup>76</sup> – renewed the Russian appeal in favor of the closure of the OHR and the definitive abolition of the Bonn Powers: ‘the interferences of Bonn must be frozen from now until the definitive disclosure of the OHR. After that, any set of power of such kind shall not exist anymore’ (as quoted in Vukicevic 2009a: my translation). Interestingly, an analyst on the ground has pointed out that the visit of the Russian President Dimitry Medvedev to Belgrade almost at the same time as the Butmir exercise got underway indirectly compromised the success of the talks even before they began. Milorad Dodik was apparently heading to Belgrade to meet with Medvedev, when he should have been participating in the US/EU initiative in Butmir (Alic 2009).

The absence of *Russia* from the negotiation table in Butmir came as no surprise. Over the past few years, Moscow has been a consistently staunch supporter of the key policy developments demanded by the Bosnian Serb leadership, which include: the immediate closure of the OHR and the related abolition of the Bonn Powers; the consolidation of the central Bosnian state institutions without further formal changes to the main pillars of the current architecture; and the maintenance of the entities as middle-level of governance.

Historically, Russia has always been a supporter of the Serb community in BiH. Russian investments in RS are already a clear sign that Moscow is ready to support the financial stabilization of Banja Luka (cf. section 4.2. in Chapter V). However, it has been only since 2009 that Russia started to adopt a more active attitude on the PIC. This, to some extent, formalized its disengagement from confrontation with the rest of the international community and the RS premier Milorad Dodik. Back in mid-May 2009, the Russian head of mission in Sarajevo



refused to support its colleagues on the adoption of an important communiqué, prepared by the PIC-SB Political Directors to condemn the RS government for its reiterated public challenges to the DPA.

The intense showdown on police reform between HR/EUSR Miroslav Lajčák and the RS Prime Minister Milorad Dodik, which started during summer 2007, came to an end with the beginning of the Mostar process for police reform in December 2007. From that moment, the relationship between Banja Luka and the OHR seemed to have arrived at a ceasefire. The first months of the new Austrian HR/EUSR Valentin Inzko seemed relatively calm on the RS front. A new season of tensions between Dodik and the international community was nevertheless very close at hand. The apparent calm was interrupted abruptly on 14 May 2009, when the RS National Assembly (RSNA) adopted a document challenging 68 competences that, in the course of the previous years, were transferred from the entities to the central level of governance. The RSNA labeled this transfer of competences as an illegal acquisition by the central government and also called on all Bosnian Serb representatives sitting in the government in Sarajevo to help the transfer of those prerogatives back to the institutions in Banja Luka.

The document adopted by the RSNA was somehow indirectly preannounced at the beginning of the year by Dodik himself. Interviewed by the RS-based newspaper *Večernje novosti* in early 2009, he made clear that the season of transfer of powers from the entities to the national government was considered to be closed by the leadership in Banja Luka: 'Before me, RS was like a store – you came in and took what you wanted. Only different to a store, you didn't have

to pay for anything. It will never be like that again' (as quoted in Vujanović 2009).

Further to that, Dodik polemically argued:

The International Community has made an enormous mistake by not implementing Dayton but the «spirit of Dayton». And once they released the spirit and started chasing it across BiH, we all knew what the only ending could be. Such that we are now going to ask for the competencies taken away from us to be returned. This will be the basis of our concept in the process of constitutional changes. Nobody should have any doubts about us achieving that. Be assured – *RS will not lose one single competency more ...* We have not received yet the 49 percent of the territory as belongs to us according to Dayton. We are going to request that our territory is returned. We are not interested in the stories that it is all Bosnia and it is all ours. No! I am only interested in RS, and others should make their own agreements. (as quoted in Vujanović 2009: emphasis added).

In spite of the pressures made by HR/EUSR Inzko, on 15 June 2009 the RSNA authorized the publication of this controversial document on the pages of the RS Official Gazette. Witnessing this development, the PIC-SB reacted with a strong condemnation, in which the attitude of RS leader was defined as an attack against the constitutional stability of the whole country:

The PIC Steering Board expressed its concern about recent political developments in BiH, not least the adoption of the Conclusions on 14 May by the Republika Srpska National Assembly. *Statements and actions challenging the sovereignty and constitutional order of BiH*, as well as attempts to roll back previously agreed reforms and to weaken existing state level institutions display open disrespect for the fundamental principles of the GFAP, are unacceptable and have to stop. These actions also run counter to the GFAP and the long-

established efforts of the PIC Steering Board to support state building. Actions such as these will be taken into account when assessing the second condition set by the PIC Steering Board for OHR-EUSR transition, which is a positive assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement (PIC-SB 2009a: emphasis added).

The most interesting aspect of this statement was that PIC-SB Political Directors were forced to mark the paragraph against the RSNA document with the following clarification: ‘the delegation of the Russian Federation could not join with the rest of the PIC’ (PIC-SB 2009a). By taking distance from its colleagues on such an evident provocation, the head of Russian diplomacy in Sarajevo made clear how far is Moscow from the Western members of the PIC-SB when it comes to assessing the political decisions adopted by the RS leadership.

Following the summer break, in the proximity of the Butmir retreat, the confrontation between Dodik and the international community restarted on the same track. Once again, Russia confirmed its disengagement, thus providing indirect support to the Bosnian Serb leader. After the RSNA document on the reacquisition of competences by the Serb Entity, a new formal direct attack was brought against the OHR and the Bonn Powers. On 24 September 2009 in the document highlighting the RS government conclusions of the 124<sup>th</sup> session held in Banja Luka, it was stated that all the decisions adopted by the HR in the use of the Bonn Powers would no longer apply on the territory of RS. As confirmed on the pages of the *Southeast European Times*, this document was a challenge to the intervention by HR/EUSR Inzko in the governance of the national electric company Elektroprivreda BiH (Associated Press 2009). Welcoming the adoption of this act, Dodik tried to argue for its legitimacy by telling the international press that,

after all, the OHR has run the country for too long as ‘an undeclared protectorate’ thus turning it into an ‘imprisoned state’ (Itano 2009).

The reaction by the PIC-SB was prompt and resolute. However, also in this circumstance the statement issued by the PIC-SB Ambassadors was not adopted with unanimous support. The text criticized the RS government, responsible for a ‘downward spiral in political relations and challenges to the GFAP’ (PIC-SB 2009b). In spite of the relatively ‘soft’ term of this condemnation, Russia nevertheless withdrew its support. As a counter reaction – probably reinvigorated by the renewed division in the PIC-SB – on 28 September 2009 Prime Minister Dodik published on the RS-based newspaper *Glas Srpske* a very strong editorial. Even if the focus of Dodik’s criticism in this article were Bosniak leaders, in particular Tihić, Silajdžić, and Lagumdžija that he depicted as ‘still dreaming hysteric dreams about a unitary BiH’ (Dodik 2009b: 2), the attacks from Banja Luka also targeted the OHR and ‘some’ members of the PIC-SB.

Refraining from the adoption of any sort of diplomatic language, Dodik reiterated his systematic accusations against the work of the OHR, directly responsible, in his opinion, for repeated breaches of the balances created with the DPA and for contributing actively to the ‘efforts to build a national state of Bosniaks, based on the idea of *reis-ul-ulema*’ (Dodik 2009b: 1). The internationally-sponsored centralization effort were labeled as an attempt ‘to convert all to Bosniak terms under the pretext of a civil state, universal rights, election by simple majority of votes’ (Dodik 2009b: 2). Finally, the RS premier launched an attack on some members of the diplomatic community in Sarajevo, reminding them that while RS has developed as an efficient sub-national unit, its

leadership has been the object of an unjustified attack by the international community for being in breach of the DPA:

Republika Srpska has accomplished that unity in the last couple of years with determination to keep on complying with the Dayton Agreement. However, that sort of commitment to the Dayton is proclaimed as the Anti-Dayton. That Bosniaks' Goebbels-like parrot chorus, assisted by some ambassadors, by which they violate diplomatic conventions and international law because they act as if the Bosniaks and not the state of BiH, in which do not live only Bosniaks, approved their letters of credit (Dodik 2009b: 2).

Only a few days before, another 'loud' attack was brought by Dodik on the international press. This time, the RS Prime Minister chose the pages of *The New York Times*. On 18 September 2009, Dodik wrote an open letter in response to a previous editorial earlier appeared on the same newspaper, in which strong claims were made on the concrete chances that 'Bosnia could well return to violence', as well as on the fear that a rebound of violence in the country can have possible destabilizing impact on the entire Western Balkans: 'Renewed fighting in Bosnia may not launch World War III, but it could well spread to other parts of the former Yugoslavia, including Kosovo' (Kulich 2009).

The article on *The New York Times* followed another worrisome analysis made on the British newspaper *The Independent*, where BiH was defined as a country 'back on the brink of ethnic conflict' (Morris 2009). More or less in the same days, in a more extensive – but equally pessimistic – analysis published on *Foreign Affairs*, BiH was labeled as a state 'drifting towards chaos', which was close to 'not remain peaceful for long' (McMahon and Western 2009: 72, 70).

Moreover – as this recent article on *Foreign Affairs* has warned – it is historically proven that the victory of chaos in BiH tends to have negative destabilizing effect in the wider Western Balkans region: ‘if twentieth-century history is any guide, conflicts that begin in Bosnia rarely remain isolated within its borders’ (McMahon and Western 2009: 70). While stressing that BiH is actually a country ‘at peace’, Dodik took the chance to make clear that Bosnian Serbs ‘do not support the centralized model that *some in the international community have sought to impose on Bosnia and Herzegovina*’ (Dodik 2009a: emphasis added).

## **5. Conclusions**

Academics and observers generally agree that international statebuilding projects create an inevitable sovereignty paradox: external actors compromise crucial aspects of sovereignty in the interest of granting domestic political authorities the full exercise of their legitimate prerogatives. The understanding of sovereignty as an internationally-shared responsibility has been identified as the normative basis on which statebuilding initiatives can be justified; this vision would hold *in nuce* the pillars that constitute the ‘ethics’ of contemporary peace and statebuilding. This claim has rarely been followed by attentive analysis of the interactions between international officials involved in statebuilding missions and local elites, in order to determine if different actors concretely share the responsibilities of stabilizations. Moreover, what has quite been overlooked in the literature is that, in cases like BiH, the EU also complicates the sovereignty paradox for structural reasons. A post-nation state organization that prepares target states for

membership, the EU monitors and facilitates institutional reorganization in view of integration; thus, while preventing the dispersion of sovereignty and reining in centripetal forces thanks to the prospect of membership, it seeks to prepare autochthon institutions to give up sovereign prerogatives when the time to join the Union arrives.

Analyzing political confrontation on constitutional reform, this chapter explored the normative approach to sovereignty and the diplomatic choices that have characterized EU-driven statebuilding in BiH. Keeping a focus on the specific issue of responsibility, the chapter has shown that in the parallel implementation of its statebuilding and enlargement agendas, the EU reproduces some of the peculiarities of a neo-medieval empire that puts peripheral units on the way to full membership. In other words, Brussels considers inclusion and participation in its formal and informal networks as definitive indicators of stability and rehabilitation. The interference created by EU-driven statebuilding cannot be thus justified simply by the goal of establishing the Bosnian authorities' full and legitimate exercise of empirical statehood.

Thanks to the analysis of official documents and extensive interviews with participants and observers to the EU-decision making process, it has been clarified that EU interference on the ground can be traced back to the conviction that the various internal fractures and wounds of the Bosnian multiethnic experiment will be healed only when the country's sovereignty is diluted, partially dispersed, and 'domesticated' by the greater European integration machine. In comparative perspective, the trajectory of sovereignty in what has been referred to as 'EU-driven statebuilding' or 'EU's member-statebuilding' is substantially different from that determined by UN-led operations of a similar kind. The EU does not

compromise self-governance with the aim of fully restoring the empirical statehood of the fragile South-Eastern European states; rather, it approaches its mission with a more sophisticated mindset and a self-serving goal that is, as said, to train political elites and civil servants from the target states for EU membership.

By studying the specific attitude of the EU vis-à-vis the Bosnian constitution-making process, light has been shed on the EU's peculiar 'hands-up statebuilding' stance. The ambiguity of raising up one's hands (a gesture used to indicate that 'it's not my responsibility') when called upon to take direct responsibility for political reconciliation and constitutional reform is emblematic of Brussels' difficulty in solving two crucial operational dilemmas: the dilemma of bottom-up vs. top-down statebuilding, and the conflict between technical assistance and complex post-war stabilization. Moreover, this particular stance has enabled the EU to escape for quite some time a more open confrontation with the residual statebuilding influence of the US in the Bosnian project.

The next chapter will analyze the 'troubled life' of the EU conditionality over the Bosnian police reform, with the aim to explain first the ideological nature of its conception and, second, its prolonged negative impact on the Bosnian political environment, which eventually induced the EU to push such conditionality slowly on the margin of the negotiation table. Also the analysis of police reform will provide evidence that Brussels has thus far not been able to resolve the crucial operational dilemmas that international statebuilding agencies are bound to face in their field activities.



## **(Chapter IV)**

# **A Story of Subverted Conditionality? The EU-Sponsored Police Reform**

### **1. Introduction**

The story of the EU-sponsored police reform in BiH represents an interesting case of mismanaged conditionality. The link between police reform and the EU accession process was promoted by Lord Paddy Ashdown in 2004, during his second year as ‘double-hatted’ HR/EUSR. In 2005, the EU clarified that this reform was a priority criteria for the opening of the SAA negotiations with BiH. In the early stages of the reform talks, an agreement between the three Bosnian ethno-religious groups on the reconfiguration of policing was almost reached. At the same time, the Bosnian negotiating team for the SAA was assembled and started a successful confrontation with the EU Commission.<sup>77</sup>

However, hopes for a fast-track deal on police reform soon faded and the initial apparent willingness to cooperate gave way to exasperated logics of relative gains. Following the general elections of October 2006, which registered the defeat of all the old nationalist parties, the new German HR/EUSR Christian Schwarz-Schilling tried to exploit the momentum and negotiate a framework for

general constitutional reform, thus marginalizing in most of his diplomatic initiatives the talks for the reorganization of the police. As the previous chapter has shown, this choice was not supported with sufficient cohesion from Brussels and Schwarz-Schilling was thus induced to resign from his post even before the scheduled conclusion of his mandate.

The EU found renewed cohesion in July 2007 with the arrival of the Slovak HR/EUSR Miroslav Lajčák, who focused again on the reorganization of the Bosnian police as to a top priority. Since his first weeks in Sarajevo, Lajčák reiterated with unprecedented emphasis the connection between such reform and the European destiny of BiH. The link between police reform and progress on the SAA actually led the country to experience one of the most severe crises of its post-Dayton history. In danger of compromising the credibility of the whole European integration project, at the end of 2007 the EU decided to cease confrontation with domestic elites and watered down the most critical elements of its requests. Brussels thus enabled local politicians to perform a ‘conquest’ of the reform agenda. So long as domestic interlocutors demonstrated enough activism and goodwill (e.g. by organising a series of meetings among their leaders, who signed a plan of action and agreed on a vague timetable for reform) the EU turned a blind eye to its conditionality and rewarded them by allowing the initialling of the long-awaited SAA in December 2007. Only six months later, the green light was also given to the final signature of the SAA.

The following pages reconstruct the key politico-diplomatic dynamics related to the reform of the Bosnian police, from the initial efforts of HR/EUSR Paddy Ashdown to the SAA signature in June 2008. The main goal of this analysis is to shed light on what can be addressed as the other side of the

problematic ‘responsibility coin’ of external statebuilding. The previous reconstruction of the EU’s reluctance to undertake concrete initiatives with regards to the Bosnian constitutional reform represents only one aspect of the ‘troubled’ relationship that Brussels has developed vis-à-vis its political responsibilities in BiH. The tendency to step back when called upon to take direct responsibility for political reconciliation and constitutional reform revealed only one critical side of the EU commitment to the stabilization of BiH. The way in which the conditionality over the Bosnian police reform was launched, sustained, and eventually obfuscated from the negotiation table by the EU, reflects the tendency, typical of multilateral institutions operating in crisis areas, to defend their ‘no mistake policy’.

## **2. The sovereignty struggle through the police reform**

The statebuilding of BiH has been hinged for almost ten years around the EU prospect of membership. BiH was recognized the status of ‘potential candidate member’ in November 2000 at the EU Zagreb Summit, together with other four countries of the Western Balkans (namely Albania, the former Yugoslav Republic of Macedonia, Croatia and the then Federal Republic of Yugoslavia).<sup>78</sup> In spite of the decade-long commitment on the part of Brussels, the externally-facilitated construction of a functional and ‘EU-feasible’ state has reached a point of dangerous stalemate. Witnessing a prolonged political stall, the re-emergence of a nationalist rhetoric, and the lack of any serious institutional development, during his last months of tenure the HR/EUSR Miroslav Lajčák

essentially invited to reconsider the feasibility of the whole Bosnian multi-ethnic project. At a press conference in October 2008, the Slovak diplomat laconically admitted that ‘the concept of a multi-ethnic BiH state is difficult to achieve, although it has not yet failed’ (as quoted in Anon 2007).

In spite of such skepticism, the EU remains the only possible ‘magnetic centre’ for the long term normalization of BiH, a role that cannot be dismissed by Brussels, especially after the gradual operational disengagement of the US from SEE and the solemn promise made by the EU at the Thessaloniki Summit in June 2003. The prospect of EU membership remains a powerful tool of indirect stabilization, which has registered some clear successes – by pulling, for instance, the incredibly rapid economic recovery and democratic stabilization of Croatia – and that has been put at work for the whole Western Balkans, Serbia included.

However, it seems that in BiH the promise of prosperity in a peaceful Europe alone does not stimulate a constructive debate among different ethno-religious political factions on how to put in place the substantial institutional ameliorations that would bring Sarajevo closer to Brussels. The EU-dream has bridled the most critical centripetal forces of the Bosnian political environment but – since it has not been backed by an active strategy for socio-political reconciliation – it could not heal all the wounds and sources of friction that characterize the ‘multilevel’ sovereignty struggle between Muslim Bosniaks, Catholic Croats, and Orthodox Serbs. The confrontation between these three ethno-religious groups ranges from the central state to the cantons (in the FBiH), and then down to municipal level.

Commenting on this prolonged stall – amongst many other voices of concern that have been raised in the last months – Christopher Patten and Paddy

Ashdown have depicted BiH as the less receptive reality among the newly independent states from SEE that are standing in line at the EU's doorstep. In a commentary published by *European Voice* on 26 March 2009 (the day of the official handover between Miroslav Lajčák and the new HR/EUSR, the Austrian diplomat Valentin Inzko), the former European Commissioner for External Relations warned that BiH is still very far from being ready to be promoted from its protectorate status. In addition, with unequivocal terms, Patten has called on the EU for a renewal of 'the threat of strong action'. To his eyes, the stick rather than the carrot represents the only possible mean to 'convince' Bosnian political leaders that they must always demonstrate, in their daily activities, a genuine commitment to a multiethnic state (Patten 2009). Only a few months earlier, with similar expressions, Lord Paddy Ashdown launched a very strong 'wake-up call' for the EU from the pages of *The Observer*. According to the analysis of the most active among all the HRs that have served in Sarajevo, 'Brussels must toughen up its conditionality, support its instruments on the ground, resist attempts to undermine the Bosnian state, insist on constitutional reform to make Bosnia more functional and tackle corruption which is becoming ever more embedded' (Ashdown 2008).

It is particularly significant that these two European high-profile politicians – both very experienced on the political dynamics of BiH – have called for a strengthening of European conditionality. Their converging policy proposals are even more striking if we take into consideration the recent story of police reform: the most critical conditionality thus far imposed from Brussels.

Apparently closed with the initialing of the SAA in December 2007 between the Bosnian government and the EU Commission, the stall that affected

the negotiations on the reform of the Bosnian police had lasted almost for three years. As early as 2005, the Bosnian rapprochement with Brussels was bridled by the choice of the EU to incorporate the reform of the police in the pre-SAA conditionality package. Brussels made clear that a set of basic conditions had to be fulfilled in order to allow BiH moving forward on the SAP: improved cooperation with the ICTY, reform of public broadcasting, a substantial restructuring of the public administration, and a reorganization of police forces.

The inability of local politicians to agree on the main pillars of this last institutional development caused the paralysis of the European integration process for BiH. More precisely, the incapacity of domestic actors to agree on a reform that would satisfy the EU requests for change became so critical to affect the functionality of all multiethnic institutions. As the last section of this chapter will demonstrate, this paralysis induced the HR/EUSR to a renewed use of the Bonn Powers, which proved again the ineluctable protectorate status of the country. However, in spite of three years of sterile negotiations, Brussels ended up demonstrating an unprecedented benevolence towards Sarajevo and turned a blind eye on all of the most demanding requirements previously attached to the police reform. As a proof of such generosity, in June 2008 (only six months after its technical initialing) the SAA could thus be finalized. The signing of this crucial agreement was granted without a comprehensive reorganization of the police, but on the basis of some minor adjustments encompassed in highly technical laws of dubious impact. Precisely, two legislative measures on the field of policing were adopted by the Bosnian Parliament in April 2008. Several voices of criticism righteously argued that these last legislative measures have actually increased complexity rather than improved the overall efficiency of policing in the country.

Against this articulated backdrop, it is clear that the EU's conditionality management on police reform offers a unique case study. Thus far, the academic literature and policy analysis have mostly focused on the very technical and security-related aspects of police reform (ICG 2005) and, even more predominantly, on the operational challenges faced by EUPM, the ESDP Mission installed by the EU in BiH (Nowak 2003; Merlingen 2005a; 2005b; Wisler 2005; Penksa 2006; Wisler 2007). Only sporadically (Eralp 2007; Muehlmann 2007) attention has been paid to the specific political and diplomatic dynamics that have characterized the long showdown – undergone from early 2005 until summer 2008 – amongst Bosnian politicians from the three ethno-religious groups, as well as between each of these groups and the HR/EUSR.

Balancing this trend, the following pages mainly focus on the political developments that accompanied the reform of the Bosnian police and the signature of the SAA. The analysis emphasizes the difficult confrontation between international institutions and local elites. Conflicting agendas determined a stall without precedents. Witnessing the failure of its long supported conditionality, the EU ended up in an uncomfortable position. Brussels saw a possible way out in the emergence of domestic ownership of the reform agenda. Stepping back and disowning a mantra that had been repeated for over three years (no police reform equal to no more progress of the SAP) the EU allowed domestic politicians to, so to speak, 'conquer' the primacy of the negotiations for reform. The discrete abandoning of conditionality allowed the EU avoiding an open and more problematic correction of policies. This subtle maneuver hence helped Brussels to defend its 'no mistake policy'. This expression is employed to describe the tendency of external actors in crisis areas

to deny objective miscalculations, mistaken politico-diplomatic choices, and unproductive reform strategies. This reluctance to take stock of mistakes and admit responsibilities represents a commonality in international statebuilding missions. In order to consolidate their governance and supervision roles, international statebuilding mission tend to present their policies, conditionality, and strategic choices as ‘the good and the proper’, whose validity should not be questioned, even when clear limitations emerge from implementation processes.

In their recent seminal work on statebuilding, Ashraf Ghani and Clare Lockhart have attentively pointed at the problem of responsibility as to one of the crucial variables that affects international intervention in the stabilization and reconstruction of failed or failing states. In their opinion, international agencies dangerously lack an ‘understanding of shared responsibility, a vision of coproduced outcome, or an international role that does not involve, at one extreme, imposed solutions that amount to viceregal hubris or, at the other extreme, a type of benign neglect that consigns the international community to the role of interested observer’ (Ghani and Lockhart 2008: 5-6).

### **3. Police restructuring as technical change: the picture presented from Brussels**

The reform process of the Bosnian police was put on the negotiation table with a certain determination by HR/EUSR Ashdown only in 2004, and it became a pre-requisite for the conclusion of the bilateral EU-BiH negotiations on the SAA. Inserting the reorganization of the Bosnian police as a key conditionality in the pre-SAA package deal allowed the EU to continue covering this reform process



under the same original technical cloak that had been determined when police restructuring started to be implemented under the auspices of the UN in the late 1990s. This ‘maquillage’ was attempted in spite new strategic and ideological considerations had clearly emerged on the part of the EU and started to influence EU policy-makers. This choice aimed to prevent irreconcilable ethnic confrontation on the issue. Nonetheless, it soon started to be clear that domestic political tensions over the most delicate passages of the reform sponsored by Brussels were destined to become overwhelming and difficult to solve in the timeframe originally identified.

At the very beginning of the negotiations, however, the strategic make-up of politics with technocratism seemed to be successful. Indeed, an agreement on a reconfiguration of policing was almost reached, with Bosnian Serb politicians who even accepted the plan to redraw ‘police regions’ across the IEBL (Moore 2005). All Bosnian parties undersigned an operational agreement in October 2005, which included a detailed working schedule. Amongst other provisions, the entente implied the creation of a Directorate for Police Restructuring Implementation that – as expressly agreed by the parties – ‘shall be assigned to make a proposal of a plan for implementation of police structures reform in BiH per phases, *including proposals of police regions*’ (OHR 2005b: emphasis added).

### **3.1. Ashdown's centralization strategy and the EC's technical packaging of police reform**

The chances for a smooth deal started to fade when Bosnian politicians felt that restructuring the police was the last centralizing effort undertaken by HR/EUSR Paddy Ashdown, which could have produced a revolution in the allocation of powers and competences within the domestic arena. As a former Head of the OHR Legal Department has clarified, Ashdown's agenda was clearly aiming to 'build Bosnia's central government and undermine the country's sub-sovereign political units: only in this way ... Bosnia could become a normal European state and put its violent war behind it' (Parish 2007: 16). This statement further confirms the idea presented in the previous chapter about the EU member-statebuilding in BiH as a technical institution building exercise to be implemented without a formal opening of the constitutional Pandora box and in the absence of a structured reconciliation project.

As Matthew Parish (2007: 16-17) further clarifies, in order to achieve the purpose of drastic centralisation, Lord Ashdown 'became a one-man legislative machine, repeatedly using the Bonn powers to enact legislation, creating new institutions, and implicit threats to remove officials to push the Entities to agree to transfer new powers to central government'. This analysis can be supported since it finds clear and objective confirmation in the OHR statistical record. So far, Ashdown has been indeed the most active user of the Bonn Powers and a staunch promoter of what could be referred to as the centralization-no-matter-what policy.

The debut of the British HR/EUSR in the exercise of the Bonn Powers dates back to June 2002, when he dismissed Nikola Grabovac from his post as

Finance Minister of the FBiH (OHR 2002). From that moment to the end of a mandate that lasted almost for four years (from June 2002 until January 2006), he adopted 447 decisions. Particularly in the first half of his tenure, decisions were focused in the field of judicial reform (almost one hundred already at the end of 2004), as well as on state-level matters and constitutional issues (almost forty in the same time span). On the contrary, limited direct intervention was attempted in the field of economic reform: only 34 decisions were adopted in this sphere throughout the Ashdown's mandate.

The HR/EUSR also devoted particular attention to the removal of public officials – both elected and civil servants. In summer 2004 alone, Ashdown issued a ban from public offices for over sixty individuals.<sup>79</sup> With the term 'ban', in the OHR jargon is intended the prohibition of 'holding any official, elective or appointive public office, running in elections and holding office within political parties'. The removal from office is accompanied by the suspension of the related salary and possible privileges: the standard OHR decision of this type usually specifies that 'any entitlement to receive remuneration or any privileges or status arising out of his said position ceases forthwith'. These two formulas are recalled in all OHR removals, unless these come in the form of 'conditional bans'. In this other circumstance, the HR might ban an individual from serving in a specific policy field or a given public function. Picking amongst many examples, the conditional removal of Zoran Djerić, RS Interior Minister, was one of the first decisions of such kind adopted by Paddy Ashdown. In this specific case, Djerić was banned from 'holding any law enforcement, or executive public office' as well as from 'holding any position within a Ministry of Interior or equivalent'. However, as it is clear from the letter of the OHR's

decision, Djeric was not banned from serving in other areas of the public administration.<sup>80</sup>

Reconnecting all the above elements, it might be useful to summarize Ashdown's activism by distinguishing three key centralizing moves – the reorganization of the judicial system, the completion of the reunification of the army,<sup>81</sup> and tax reform (which allowed merging the country's three separate customs administrations and create a single, state-wide VAT system) – as well as one clear and ambitious plan to clean up the Bosnian public administration and governmental institutions from corrupted and nationalist officials. Reaching the verge of this simultaneous 'piece-by-piece centralization' and 'cleaning effort', the HR/EUSR focused on the reform of the police as to the very last challenge for the rationalization of the Bosnian state structure.

The input from the Commission on this specific matter had been more prudent. For instance, a reference to the need for police restructuring was made in the Commission report 'on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union', a feasibility study published in November 2003. In this document, the police was only one of many other fields where Bosnian authorities were asked to intervene with substantial reforms and institutional ameliorations. No differently than other items considered in the feasibility study, police was dealt with a highly technical understanding and, possibly even more than other issues, it was approached with an exclusive focus on the equation between costs and performances.

Back then, the Commission mainly criticized fragmentation and conflicts of competences between the different police forces deployed in the country,

stressing that ‘the complexity of the existing multiple police forces increases costs and complicates co-ordination and effectiveness... Costs are high because of duplication in areas such as training and equipment. Financial and technical constraints limit crime fighting abilities’ (European Commission 2003: 26). The emphasis on efficiency and operational aspects was attentively kept by the Commission, particularly after the Police Reform Commission (PRC 2004) issued a detailed report on how to implement such a challenging reorganization. In a letter to the then BiH Prime Minister Adnan Terzić, in his capacity as EU Commissioner for Enlargement, Chris Patten emphasized the connection between counter-crime measures in BiH and security in Western Europe. According to Patten, the direct and pressing involvement of the EU in the police reform process would be legitimized by the fact that ‘if BiH is not able to tackle crime effectively, this has a bearing on crime elsewhere in Europe, including within the EU’ (European Commission 2004b: 1).

### **3.2. The difficult balance between strategic political objectives and technocratism**

The emphasis attached by the Commission to the fight against crime should not obfuscate the strategic objectives attached to police reform by the HR/EUSR Ashdown. From the mandate of the PRC, it is possible to see that while arguments on efficiencies were given priorities, the HR/EUSR was nonetheless ready to open a more political confrontation with Bosnian elites. The PRC was established thanks to a decision adopted directly by Ashdown (OHR 2004). In the very first article of the mandate, the HR/EUSR clarified that the new body

was expected to elaborate ‘a single structure of policing for Bosnia and Herzegovina under the overall political oversight of a ministry or ministries in the Council of Ministers’ (OHR 2004).<sup>82</sup>

The ideological and strategic intentions at the basis of police restructuring become more obvious if we recall that police restructuring was somehow detached from judiciary reform. The reform of the judicial system – which, once completed, was presented by Ashdown as one of his most relevant success stories – was not proposed as a point of reference for police reform. This link was completely absent in the mandate given by the HR/EUSR to the PRC and appeared only as a sporadic term of reference in the final report issued by the same PRC at the end of its assessment activities. Indeed, in what turned out to be a 283-page handbook for reform, the problem of effective cooperation between police officers and prosecutors appears only in the section that provides the detailed ‘Legal Provisions for the Single Structure of Policing’. In Art. 63, which outlines ‘Duties and Responsibilities of the Local Police Commissioner’, it is clarified that commissioners, amongst other responsibilities, must ‘ensure proper implementation of the guidelines and directives of the Prosecutor concerning the activities of police officials in relation to criminal proceedings within his/her police area’ (PRC 2004: 139).

The absence of a clear link between the two reform processes in the PRC report is striking, especially since the HR/EUSR originally called for an assessment of policing in BiH on the basis of the feasibility study published in November 2003 by the Commission, where instead a clearer technical focus on the overall law enforcement capabilities of the country was present. The Commission enumerated the most critical operational difficulties of the Bosnian

police, highlighting what changes would improve the general counter-crime capabilities of Bosnian authorities. According to the analysis elaborated in Brussels, the following weak points had to be tackled: ‘police forces in one Entity have no right of “hot pursuit” into another; there is no central data base, different Entity forces use different information systems’ (European Commission 2003).

The decision to maintain the two reform processes separate seems particularly strange if we consider that symmetries between judicial districts and police areas should be common sense. This is of particular relevance in a country like BiH, where internal boundaries of any kind are systematically ‘exploited’ and turned into insurmountable barriers by politicians that find it convenient to feed their constituency with nationalism, as well as by civil servants that tend to privilege the relationship with the ethnic group to which they belong. Interviewed on this specific matter, an OSCE officer serving in Sarajevo as Legal Adviser on Judicial and Legal Reform confirmed the impression that, in spite of the rhetoric on efficiency, institutional centralization was the primary objective pursued by the EU.

The police reform has been presented by the EU in a very weird way. Paradoxically, the EU principles could potentially turn the police structures into something more expensive and complicated than today. Moreover, it is probable that this reform can even produce a less efficient police. A reorganization of the police should be indeed structured in parallel with the reform of the judiciary system. Without doing so, the potential costs and the series of inefficiencies could be detrimental. We alerted EU and OHR officials repeatedly on the problem, but so far without success.<sup>83</sup>

The idea that police reform was packaged and linked to the SAA to serve more strategic and ambitious institutional objectives has been confirmed by Ms. Anna Ibrisagić, a Swedish MEP of Bosnian origin who has served on the Foreign Affairs Committee of the EU Parliament since the 2004/2009 legislature. When the political crisis erupted in BiH after summer 2007, Ms. Ibrisagić met the key actors of the political confrontation over the police reform to explore grounds for mediations. In particular, she followed firsthand the contacts between Dodik and Silajdžić, which eventually paved the way for the Mostar Declaration (the agreement that at the end of 2007 helped to overcome the police reform impasse) and that had an initial positive implication in the drafting of a protocol on police reform (*Protokola o ispunjavanju uvjeta za reformu policije koji su potrebni za parafiranje i potpisivanje Sporazuma o stabilizaciji i pridruživanju / Draft Protocol on fulfilling the police reform requirements necessary for initialling and signing the Stabilization and Association Agreement as a basis for police reform in BiH*) signed by the two leaders on 28 September 2007 (Reuters 2007). Interviewed at the European Parliament in the aftermath of the Dodik/Silajdžić compromise, the Swedish MEP strongly criticized the scepticism with which the September protocol was ‘handled’ by the HR/EUSR. According to Ms. Ibrisagić:

The link between police reform, EU principles, and the SAA has become exasperation. Did the International Community realize that the Dodik/Silajdžić compromise was the first kind of agreement between the two sides after years? Why did they make only negative comments on that? I believe that all has to do with the divisions inside the EU. I have clear evidence that some countries in the PIC Steering Board are not satisfied with the developments and want to



boycott any result that is far from their expectations. What these diplomats and politicians miss is that their work in BiH should be about reconciliation instead of being about pushing their own specific visions and strategic interests. The story is simple: different countries have different visions and they try to dismiss the protocol since they see it as an insufficient result.<sup>84</sup>

This extensive quotation highlights several problematic aspects of the EU commitment to BiH, which can be extended more in general, to the experience of other multilateral organizations involved in peacebuilding initiatives and post-conflict stabilization in crisis areas. First of all, the analysis of the Swedish MEP raises the problem of conflicting interests among EU member states. As has also been pointed out by the literature: 'International agencies are not simply staunch defenders of human rights, but are also organisation with their own institutional interests, priorities and objectives resulting from the self-interest of their member states' (Belloni 2007: 175-76).

Secondly, Ibrisagić offers an interesting assessment when she touches upon the specific situation in BiH and the showdown on police reform. In particular, the comment on the 'exasperated' attitude shown by the HR/EUSR and the rest of the international community can be shared. When the Dodik/Silajdžić protocol was sent to the attention of the international community, the HR/EUSR Miroslav Lajčák offered a moderate but nevertheless positive comment on the achievement (OHR 2007i). However, only a few hours later a press release clarified that: 'OHR and EUSR have received the Dodik/Silajdžić Protocol which is now under review by the relevant EU institutions. We urge everyone to refrain from interpreting the document as only the European Commission can give an opinion on whether this agreement is in

line with the three principles for police reform' (OHR 2007v). This statement mirrors the choice of the HR/EUSR to emphasize the technical aspects of the process and obfuscate the highly political and strategic nuances of the proposed reform.

Only two days later, the importance of this 'entente cordiale' was completely downplayed, since it became clear that the Bosnian Parliament was not in a position to give any concrete and rapid follow up. Hence, already on 1 October 2007 (which was the deadline for police reform chosen by the HR/EUSR back in August) Lajčák commented: 'on Friday afternoon I received a paper reflecting the views of SBiH and SNSD<sup>85</sup> ... It is positive that these two party leaders have taken the police issue and the future of the country seriously and decided to work towards a solution ... The document however leaves some key questions unresolved' (OHR 2007r).

#### **4. Police restructuring as an opportunity for ethnic gains: the picture seen from Sarajevo (and Banja Luka)**

The prolonged stalemate shows that attempts by the HR/EUSR to maintain an aura of technicism over police reform were overwhelmed by domestic political tensions. As an EU diplomat admitted 'through the police reform we were dragged down into politics. We wanted this process to be something technical that could hold a political point. But Bosnian politicians reminded us that it was all about politics'.<sup>86</sup> To be more precise, the technical 'maquillage' over police reform survived until 2006. After the general elections that took place in October

of that year, the Bosniak leader Haris Silajdžić tried to ‘hijack’ the process and used it to question the existence of RS, thus causing resistance in Banja Luka to the reform package. When this happened, EU diplomacy stressed the idea that police reform was a necessary ‘technical’ step for the adoption of European standards and principles (that actually in the field of police do not really exist in the EU). According to the EU, Bosnian politicians were expected to agree on a reform based upon three ‘European’ principles: place exclusive competence for police legislation and budget at the State level; recast regional police areas on the basis of functional police criteria; help protect the police from improper political interference (OHR 2005c).

The failure of the technical maquillage over police reform generated a negative spiral. Still today, several months after the apparent conclusion of the impasse and the signing of the SAA, years of tensions over police reform still have a negative impact on the relations between Bosnian domestic elites and the international community. An assessment that confirms this impression was provided by the ICG in March 2009. Describing the key features of ‘Bosnia’s incomplete transition: between Dayton and Europe’, the analysts from the ICG have argued that the mismanagement of the conditionality link between police reform and SAA (which symbolized a relevant intermediate goal for the overall European destiny of BiH) and the tendency of the HR/EUSR to get involved in the political showdown by using the Bonn Powers, are at the basis of the current stalemate. The ICG report identified the following criticalities:

The roots of the international community’s problems in Bosnia and Herzegovina go back many years, but the direct antecedents of the current situation lie in the failure of the police reform process in the

fall of 2007 and the High Representative's abortive use of his Bonn Powers in response. The international community overreached in its demands on police reform, overreacted to its failure and was unprepared for the consequences (ICG 2009b).

#### **4.1. Conflicting ethnic aspirations over the reconfiguration of the Bosnian central state**

When the EU nominated Miroslav Lajčák as the new HR/EUSR reform priorities dramatically switched compared with the tenure of Schwarz-Schilling: broad constitutional issues were taken out of the negotiation table, so that emphasis could again be attached, almost exclusively, to police restructuring as key pre-SAA conditionality. Facing the breakdown of the talks on police reform, the German HR/EUSR (who held his position from January 2006 until July 2007) engaged in negotiations for the definition of a constitutional reform framework. As has been previously shown, the lack of support from Brussels induced Schwarz-Schilling to abandon the project and resign from his post. Nevertheless, a few days prior to his departure from Sarajevo, he emphasised the importance of constitutional reform as the basis for reconciliation. Published by three main local newspapers (*Dnevni Avaz*, *Nezavisne Novine*, and *Vecernji List*), Schwarz-Schilling's pre-departure admonition emphasised that 'now that the peace implementation process and with it the institution of the High Representative are gradually coming to an end – and Euro-Atlantic integration is the key task – it is time to reform the constitution and develop a stable, self-sustaining and efficient state structure' (OHR 2007s).

In spite of this warning, Lajčák came to BiH with the unwritten mandate to specifically break the deadlock on police reform. This policy change paved the way for one of the most severe crises experienced in post-Dayton BiH. The change of focus resulted from a ‘technical understanding’ of EU driven-statebuilding, which is based on the idea that Western Balkans countries are like those others that have already gone through the enlargement process; therefore, they are equally expected to strive to respect all the conditionalities decided in Brussels and commit to take on board the *acquis communautaire* and implement it line by line. The critique that can be made against this view is relatively simple: BiH has a very different history if compared with the Eastern European countries that joined the EU in recent times. While the grand strategy defined in Brussels at the time mirrored this simplistic approach to the stabilization of BiH, some personnel in the field started to develop a different sensibility. The Head of the Political Economic Section at the Commission Delegation in Sarajevo admitted:

We were not able to reproduce and walk the same path that has characterized the integration of Eastern European countries. This has to do with some of our decisions and, obviously, with the fact that the post-conflict environment is complicated by the persisting ethno-religious divisions. Here all our efforts are conditioned by the presence of three different interlocutors and three different set of political aspirations.<sup>87</sup>

To some extent, in BiH there is no social contract between the different political communities that instigated the civil war in the early 1990s. There is still not one political BiH, but a state divided into three political ethno-religious

groups that are too suspicious of each other to surrender in the ongoing sovereignty struggle. A pre-requisite for the construction of the state is sufficient cohesion at the socio-political level. Currently, BiH resembles a mere assemblage of ethnic groups amongst which there is no substantial and shared commitment to the state but a permanent confrontation. As Roberto Belloni (2007: 1) has stressed, the Bosnian peace process, since its inception, has mostly resulted in an ‘attenuation of historical ethnic and national rivalries’ rather than grassroots reconciliation of a complex multi-ethnic polity.

This approach is generally justified in Brussels by emphasizing that technocratism preserves local ownership of changes. Privileging functionalism and gradualism, the EU has thus focused predominantly on ‘technical’ conditionalities that – even when they clearly encompass complex political changes for the target state – are presented in a technical form. A clear example of this tendency can be found in the set of priorities assembled by the Commission (2005) and then adopted by the EU Council as the main terms of the official ‘European Partnership’ between Brussels and Sarajevo (European Council 2006a).

In the opinion of EU policy makers, presenting technical shopping lists is also a way to unblock crucial political and institutional deadlocks that still today prevent BiH from developing into a more efficient state structure. However, in spite of the externally-facilitated institutional restructuring and the EU perspective, there is no agreement among Bosnian elites on how to move beyond Dayton. As it was in the immediate aftermath of the peace settlement in 1995, the main institutional lines set out in the Dayton agreement still now represent a ‘ceiling’ for the Serb community, a ‘starting ground’ for more drastic

centralization for the Bosniaks, and something in between these two for the Croats.

Clearly, Serbs and Bosniaks have antithetic positions, and the attention of the international community has mostly been focused on the confrontation between these two groups. However, it should not be disregarded that the Croats have never completely abandoned the idea of running their own entity. It is very interesting that at the end of 2006 the Bosnian Serb politician Milorad Dodik was elected 'personality of the year' by a well-known Croatian magazine based in the FBiH, the *Vecernji list for BiH*. This daily paper is produced by the same company that distributes the *Vecernji list* in Croatia. The motivation behind this paradoxical decision was the recurring incitation given by Dodik to the Croats living in the FBiH, encouraging them to constitute their own entity at the expenses of the Bosniaks living in the Federation. Moreover, it is probably even more interesting to stress that the readership of *Vecernji list for BiH* is almost purely Croats, and this award was a result of the reader's voting and not a decision taken by the editorial team of the newspaper. Dodik went personally to the award ceremony and expressed all his gratitude with the following comment: 'I have nothing against BiH, I just want to be in this country, wishing good things to happen to all people, as well as to those that are wanting nothing but peace for this country and safe life'.<sup>88</sup>

Because of these three conflicting views on the general configuration of the state, Bosnian elites approach cooperation by relying mostly on logics of relative gains. Institutional adjustments that bring potential benefits receive hardly any cross-ethnic support when they are perceived as steps that push the central state towards the ideal configuration sponsored by one ethno-religious

group or another. As clarified by Belloni (2007: 2) 'Bosniaks, Serbs, and Croats alike still take the following view: dominate or be dominated, impose one's will or withdraw'. In BiH, Interethnic cooperation has remained sporadic even after the last renewal of the Parliament. Despite the defeat of nationalist parties in the 2006 general elections, the moderate parties that won have thus far confirmed – in their strategies, interactions, and *modus operandi* – that confrontation based on ethnicity remains the crucial feature of Bosnian politics. The struggle on the terms of the police reform is useful to understand how the three different ethno-religious factions are reluctant to cooperate when issues concerning the configuration of the state are at stake.

Reporting to the Foreign Affairs Committee of the EP, HR/EUSR Lajčák proposed an analysis that is worth quoting extensively, since it perfectly sums up all the above elements on the domestic sovereignty struggle between Bosniaks, Serbs and Croats on the organization of Bosnian central institutions:

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



country. The legacy of war and the logic of nationally based and zero-sum politics make any significant compromise profoundly difficult if not entirely impossible (OHR 2007u).

#### **4.2. A matter of sovereignty and survival: Milorad Dodik's opposition**

The RS Prime Minister Milorad Dodik strenuously defended the autonomy of the RS Police as one of the last pillars of his Entity's 'sovereignty' against the supposed Bosniak strategy to create a centralized and Muslim dominated BiH. Interestingly, from an RS perspective, Dodik's opposition to police reform has been purely, so to speak, 'anti-economic'. The norms that define the partition of budgetary responsibilities between RS and the FBiH for competences attributed to the state level of governance leave no ground for doubt: the centralization of an issue implies that the related budget is provided for two third by the Federation and only for one third by RS. Article VIII of the Bosnian state constitution clarifies that for issues dealt with at state level 'the Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly' (US Department of State 1995).

On this basis, the first principle set by the EU as a key term of reference for police reform (police legislation and budget must be placed at the State level) should have represented a clear economic incentive for Dodik to accept a scheme for reform as early as possible, also as a way to contain a possible source of social instability. The salaries of police officers in RS are indeed far lower than the average in FBiH, and less again than those of the police in the Brčko

District. However, the RS Prime Minister preferred to minimize considerations exclusively focused on the economic convenience of the centralization plan. This choice was 'financially sustainable' for Dodik since in the course of his first year and a half in office he achieved two important privatization plans, one in the oil market and one in the telecommunication sector. Six months after the 2006 general elections, two international tenders were issued by the RS Entity government: the first to sell 65% of Telekom Srpske and a second one to privatize a state-owned oil refinery in Brod (which, together with a chain of gasoline service stations, was bought by the Russian company Zarubezhneft). Particularly with this latter move, the RS Premier managed to channel an incredible amount of Russian petrol-dollars in RS.<sup>89</sup>

Once the economic arguments for reform had temporarily been contained thanks to these two strategic privatizations, police reform became also for Dodik a ground of purely political confrontation. To a certain extent, the animosity of the debate and repeated crises meant that police reform became the last point of contraposition between two different interpretations of the original sovereignty trajectory in BiH. Dodik presented himself as the beacon of what can be referred to as a 'confederal' interpretation of the Dayton agreement and the creation of a multiethnic state built on two separate Entities. According to such a view, the creation of a unified post-war BiH in 1995 has been possible thanks to the compromise between the representatives of the Entities, who 'permitted' the emergence of a multiethnic state by transferring some powers to central level. From this perspective, the original sovereignty trajectory could thus be idealised as a bottom-up release of powers, based on the consent of the two Entities. Any

centralization move that followed was based on simultaneous concessions of both Entities in favour of the state level institutions.

This understanding is opposed by Croats and, more strongly, by Bosniaks as well as by most international observers who are concerned at the Serb nationalist rhetoric and therefore seek to contain the institutional drifts that could stem from their interpretation of the Bosnian state. Bosniaks, in particular, support the idea that centralization of powers has taken place with the state assuming competences. The central state, via a top-down exercise of power, can deliberately collect competences under its direct responsibility. The legitimacy of any centralization move would hence depend on the capacity of the central government to concentrate governance, with a view to enhancing efficiency and reducing asymmetries between the Entities. On the contrary, the *leit motiv* in Banja Luka has been that, whenever the centralization of an area of governance takes place, this is not due to an arbitrary assumption of competences by the state, but rather to an implicit, simultaneous, and ‘responsible’ concession from the two Entities to the central government.

The constitutional court has often made reference to this matter, in general ruling that the state has the original right to assume competences from the entities. Art. 3 of the Dayton constitutional text (Law and Responsibilities of the Entities and the Institutions) proceeds as follows: (A) All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities. (B) The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the

institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities (US Department of State 1995).

#### **4.3. A matter of law enforcement capacity: Miroslav Lajčák's public diplomacy**

Aware of this irreconcilable clash and conscious of the fact that this ideological contraposition had inevitably affected also police reform, immediately after the arrival of Lajčák in June 2007, the OHR re-launched a public campaign (that had been first made in 2005) with the clear aim to dismantle what international referred to as all the 'political myths' built around the police reform. In particular, one of the core messages of this campaign was to stress in the clearest terms that '[p]olice re-structuring is only about establishing a professional police service and will not abolish the Entities' (OHR 2007a). In the same text there is another element that deserves particular attention, what the OHR identified as myth five: 'there are no EU requirements for police reform'. The OHR argued against this supposed myth that 'the EU has said clearly that BiH must adopt police restructuring if it is to move forward towards the EU. The three key principles must be adhered to and the Police Restructuring Commission report is one way to do this' (OHR 2007a).<sup>90</sup>

This point was made in response to comments by Milorad Dodik. The RS leader contested the EU rhetoric on the three 'European' principles that should guide reform. On several occasions, the HR/EUSR and EU officials argued that these principles would align the Bosnian police with consolidated European

‘standards’ and ‘customs’. Dodik contested this argument on the pages of the *International Herald Tribune*. The RS Premier replied in the following terms:

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

This criticism on the arbitrary nature of the three principles was reiterated by Dodik at every possible opportunity, also through the domestic media. For instance, in a long conversation with Senad Pećanin – editor of the local *BH Dani magazine* – the RS Prime Minister contested the lack of any technical rationale for the reform:

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

In this open attack, Dodik referred to some imprudent confessions made by Ashdown in the pages of his recently published memoirs. The British politician

admitted that the need to propose a centralizing strategy for the police represented his very personal conviction, which was ‘as always’ blessed by Chris Patten during a quick morning phone-call (Ashdown 2007b: 249).

Facing repeated accusations that the EU had launched an arbitrary process, the HR/EUSR developed a new communication strategy. In the simplest possible terms, Lajčák tried to make clear that the absence of a European common model of policing should not prevent Brussels from proposing basic principles to be respected. The main message from the Slovakian diplomat to Bosnian Serb politicians can be summarized by the following idea: it is not important whether these principles reflect the average situation in Europe, what matters is that the EU has identified them as being appropriate for BiH.

At the same time, the HR/EUSR kept emphasizing on several occasions the equation ‘no police reform = no SAA’ (Supova 2007), which Brussels supported with an unprecedented determination. Backed by the then Enlargement Commissioner, Finnish politician Olli Rehn, the HR/EUSR sent a clear message to domestic elites. Less than two months after he took possession of his new offices in Sarajevo, Lajčák announced: ‘the European Union is following the police reform negotiations very closely, and their outcome will be a clear indication of the political maturity of the country’s leaders and their readiness to lead Bosnia and Herzegovina towards the European Union’ (OHR 2007j).

In spite of this double-track communication strategy, during summer 2007 confrontation on police reform was heightened by two manoeuvres, one from Silajdžić one from Dodik. The former – leader of SBiH, who could count also on important support from the head of SDA Sulejman Tihić<sup>91</sup> – opposed the new

framework concepts for reform, which had been the first official acts of the new HR/EUSR. The counter-reaction from Lajčák proved to be emblematic. The Slovak diplomat declared: ‘I am deeply disappointed ... By rejecting the draft proposal on police reform before all the major political leaders have even received it, [Silajdžić and Tihić] have demonstrated a disdain for their colleagues and the political process’ (OHR 2007p).

Possibly, relations with Banja Luka were even tenser. Speaking on the *Radio Televizija Republike Srpske*, Dodik opposed *a priori* any institutional development, claiming that change was mostly being promoted by Bosniak interests to challenge the integrity and existence of RS. Similarly in this case, the reply from the HR/EUSR was resolute: ‘[Dodik’s] statements questioning the sovereignty and territorial integrity of BiH are *detrimental* to the country’s ongoing efforts to continue reforms and integrate into Euro-Atlantic institutions’ (OHR 2007d). These declarations opened a period of tough confrontation. At the end of summer 2007 Lajčák imposed a one-month deadline for police reform; however, as stressed above, once the deadline had passed the HR/EUSR could just take note of the lack of agreement (OHR 2007q). The HR/EUSR found himself dragged into the middle of an unprecedented crossfire between Bosniaks and Serbs, while new fears grew amongst the Bosnian population. ‘We are back to 1992(!)’ was a widespread warning heard in Sarajevo when average Bosnian citizens were asked to comment on domestic politics.

## 5. The compromise and the signature of the SAA

While clearly placed in an uncomfortable position, Lajčák was constantly backed by Brussels, contrary to the experience of his German predecessor on constitutional reform, and he could thus keep the promise made to the Bosnian people in his inaugural TV address. On that occasion, the Slovak HR/EUSR made the following comment: ‘we will not tolerate any activities or statements that push BiH back into the atmosphere of tension and hatred’ (OHR 2007h).

Amongst other protagonists at EU level, Javier Solana, witnessing the recalcitrant attitude of Bosnian politicians towards negotiations, blamed them for ‘gambling with the future of their own country’ (Associated Press 2007a). Enjoying such support, Lajčák raised the level of confrontation and in October 2007 adopted *manu sua* a reform of the voting procedure of the Council of Ministers (CoM). This use of the Bonn Powers was resolutely contested by Nikola Špirić, a Bosnian Serb politician, who resigned from his post as Prime Minister (BBC News 2007). The HR/EUSR labelled Špirić’s resignation as an irresponsible act and argued: ‘It is paradoxical that the Chairman of the Council of Ministers should resign over measures that are designed to make the Council of Ministers, the body that he Chairs, more efficient ... the country needs functioning institutions for the reform processes to be re-launched’ (OHR 2007e). Speaking before the UN Security Council in New York, Lajčák reiterated the need for CoM reform and pointed out that political stalemate in BiH inevitably required ‘robust and creative’ initiatives (OHR 2007o).

A key passage in understanding the extent of Lajčák’s confrontation and blame-game with domestic politicians can be found by analyzing the



presentation to the press of the reformed CoM voting procedures. The most interesting passages of the HR/EUSR statement read as follows:

We cannot consider our mission complete until changes are made in the direction of establishing a stable, European, democratic, multiethnic society in Bosnia and Herzegovina. There are several ways how this objective can be achieved. The most favorable of them is to achieve this goal through European integration. This is a road that ... has no alternative for a European country such as Bosnia and Herzegovina ... This is why I have put in so much effort to lift the blockage on the European integration process for this country, a process which resolves current problems and leads to the future at the same time. But, as you know, this is a process for which only domestic politicians take responsibility voluntarily (OHR 2007g)..

The most delicate innovations introduced by the HR/EUSR were those updating articles 16 and 18 of the existing Law on the CoM. Lajčák updated, first, the rule on the quorum necessary to hold a regular session of the CoM, and second, the decision-making process. On the first issue, the HR/EUSR introduced the principle for which a session can be held whenever it is possible to gather a majority of the members of the CoM, regardless of their ethnicity. The previous requirement allowed holding a regular session only at the presence of at least two members belonging to each of the three constituent peoples. As far as the second point is concerned, Lajčák's provisions – which were labeled as a revolutionary act by all Bosnian Serb parties – targeted the rule for which a provision can be adopted only if supported by a majority of all members of the CoM. The previous version of article 18 proceeded as follows: 'a majority

decision will be taken which must include the votes of at least two members of each constituent people'. In the updated version of the voting procedure it is specified that a decision can be adopted if it is based on the majority of 'those members presenting and voting' (instead 'of its whole number') 'provided that the said majority includes the vote of at least one member of each constituent people' (OHR 2007g).

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

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

For his part, the RS Prime Minister Milorad Dodik addressed a letter of complaint to the European Parliament. In this communication he accused HR/EUSR Lajčák of having 'directly shaken the foundations of the Dayton Peace Agreement' and of being the one to blame for the negative political climate affecting BiH at that time (Dodik 2007b: 68).

A few weeks later, the HR/EUSR issued an 'Authentic Interpretation' of the changes made to the CoM working and voting procedures. *Inter alia*, Lajčák explained that first, the main aim of his decision was 'to facilitate the operation

of the Council of Ministers; second, the changes and amendments apply equally to all members of the CoM without any distinction'; third, 'the changes and amendments do not touch upon the overall composition of the CoM, and in particular the equal representation of the constituent peoples'; fourth, 'the changes and amendments ensure that none of the members of the CoM can obstruct its work simply by an unjustified and illicit absence from sessions and the need for the Council of Ministers to be able to take decisions at all times'. Lastly and most crucially, the explanatory note stressed that 'the changes and amendments are not to the detriment of any constituent people and any Entities of Bosnia and Herzegovina'. On the specific update of article 16 of the previous CoM ruling procedure, the Authentic Interpretation specified that this seeks to prevent the 'possibilities to block the Council of Ministers by the mere absenteeism of members of a constituent people' (OHR 2007g).

Apart from the 'Authentic Interpretation', the HR/EUSR also published a list of strategic arguments in support of the imposed reform. This choice respected a certain tradition by the HR/EUSR to communicate by issuing Decalogues and explanatory notes over the internet as well as in the local press. This habit had been inaugurated by Paddy Ashdown in 2005, with a view to support the need of police reform. In line with such custom, also Miroslav Lajčák published a Decalogue to support the imposed reform of the CoM voting procedures. Among the most interesting 'ten facts on the High Representatives Decision Imposing Changes and Amendments to the Law on the Council of Ministers', the HR/EUSR stated that: '(2) measures apply equally without discrimination to all members of the Council of Ministers; (3) the decision does not change the composition of the Council of Ministers, and it especially does

not change equal representation of constituent peoples; (10) The Decision does alter the Law promulgated by the High Representative on Dec 2, 2002. However, the time has shown that these mechanisms were regularly misused since the Ministers failed to attend sessions and carry the duties they are elected to and very well paid for' (OHR 2007w).

In parallel with reform of the CoM voting mechanisms, two other procedural improvements were made by Lajčák: a series of amendments to the rules of procedure of the House of Representatives and to the House of Peoples of the Parliamentary Assembly. These two packages were accepted within a relatively short time frame. Only a few weeks after their adoption through the use of the Bonn Powers by the HR, these reforms were formally subscribed to by Bosnian Parliamentarians. Lajčák welcomed this development pointing that the 'agreement opens the door for the BiH institutions to return to the European agenda and formally adopt the Action Plan for Police Reform. This would bring Bosnia and Herzegovina back to European integration process' (OHR 2007m). However, the confrontation over the CoM reform and the showdown for the police reform determined the persistence of diffused tensions.

### **5.1. The Mostar agreement and the Sarajevo Action plan**

When the impasse seemed unbreakable (also due to the tensions for the previously mentioned reform of the CoM) a ceasefire arrived: in December 2007 the SAA was initialled. The EU granted technical approval to the agreement on the basis of a general compromise signed by the main Bosnian party leaders in Mostar (OHR 2007f) and the related 'Action plan' for reform adopted a few

days later in Sarajevo (OHR 2007b). On the website of the Commission it was announced that: ‘following Commissioner for Enlargement Olli Rehn’s assessment that there is *sufficient agreement on reforms among BiH political leaders*, the Stabilisation and Association Agreement with Bosnia and Herzegovina is initialled in Sarajevo’ (European Commission 2007). Meeting the Slovenian Foreign Minister Dimitrij Rupel – who was about to assume the Presidency of the EU Council of Ministers – Lajčák emphasized that the initialling of the SAA on 4 December 2007 reflected a ‘good atmosphere of compromise [which] needs to be used to bring the country closer to the European Union. The EU’s support for the European integration of Bosnia and Herzegovina will only yield results if it is not abstract. Last week’s initialling of the SAA showed that the EU is prepared to reward progress’ (OHR 2007n).

This last remark is representative of the benevolent attitude of the EU towards the integration of BiH. However, in the attempt to keep pressure on Bosnian elites, the HR/EUSR clarified that the crucial assessment would be made on the actual reform that political leaders were able to transform into laws. While commending the work that resulted into the Mostar agreement – which he recognized as a good basis for police reform – Lajčák clarified that the deal needed to be ‘followed-up by concrete steps, primarily the drafting of laws [since] EU requirements will not go away, and party leaders must finally meet their commitments and deliver results’ (OHR 2007k).

Highly sceptical comments were made by representatives from the block of countries that in the EU Council constitute the ‘conditionality coalition’ (led by Belgium, The Netherlands, and the UK). Amongst those criticizing the weakness of the compromise achieved by Bosnian politicians, the Dutch

delegate to the COWEB (a diplomat of Yugoslav origins) had no hesitation in stating that: ‘the signature of the SAA by Olli Rehn is just a manoeuvre of the Commission. You cannot reward someone for doing nothing. If you do not pass your exams you cannot go to another level of class. However, initialling the SAA is just in the mandate of the Commission; we cannot oppose it from the Council’.<sup>92</sup>

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

Interestingly, interviewed on 5 December 2007 by the Bosnian newspaper *Dnevni Avaz* on the possible future steps that Bosnia had to make, Olli Rehn confirmed: ‘first the police reform must be implemented and a functionality of state institutions should be restored. After that, there is the reform of BiH Constitution. That is a crucial question and its solution represents an obligation of people and leaders in BiH’ (Rehn 2007). This position indicates certain confusion in the EU approach. By giving the green light to the SAA signature on the basis of the Mostar compromise and the subsequent Sarajevo working plan,

the Commission accepted an unusual working schedule. The Sarajevo plan for the implementation of the police reform – which was signed in the Bosnian capital on 22 November 2007 – represented an interesting example of deal on procrastination.

While the Sarajevo plan foresaw the imminent creation of a series of new state-level institutions (e.g. ‘a Directorate for coordination of the Police with aim to improve efficiency of the work of relevant police bodies in Bosnia and Herzegovina and effectiveness of the communication at the level of Bosnia and Herzegovina with relevant international institutions; Institute for forensics; Institute for education and professional upgrading of personnel; Police Support Agency; Independent Board, Citizens Complaint Board; and Police Officials Complaint Board’) and recognized ‘relevant issues of relationship between these and local police bodies shall be regulated through a new and single police structure of BiH, on the basis of the three principles of the European Commission’ it nevertheless proposed that these substantial changes would only ‘be established pursuant to the provisions of the Constitution of BiH to be elaborated in a constitutional reform process’ (OHR 2007b).

Following the initialling of the SAA, party leaders gathered again on 26 January 2008 in Sikori Brijeg to agree on the next steps. At the same time, the EU began to intensify pressure on local levels. For instance, a letter from the EU Commissioner for Justice, Freedom and Security<sup>93</sup> addressed to the Bosnian Minister of Security highlighted the connection between progress on police reform and EU visa liberalization for Bosnian citizens (European Commission 2008b). On closer examination, this letter actually demonstrates some interesting peculiarities in the Commission’s attitude to conditionality for BiH. The

document structure shows the tendency by the Commission to connect highly technical and specific requirements with requests of a highly political nature.

The letter was opened with an introductory statement on the willingness of the Commission to open a dialogue on visa liberalization with *all* the countries of the Western Balkans, since the process ‘should ultimately promote people-to-people contacts’ between the people of the region and EU citizens. The letter went on to remind the Bosnian authorities that while such a dialogue had already been established with Serbia, Macedonia, Albania and Montenegro, Sarajevo still remained a step behind. However, being next on the list, Bosnians should not arrive unprepared at such an important rendezvous. The police reform is referred to as an issue of ‘key importance ... for the progress of Bosnia and Herzegovina on the road to EU integration’.

The text also mentioned the introduction of passports containing biometric identifiers by the Bosnian authorities: this technical reference served the purpose of diluting the political link between police reform and visa liberalization. Putting police reform alongside to the improvement of identity documents allowed the Commission to stress the technical aspects of the process over the political ones. The link between police reform and visa liberalization was not new. Back in 2005, the OHR identified ten reasons to support police restructuring. This Decalogue noted that ‘without police restructuring, there will be *no change in European visa requirements for BiH citizens*’. Moreover, in addition to stressing that ‘police restructuring is *a European Union requirement*’, the Decalogue was closed with the straightforward statement: ‘police restructuring is common sense’ (OHR 2005a).<sup>94</sup>



## **5.2. The technical reform of the Police adopted in April 2008**

In spite of the renewed pressure, the supposed ‘fresh political dynamism’ had a short lifespan. On 16 April 2008, the Bosnian Parliament adopted two technical laws on policing: a ‘Law on Directorate for Coordination of Police Bodies and on Agencies for Support to Police Structure of Bosnia and Herzegovina’ and a ‘Law on Independent and Supervisory Bodies of Police Structure of Bosnia And Herzegovina’.<sup>95</sup> At the same time though, the discussion on the police structure has deliberately been suspended until an agreement on the constitution is reached. The small technical steps were welcome by most EU member states. Amongst other leaders, the German Foreign Minister Frank-Walter Steinmeier provided an example of the benevolent attitude demonstrated elsewhere in Western Europe:

I welcome today’s decision by the House of Peoples in Sarajevo. The international community has always pushed for decisive progress on police reform and the necessary legislation. This decision is therefore a success – not just for the political decision-makers in Bosnia and Herzegovina, but also for the mediation efforts of the EU’s Special Representative Miroslav Lajčák. Bosnia and Herzegovina is thus taking a major step closer to the EU. We will now take stock of all the spheres where reforms are necessary and I am confident we will also be able to sign the Stabilization and Association Agreement quickly (Steinmeier 2008).

The international press welcomed the development far more cautiously and, in some cases, highlighted how distant was the reform laws from the goals previously set by the EU. An editorial note that appeared in the online publication *EUbusiness* clarified that the laws adopted by the Bosnian

Parliament were far, in both quantitative and qualitative terms, from the conditionality that the EU had maintained for the previous four years: '[the police] reform laws ... barely touch the tip of a massive iceberg of changes needed to streamline the way the police service is run, and indeed add new layers of agencies to an already complex system'. The same commentary also emphasized that 'the reforms also help entrench the divide between communities that the EU has carefully tried to avoid' (AFP 2008).

Undoubtedly, it is not entirely fair to condemn a reform before it has been fully put into practice and its effect can be tested in more concrete terms by looking at what actually happens in the most advanced phases of its implementation. In this case, however, a preliminary negative assessment can be made, in view of the clear distance that separates the strategic goals set by the EU with its conditionality and the limited changes agreed by the main Bosnian political parties that were subsequently enacted. Moreover, it is notable that the Commission itself eventually acknowledged all the shortcomings of the reform that were adopted. In the progress report issued in November 2008, the Commission expressed a general disappointment, stressing that 'cooperation and information exchange between law enforcement agencies remain weak' (European Commission 2008a: 56).

However, the most interesting observation offered in the evaluation report comes when the Commission openly admits that the laws adopted by the Bosnian Parliament a few months earlier might on the contrary have increased the institutional chaos affecting the Bosnian police. The words employed by the Commission leave no ground for doubt: 'these laws provide for establishment of seven new agencies at State level. Given that no agreement was reached on a

transfer of policing powers, the new bodies have no coordination role vis-à-vis the Entities, cantonal and Brčko District police forces' (European Commission 2008a: 56-57).

Accepting what has been already referred to as an 'agreement on procrastination', the green light for the signature of the SAA was nevertheless granted in June 2008. A EUSR official commented metaphorically: 'Our conditionality bar was three meters high, they made a jump of less than one meter and we took it for good'.<sup>96</sup> A similar assessment was offered by the Head of EUPM. Interviewed in Sarajevo in the same days of the SAA signing ceremony, General Vincenzo Coppola reconstructed with tough but effective criticism the developments between the Mostar declarations and the laws for police reform.

There was no political will or political understanding of what they could offer to us. None of the political leaders who signed the Mostar agreement had any idea of what technically they were signing, nor did they have ideas on how and if they could actually offer a useful follow up. Because of this weakness, when the agreement landed on the table of the working group that was supposed to draft a legislation on the matter, the political and strategic problems that, it was clear to all of us, had not been solved in Mostar had to be solved on the table of the working group, which was impossible. In this situation, what would be the only way out? To put in place legislation that is extremely weak. They could not put any flesh around the bones. They created seven new institutions, fine, but they are empty institutions, because there was no political will to create strong and effective institutions. The reform was empty, but it was the only way out to allow them signing the SAA. Was police reform a true priority for the country? No. Was the SAA

a priority? Yes. The SAA was a priority because we said that this country has to go to Europe and we had to move forward to bring it in.<sup>97</sup>

Why did Brussels give up on a conditionality that had been so strenuously promoted? Turning a blind eye was the only possible way for the EU to literally drop a conditionality that had been badly conceptualized. As Muehlmann (2007: 41) emphasized ‘only when the international community backed away from their original requests did they manage to get a *face-saving, but not viable*, solution’. Moreover, the choice was also motivated by a need to defend the emphasis that has been attached by the EU to the SAP. The prolonged difficulties of BiH respecting the pre-conditions had become ‘embarrassing’ for Brussels, since the stalemate began to show that the technical anchorage of the country via the SAP was not resolving political tension. As an observer has pointed out, the EU was trapped in an uncomfortable situation: ‘[t]he collapse of the SAA process would reflect a failure of the key principle that has guided international policy in the region over the past years – the notion that the prospect of EU integration will be sufficient to put aspirant countries on a reform course’ (Vogel 2007).

### **5.3. ‘Conquered ownership’ vs. ‘octroyée ownership’**

The political showdown on police reform in BiH demonstrates that the EU allowed domestic politicians to ‘perform a conquest’ of the reform agenda. In other words, the failure of conditionality induced external actors to withdraw from the main stage of confrontation and to favour the predominance of domestic actors on the political scene. According to Christophe Solioz, the

patterns of other internationally-sponsored reforms that were previously undertaken specifically in BiH also confirm that it was the eventual failure of conditionality that paved the way for a greater focus on ownership as an alternative option. Building on this argument, Solioz cites the example of the state-level Central Bank of Bosnia and Herzegovina (CBB&H) as another case in which ‘conditionality led to ownership, but more generally it was the failure of “conditionality” that introduced “ownership” as an alternative approach’ (Solioz 2007: 35-36).

Similarly, police reform represents an area where the failure of conditionality led to the acceptance of a more flexible and domestically-owned reform agenda. Specifically, because of the mismanagement of conditionality – both in its conceptual and enforcement phases – the external agent found itself in an uncomfortable position. The EU could have promoted at an earlier stage different items on the reform agenda, thus indirectly admitting its mistake, or it could have publicly removed the link between police reform and the SAA agreement. However, a reluctance to give up its ‘no mistake policy’ induced the EU to maintain its original conditionality until the project became increasingly untenable and confrontation completely unproductive. Only then were EU policy-makers forced to give up conditionality and accept a domestically-owned reform agenda, which was rewarded in spite of its weaknesses and clear unfeasibility. Ownership was thus portrayed as an achievement, despite the fact that the eventual reform was not satisfactory.

Against the backdrop offered in this chapter, it is necessary to conclude by making a clear distinction between the debate on the restructuring of the Bosnian police (and the related international efforts that date back to the activities of the

United Nations Mission in Bosnia and Herzegovina, UNMIBH) and the continuous work of police reform. The latter has been going on since 1995, through several different steps; these included: initiatives aiming to improve procedures, *modus operandi*, and administrative capacity of the police. Moreover, there have already been two major reforms. One was undertaken in 1996 and concerned the structure of the FBiH police. The other one came two years later and concerned the RS police. This process of constant reform and amelioration has allowed substantial and clearly visible improvements. At the institutional level, the creation of the State Information and Protection Agency (SIPA) and the unified border police can be considered as relevant achievements. Such institutional improvements followed a precise logic, and they were around a genuine technical need: to improve the effectiveness of policing throughout the country. Interviewed on the issue, the Chief of the EU Coordination Office at EUPM has admitted that the link between the SAA and police reform that was instead pushed by the HR/EUSR was close to hinder the previous efforts for police restructuring. The high-ranking EUPM official admitted the limitation of the approach sponsored by the EU in 2007:

The logic behind the technical efforts to restructure and rationalize the police in BiH has been disturbed by the arbitrary decision of installing conditionality for the SAA on the police reform process. Moreover, the creation of the three European principles and the emphasis that was attached to them was not logical. Rather, this has been totally idiotic. Obviously, when I say idiotic, I do not refer to the aims of the police reform but to the link with the SAA and to the way it was highlighted. Another reason to talk about an idiotic choice is that the police reform has been left in total disconnection to the effort for the constitutional reform. This conditionality was used

by the EU as an early-warning, but concretely, it was totally illogical to use it as a precondition for the initialization of what is nothing but a free trade agreement. The problem with all this is that the EU so far has been too agnostic with regards to the reorganization of the Bosnian state. The EU is and has tried to remain an apparently non-invasive actor.<sup>98</sup>

The idea of the EU as non-invasive statebuilder proposed by the EUPM official is a powerful expression that allows drawing some conclusions on the analysis thus far developed. Moving from the examination of the EU's hands-up stance presented in the previous chapter, we have highlighted the existence of another side of what has been referred to as the 'responsibility coin' of external statebuilding projects. Moreover, it has been possible to show how dangerous can be the swing between politics and technocratism that characterized the EU conditionality over the police reform.

The analysis of police reform is relevant for two aspects. Firstly, it sheds light on the disinclination of multilateral institutions to admit mistakes and correct policies. Secondly, it represents another confirmation of the EU's inability to solve the two crucial operational dilemmas that international statebuilding agencies are bound to face: the dilemma of bottom-up vs. top-down statebuilding (which has been metaphorically referred to as the 'vertical' statebuilding dilemma, since it is connected to what type of target international policies mainly aim to), and the conflict between technically oriented assistance and a complex post-war stabilization focused on grass-root reconciliation and the establishment of a definitive socio-political peace (which has been characterized as the 'horizontal' statebuilding dilemma, since instead it refers to what type of instruments are used by international agencies).

At the intersections of these two sets of operational choices lays the core contraposition between technical institution-building and externally-driven nation-building. The need to create a fluid balance between these two trajectories represents the main challenge for every statebuilding initiative. When interest in the former is predominant, international human and financial resources are mostly invested in the creation of structures that guarantee short-term achievements. On the contrary, if the latter but more arduous path is privileged, international institutions would be expected to tune their efforts to implement policies that respect a long-term vision and focus on socio-economic development.

The case of BiH, unfortunately, shows that foreign intervention has rarely found a stable balance. The need for success-stories encourages external statebuilders to privilege relationships with a selected group of bureaucrats (mostly educated in Western countries),<sup>99</sup> which permits a deferral of confrontation with a turbulent political class. This 'more comfortable' way of interacting can be traced back to some very basic principles that are a feature of international missions pursuing highly-intrusive field activities. The recent history of the Western Balkans shows that once a crisis is under control and reconstruction has been launched, the prolonged involvement of the international community is typically justified by the occurrence of small crises and, equally important, periodic and partial successes. Crises allow a mission to be kept in place and legitimized in the eyes of the host country population; success stories make the field efforts justifiable to taxpayers in contributing countries. Moreover, the sustainability of an international mission is based on its capacity to perpetuate the above mentioned 'no mistake policy'. The case of the Bosnian



police reform provides an interesting example: EU policy-makers did their best to avoid admitting their shortcomings, up to the point of giving up their conditionality.

What could be referred to as ‘conquered ownership’ must be distinguished from ‘*octroyée* ownership’.<sup>100</sup> The latter occurs when international agencies define the main terms of the reform agenda and *genuinely* allow domestic elites, from the very beginning of the process, to negotiate internally and decide in their own way how to implement it. Instead, the ownership of the reform agenda is ‘conquered’ when internationals fail to steer a reform process towards their pre-defined strategic objectives and national elites, exploiting the mismanagement of conditionality, raise internal confrontation to a critical point.

When the political conflict reaches its apex and domestic instability is of increasing concern, internationals begin to fear that a break-up is possible and that responsibility for the crisis must be publicly shared with the recalcitrant domestic politicians. At this point, external policy-makers are bound to consider two alternative options: either they can admit to having supported the conditionality that caused the collapse of the national dialogue on reform, and negotiate openly a correction of strategy; or, alternatively, they can accept the lack of progress and favour a silent transfer of responsibilities to domestic elites, who in turn are expected to act as if they are conquering the ownership of the reform process with a renewed spirit of cooperation. Needless to say, it is convenient for both sides that this change does not take place in the form of a clear top-down concession, but rather appears as a bottom-up affirmation of domestic ownership over the reform agenda. Once this ideal ‘handover of convenience’ takes place, the international statebuilding agency can drop the

specific conditionality without compromising the credibility of the wider reform project.

## **6. Conclusions**

Analyzing the developments of the EU-sponsored reform of the Bosnian police, this chapter revealed another side of what has metaphorically been defined as ‘the responsibility coin’ of international statebuilding projects. The previous pages highlighted that, no differently than other international agencies deployed in crises areas, also the EU preserves its own ‘no mistake policy’. International statebuilding mission try to consolidate their governance and supervision roles by presenting their policies, conditionality and strategic choices as ‘the good and the proper’, whose validity cannot be dismissed, even when clear limitations emerge from implementation processes.

The showdown on police reform demonstrates that this attitude stems from a variety of factors, most of which are inherent in the same physiology of international missions, or depend from the multilateral dynamics that take place at the headquarter. First of all, the rotation of international personnel, particularly at the highest positions, is a crucial element. As the experience of Miroslav Lajčák reveals, top-ranking officials with relatively short-termed mandates are often sent to the field with limited flexibility and they are induced to defend strenuously the policies and conditionalities promoted by the organization for which they work, even when these produce negative effects on the stability of the domestic political arena. In an ideal parallel, the experience of

Schwarz-Schilling instead confirms that when field officials try to marginalize a given reform item that is strongly sponsored by the headquarter, they hardly manage to win sufficient support for a broad renewal of strategies and a substantial update of the main policy objectives.

Moreover, the lack of time in developing familiarity with a given post-conflict environment makes leading international officials more vulnerable to the attacks and accusation that politicians from the host state might attempt. The difficulties experienced by Miroslav Lajčák during the fall and winter of 2007 in handling confrontation with the most recalcitrant Bosnian-Serb and Bosniak politicians have offered a striking example in this regard.

# General Conclusions

## 1. Implications on theoretical issues

For the last two decades, statebuilding intervention in post-conflict societies and crisis areas has steadily increased, in terms of both the number of missions deployed and their intrusiveness in the politico-institutional life of several states that became ‘in-the-making’ as a result of intervention by the international community. Accordingly, scholars and policy analysts have become increasingly interested in two main issues related to the external reconstruction of failing or failed. Firstly, how can efforts by the international community to rebuild states be legitimized? Secondly, what are the most effective modalities to rebuild states and guarantee stable governance by solid domestic institutions?

Following this thread in the scholarly literature and policy analysis, Chapter I introduced the main features of the debates on the normative aspects of statebuilding and on the operational challenges of externally-driven reconstruction. The first part of the chapter provided an account of the evolution of the idea of sovereignty, key ‘rule of the game’ in international relations to which theorists have turned in their efforts to identify a plausible ‘ethic’ of

statebuilding. The second part of the chapter has instead examined the main operational concerns with which statebuilders are confronted in their actual policy-making and has identified the existence of three main strategic dilemmas of intervention in post-conflict scenarios.

The recent theoretical interest around the idea of sovereignty as responsibility has been an attempt to update the normative pillars on which intervention in unstable environments can be justified, and the prolonged external regulation of post-conflict societies can find legitimization. Neo-communitarian scholars have based their theories on the presupposition that this norm has been genuinely informing international policy-makers. At the same time, they have identified a paradox of sovereignty and statebuilding, which provides a theoretical justification that can be applied to all cases of intervention, and an ethic that can support prolonged external control over failing or failed states. In contrast with the view, it has been shown that structural weaknesses in the contemporary multilateral architecture result in a profound gap between the ambition to consolidate an efficient system of collective security based on the idea of responsible intervention and the residual features of the Westphalian system of sovereign states that have remained the same notwithstanding the exponential increase in multilateral cooperation.

Reference to the sovereignty as responsibility ideal has become a regular feature of UN documents – in statements, declarations, and in UNSC resolutions – and also appears in documents produced by many relevant regional organizations working in the areas of peacebuilding and statebuilding. However, the relationship that external policy-makers have with the issue of responsibility remains troubled one. The gap between abstract conceptualizations and practice

still remains great. In order to narrow it, and assess to what extent this new normative proposal is becoming a driving principle that informs practitioners, this dissertation has examined a specific statebuilding project.

Against this backdrop, one principle question has been addressed. What normative understanding of sovereignty and what vision of post-conflict stabilization have been driving the specific efforts of the EU as a statebuilder? Chapter II has highlighted the ‘paradox within the paradox’ of sovereignty and statebuilding as practiced by the EU. Since the prospect of EU membership was formally extended to BiH, Brussels has pushed this ‘potential candidate country’ – to use the jargon of the EU Commission – along a very particular stabilization path. The progressive process of EU-driven statebuilding has produced a paradoxical situation. A post-nation state organization based on a system of pooled sovereignty – the EU – is preparing a state that is still in-the-making to relinquish crucial sovereign prerogatives when the time to join the Union arrives.

Rather than focusing on statebuilding *strictu sensu* and the full restoration of domestic authority, the rehabilitation trajectory designed for the specific EU member-statebuilding aims to absorb critical aspects of the target state sovereignty. Nonetheless, BiH remains an incomplete statebuilding project, a weak state that still needs to be strengthened in the full and efficient exercise of its domestic sovereignty capabilities. Moreover, stability in the country is still threatened by a tense domestic sovereignty struggle between representatives of the three main ethno-religious elites previously at war: Muslim Bosniaks, Catholic Croats, and Orthodox Serbs.

EU-driven statebuilding in BiH is presented as a more complex project when compared with ‘ordinary’ internationally-led missions for the institutional

stabilization of failing or failed states. In today's BiH, the constraints on self-governance are imposed not with a view to the full restoration of sovereignty; rather, Brussels is preparing this multiethnic polity with the objective of Euro-Atlantic integration and in the inherent conviction that by dissolving aspects of Bosnian sovereignty into a supranational construction, even the most profound fracture lines are bound to disappear. In simple terms, the externally driven reorganization of the state is directed towards a supranational project, and thus is conducive to a future dilution of sovereignty.

While pursuing this project, the EU has undoubtedly exercised a positive influence on the country: European integration represents the only issue on which local elites unconditionally agree. Together with NATO membership, the EU has offered the only credible perspective that, even if indirectly, has so far successfully contained the centripetal forces that characterize the Bosnian multiethnic and multi-religious context. Political and institutional stabilization remains nevertheless a distant prospect. At all levels, sovereignty is contested between the representatives of the three ethno-religious factions formerly at war. Ranging from the central state down to cantonal and even municipal level, this confrontation has been defined in this dissertation as a 'multilevel sovereignty struggle'.

Aware of these problems, the EU has relied on the instruments provided by the SAP, in an attempt to limit the direct intrusiveness of its powers and to minimize as much as possible the risks related to the complex constitutional restructuring of the country. Moreover, in the course of almost ten years of EU-driven statebuilding in BiH, external policy-making has been accompanied by a consistent emphasis on the importance of ownership and democratization, in

addition to the obvious references to economic development. All of these methodological precautions adopted by the EU are based on the inherent conviction that the numerous internal fractures of the country will eventually be healed once Bosnian sovereignty is pooled – and thus partially diluted – in the greater European supranational construction.

Identifying this fundamental characteristic that differentiates EU member-statebuilding from other exercises of externally-driven stabilization in crisis areas, this thesis has approached the EU commitment to BiH with the overall aim of highlighting Brussels' contradictory stance as a statebuilder and with a view to reconstructing not only the most relevant normative aspects, but also the operational peculiarities of such a complex undertaking. BiH is an optimal case study for understanding the principles that inspire EU stabilization efforts in the Western Balkans region as a whole, and the operational limitations which it faces. Moreover, this investigation has highlighted the strategic and methodological differences between internationally-driven (UN-led) statebuilding, EU member-statebuilding, and some of the key strategic features that characterize US-led initiatives for the external regulation of failing and failed states. In particular, it has been shown that while Washington invests in statebuilding enterprises to multiply the number of its allies and consolidate its global network, Brussels pursues a more sophisticated and idealistic goal. In other words, this thesis argues that while Washington consolidates its global influence and promotes consolidation *through* states, Brussels focuses on the consolidation of its regional influence *on* states.

The investigation into the normative understanding of sovereignty and post-conflict stability at the basis of the current EU involvement in the Bosnian



political context has shown that direct policies for political reconciliation are only marginally on the EU's agenda for this complex multiethnic polity. In the logic of EU policy-makers, BiH can be rescued if it is anchored through the SAP to the EU integration process. Specifically, the SAA – with all of its mechanisms, negotiations, and deadlines – is perceived as an instrument that can create a positive 'chain reaction'. Once the process is launched, Bosnian political representatives are confronted with the inherent contradictions of their institutional structure and they are expected to spontaneously reform, readapt, and rationalize the Bosnian state. It is thus a widely-held view in Brussels that the SAA implementation process should be sufficiently demanding that it forces Bosnian elites to undertake reforms.

Even if it is mainly an economic instrument designed to open up the market of the recipient country to European products, the SAA is perceived by policy-makers in Brussels as an adequate instrument to encourage Bosnian elites to pursue substantial reforms in all core policy areas. Specifically, the SAA was designed by the EU to be a mechanism aimed at: 'supporting efforts to strengthen democracy and the rule of law in Bosnia and Herzegovina; contributing to political, economic and institutional stability in BiH and in the wider region; providing a framework for political dialogue, allowing for the development of close political relations between the EU and BiH' (European Council 2008b). The SAA represents the key instrument of what has been referred to as a 'statebuilding by induction' process or, put another way, it could be said to reflect a 'statebuilding by the backdoor' methodology.

Given its structural peculiarities, and a certain institutional predisposition to distance itself from political processes, it can be concluded that the EU

involvement in BiH and the rest of the Western Balkans remains incomplete. The EU *modus operandi* in BiH continues to be exposed to the residual influence of the US. It is not by coincidence that since July 1997 the position of Deputy High Representative in BiH has constantly been held by a senior US diplomat, who has been in constant open confrontation with local elites. At the same time, EU-driven statebuilding in BiH is conditioned by the attitude of European states which, while holding a seat in the PIC-SB, do not invest sufficient diplomatic resources in Brussels to promote political consensus on BiH at the European Council.

For instance, the attempts at quiet mediation undertaken in 2007 by HR/EUSR Schwarz-Schilling (which were oriented in principle towards political reconciliation and in practice towards the creation of a sustainable framework for constitutional reform) were not backed up with sufficient political support by the Council. It is too early to say whether placing so much confidence in technically-driven changes is a risky choice or not; however, it seems unlikely that there will be any substantial positive institutional change until the Bosnian stabilization process is backed up with renewed diplomatic energy and more coordinated political action from Brussels. To be sure, the EU integration process helps to ‘depoliticise’ many sensitive issues (Belloni 2007: 155). However, the continued marginalization of politics in the process that leads to integration might eventually undermine the final outcome. The prolonged absence of a structured strategy for reconciliation – both at political and societal levels – has resulted in an increased polarization between the three main ethno-religious groups in the country.

With a view to demonstrating that the EU follows a very peculiar ‘ethic’ and *modus operandi* when it comes to statebuilding policies in its near abroad, particular attention has been paid to the main processes that dominate the reform

agenda in BiH and the ways in which Brussels has approached them. The analysis demonstrates that the sovereignty issue is often employed as a smoke screen by EU policy-makers, in the attempt to mask their inability to agree at the level of 27 – beyond a general consensus on the need to pursue the enlargement process – on coherent specific stabilization policies. Moreover, it has been shown that the EU's particular approach to statebuilding stems from an imperial attitude to the enlargement process.

As argued in Chapter III, the cautiousness with which the EU has approached the issue of constitutional reform in BiH – from the early days of its field presence in the country up until the present time – demonstrates that the conventional understanding of sovereignty is an argument on which EU statebuilders rely for strategic reasons. The emphasis that the EU places on the need to respect domestic sovereignty reveals a genuine paradox. The promotion of a classic sovereign ideal is maintained while, at the same time, domestic sovereignty is on the one hand subjected to continued and internationally institutionalized violations and, on the other, is projected towards an alternative model based on the predominance of formal and informal supranational networks over domestic ones.

This analysis confirms Stephen Krasner's argument that sovereignty is 'organized hypocrisy' (1999b), as well as his specific conclusions on the gap between what statebuilding is said to be and how in reality such projects are carried out by external actors in failing or failed state (Krasner 2004). The EU experience in BiH confirms that the idea of sovereignty is strategically manipulated with a view to presenting external peacebuilding activities as being always 'appropriate'. As an example of this tendency, reference has been made on

the EU's hands-up statebuilding attitude. This metaphor has been employed to describe the tendency of EU policy-makers to distance themselves from uncomfortable political responsibilities and to ignore deviations from the ideal of responsible intervention. The predominance of the hands-up attitude amongst EU policy-makers finds confirmation in the experience of HR/EUSR Schwarz-Schilling. The way in which 'European' political support was slowly withdrawn from the German HR/EUSR is emblematic.

Testing the ideal of shared responsibilities on a more operational and policy-oriented ground, the analysis in Chapter IV focused on a concrete aspect of external policy-making. Two main questions have been addressed in this regard. Firstly, do statebuilders take responsibility for all of their actions, including their mistakes? Secondly, do statebuilders learn from their mistakes and correct ineffective policies in a timely manner? An attempt to answer these two interrelated questions has been made by employing another metaphor – 'hands-off statebuilding'. This expression describes the EU's approach of pursuing the reorganization of Bosnia's incomplete and contested sovereignty via partial and apparently technical reforms. In concrete terms, this strategy serves two purposes. On the one hand, it facilitates preservation of those ideals of gradualism and functionalism that have been features of the EU integration process since the early post-WWII period. On the other, the hands-off *modus operandi* has helped to overcome a substantial limitation that has characterized the intra-EU multilateralism: the lack of strategic political consensus in the Council and the institutional frictions between the Council, the Commission and, to a degree, the EP.

Reference to the idea of a ‘hands-off’ attitude has also been made with a view to showing that the actual sharing of responsibilities is difficult if not impossible to reconcile with the structures, customs, and unwritten rules of international missions in a post-conflict environment. External actors have devoted significant attention to the issue of responsibility. But they do so with the aim of off-loading their responsibilities and minimizing risks; in particular, the risk of a loss of public legitimacy for their presence on the ground. This legitimacy is based on two distinct pillars: the first is determined by the relationship between the field presence and headquarters, the second stems from the interactions of the field presence with both the political elite and constituent people of the host state. It is notable that this tendency can be identified even in the case of the EU, which has a more sophisticated objective than other multilateral organizations: that of welcoming target states into its supranational integration structures.

The history of EU-sponsored police reform in BiH is an interesting case of mismanaged conditionality that has been analyzed precisely in order to identify the main features of the EU hands-off statebuilding stance. An examination of this reform process reveals the difficult confrontation between internationals (in this case, EU officials) and local elites. The police reform shows that the mismanagement of external conditionality induced the external agent, the EU, to accept a more flexible, weaker, but domestically-owned reform agenda. This conditionality sparked one of BiH’s most serious crises in its post-Dayton history. With the credibility of the whole European integration project for BiH at risk, the EU decided to refrain from further confrontation with domestic elites and dropped

its most critical demands, thus allowing local politicians to ‘perform a conquest’ of the reform agenda.

This thesis posits that reluctance to give up on a ‘no mistake policy’ induces international agents to defend conditionality to the point that a project becomes almost untenable. At this point, internationals prefer to relinquish conditionality and accept a domestically-owned reform agenda, which is rewarded in spite of inherent weaknesses or clear unfeasibility. Ownership is thus presented as a successful outcome in itself, even if the resulting reforms are not in the least satisfactory. Much like other international agencies deployed in crises areas, the EU demonstrates a tendency to preserve its own ‘no mistake policy’ at all costs.

## **2. Policy implications**

What does it mean to share responsibilities in a project of state reconstruction? The concept of shared responsibilities has a twofold dimension when it is applied to international intervention. On the one hand, there is a moral imperative to launch multilateral efforts in a timely manner when a crisis situation threatens lives. As the trend of post-Cold War history has shown, the UN’s ability to establish an effective international presence in crisis areas has significantly increased. Unfortunately however, there are still cases – such as Somalia – that confirm the general reluctance of states to intervene in situations of state collapse where the associated risks are high and where strategic interests, other than the general ideal of promoting peace, are limited. On the other hand, the question of responsibility comes to the fore once an international mission has been deployed

on the ground. The particular ‘degree’ of responsibility relates to both the policies promoted by international missions in the areas under their supervision and their conduct in the field.

The analysis of the Bosnian case allows elaborating broad policy prescriptions and lessons-learned that could be applied to other cases of statebuilding. For instance, amongst others lessons that can be drawn from fifteen years of highly-intrusive intervention in BiH, an important conclusion is that ethno-religious fractures tend to crystallize in the absence of a systematic attempt to promote structured reconciliation policies at both political and societal levels. However, since the issue of shared responsibilities represents the red line of this dissertation project, a final policy remark is warranted about the proposal to institutionalize shared sovereignty agreements. These frameworks for statebuilding projects should facilitate the establishment of a clear division of labour, duties, and responsibilities among international practitioners and local elites.

Shared sovereignty agreements or the formal establishment of a protectorate could enhance the degree of control and accountability of international missions. As Krasner (2004: 108) points out, the establishment of clear rules and the definition of specific responsibilities ‘would allow actors to obfuscate the fact that their behavior would be inconsistent with their principles’. The empirical findings that have been presented here demonstrate that even the EU – which pursues through its member-statebuilding initiatives a series of sophisticated ideals on regional peace and reconciliation – has had a troubled relationship with the issue of sharing responsibilities. In common with other multilateral missions committed to statebuilding projects, the EU has a tendency to ‘technify’ the relationship with

the target state and pursue partial achievements that concern mostly the institutional dimension rather than focusing on the stabilization of the society and the domestic political environment.

Shared sovereignty agreements can play an important role in clarifying the responsibilities of external policy-makers vis-à-vis local elites. An argument that has recently gained ground amongst practitioners is that by increasing the capacities of regional organizations, it will be possible to ensure a greater degree of local ownership of stabilization processes and peacebuilding efforts. While this may appear a 'noble' long-term objective, a simple transfer of responsibilities to regional organizations is not in itself a solution. Rather than increasing the sense of responsibility in multilateral missions engaged in peacebuilding initiatives, this approach may simply enable developed countries to off-load their responsibilities onto their weaker neighbors.

The increased use of shared sovereignty agreements could also serve the purpose of depriving recalcitrant local elites of an argument that is often employed by them in the blame game with the international community: as the detailed account of the showdown between the RS leadership and the OHR demonstrates, domestic nationalist politicians tend to complain obsessively that the international community keeps the host country in a status of *de facto* protectorate that has no legitimization and, for this reason, justifies intransigent positions.



### **3. Perspectives on future research**

This analysis of the Bosnian context has opened the way for other comparative studies into international statebuilding interventions. Remaining within the sphere of EU member-statebuilding in the Western Balkans, for example, Kosovo and Macedonia present the most interesting cases for immediate comparison with the experience of reconstruction in BiH. Moreover, this thesis also points to some other potentially interesting avenues for exploration. Firstly, the findings show that there is scope for more research in this relatively new field, which might be referred to as the ‘sociology of international missions’. The process that leads to the establishment of an international mission in a crisis area is often overlooked by analysts. Observers tend to monitor the activities of an international mission, but only limited attention has been paid to the political dynamics that lead to its establishment, the negotiation process for the definition or modification of its mandate, and issues concerning the selection and management of the human resources deployed on the ground.

Secondly, this dissertation has shown the need for further analysis into the issue of ‘policy adaptation’ by international missions. Do international missions recognize their mistakes and change their policies accordingly? This is a crucial question that is directly linked to the issue of adjustments in external conditionalities. Some research in this field has already been undertaken, but predominantly on the management of conditionalities by development agencies or international financial institutions, such as the IMF and World Bank. Very limited attention has thus far been paid to policy development and change by international missions dealing with security-related issues and political affairs.

Thirdly, the specific focus on EU attempts at member-statebuilding and the assessment of the difficulties that the EU encounters in its internal policy-planning represent an interesting basis on which to launch an examination of the EU decision-making processes in the post-Lisbon era. The establishment of the external action service and a new division of labour between the Commission and the Council are imminent. It is to be hoped that the EU will learn to act collectively, affirm its geopolitical *primauté* in its near abroad, and eventually overcome its ‘Jacques Poos’ complex<sup>101</sup> also in other regions of the world, where its stabilizing influence could play an important role in guaranteeing peace and stability. The EU is already an example of a successful model for the consolidation of regional peace and the promotion of opportunities for economic prosperity; it is time that it takes its rightful place as a responsible international actor as well.

## (Appendix A)

### Framework Interview Questions

1. Can you identify the key issues related to the reorganization of sovereignty in BiH?
2. Could you briefly list what are the specific responsibilities of ‘international statebuilders’ towards BiH today?
  - 2.1. What is the specific role of the EU in the Bosnian stabilization process?
  - 2.2. What is the role of the United Nations?
  - 2.3. What is the role of other states (e.g. the United States, Russia) or relevant regional actors?
3. Who is sovereign in BiH today and who should be sovereign?
  - 3.1. If the people are sovereign, would you consider a referendum on the integrity of the Bosnian state or a vote on secession in Republika Srpska as a legitimate, suitable, and appropriate exercise of popular sovereignty?
  - 3.2. If we consider the ‘sovereignty of the people’ as an ideal and sovereignty *de facto* lays in the government (or the constitution), how much work does BiH still need to be, so to say, normalized as a functional sovereign state?

4. Have you considered the possibility that the Bosnian experiment might fail?
  - 4.1. If yes, what are the elements that induced such a fear?
  - 4.2. If not, why do you think this is impossible?
  
5. What would be the consequences of a failure of the Bosnian experiment?
  - 5.1. What specific consequences would there be on European security?
  - 5.2. What specific consequences would there be on the credibility of the EU?
  
6. If Bosnian political elites show no substantial progress in the reform talks and in the constitutional debate, do you think that the whole Bosnian project should be reconsidered?
  
7. Can BiH go to Brussels without leaving Dayton? In other words, do you think that the EU could integrate, 'save', and interact in efficient ways with BiH without a substantial consolidation of power and authority in favor of the central governing Bosnian institutions?
  - 7.1. If yes, what role do you assign to multi-level governance practices and EU pooled sovereignty?
  - 7.2. If not, how much consolidation of power and sovereign prerogatives towards Sarajevo are still needed?
  - 7.3. Do you think this would be 'fair' in terms of sovereignty?

8. What do you foresee as the outcome of the Bosnian statebuilding experiment?
  - 8.1. How do you perceive your contribution to achieving such an outcome?
  
9. Why has the EU in BiH taken all the responsibilities formerly attributed to the UN and NATO?
  - 9.1. How much has the US disengagement from the Balkans influenced the increased EU presence?
  - 9.2. To what extent is this commitment connected to security concerns in Western Europe?
  - 9.3. How much to the consolidation of the EU as a foreign policy actor?
  
10. How would you define the EU prospect of membership as a tool for indirect stabilization and soft power?
  
11. Could you say that the EU prospect is successfully “bridling” the centripetal forces characterizing the Bosnian political environment?
  
12. Why do we keep the double-hat (and therefore the double chain of command) on the HR/EUSR?
  - 12.1. How much was the choice determined by lack of unitary view at the EU?

- 12.2. How much was this is linked to the uncertainties determined by the independence of Kosovo?
13. The EU seems to look at the SAA as to an automatic process that can unhinge the most critical Bosnian institutional weaknesses. Do you think this approach is correct and it will actually be successful?
- 13.1. If yes, don't you think this technocratic way dangerously excludes or, to say the least, marginalizes politics?
- 13.2. If not, could you elaborate on your answer?
14. Could you elaborate on the alternative strategies for constitutional reform in BiH that the EU has tested while instead the April Package was promoted under strict US supervision?
15. In which respect does the EU approach to member-statebuilding in BiH differ from the strategies of the US for the reorganization of the Bosnian state structure?
16. What are in your opinion the main differences of approach between the US and the EU to making external pressures on the Bosnian elites specifically for the constitutional reform?
17. What are the strategic goals of the EU-sponsored police reform in BiH, if any?

## **(Appendix B)**

### **List of Interviewees**

- Mr. Michael Aldaya, Albania, Bosnia & Herzegovina Programme Manager and Assistance Desk Officer for Bosnia-Herzegovina, DG Enlargement, EU Commission (Brussels, September 2007).
- Mr. Tommaso Andria, Deputy Head of Mission at Italian Embassy to BiH (Sarajevo, November 2007).
- Ms. Nadine Athanassiadou, Counselor at the Permanent Mission of Greece to the EU, participant to the COWEB (Brussels, September 2007).
- Mr. Šukrjia Bakšić, University of Sarajevo (Sarajevo, June 2007).
- Mr. Jan Bayart, Counselor at the Permanent Mission of Belgium to the EU, participant to the COWEB (Brussels, September 2007).
- Mr. Arno Behrens, Sec. Adj. at the Permanent Mission of Germany to the EU, participant to the COWEB (Brussels, April 2007).
- Ms. Andrea Berdesinski Counselor at the Permanent Mission of Germany to the EU, participant to the COWEB (Brussels, April 2007).
- Ms. Arina Beslagic, BiH Ministry of Security (Sarajevo, June 2007).
- Ms. Talija Boati, Democratization - Working Table 1 Stability Pact for South-eastern Europe (Brussels, May 2007).
- Mr. Detlev Boeing, Principal Administrator, Policy Coordination Unit, DG Enlargement, EU Commission (Brussels, July 2007).
- Ms. Giovanna Bono, Administrator, Subcommittee on Security and Defence at EP (Brussels, November 2007).

Ms. Anica Brooks, Adviser at the EP (Brussels, December 2007).

Mr. Vincent P. Carver, US Permanent Representation to the EU (Brussels, November 2007).

Mr. Gabriele Cascone, Euro-Atlantic Integration and Partnership Directorate, NATO (Sarajevo, June 2007).

Mr. Mauro Conciatori, Counselor at Italian Permanent Mission to the EU, participant to the COWEB (Brussels, March 2007).

Mr. Vincenzo Coppola, Head of Mission at EUPM (Sarajevo, December 2007 and June 2008).

Mr. Aleksandar Damjanac, Delegation of BiH to the EU (Brussels, September 2007).

Mr. Renzo Daviddi, Head of the European Commission Liaison Office to Kosovo (Pristina, December 2007).

Mr. Emir Demirovic, BiH Council of Ministers (Sarajevo, June 2007).

Mr. Fabrizio Di Michele, Counselor at Italian Permanent Mission to the EU, participant to the COWEB (Brussels, October 2007).

Ms. Anela Duman, Policy Consultant at CPM Group (Sarajevo, June 2007).

Mr. Steffen Elgersma, Euro-Atlantic Integration and Partnership Directorate (Brussels, September 2007).

Mr. Alessandro Fallavolita, Head of Mission, Italian Embassy to BiH (Sarajevo, December 2007).

Mr. Mark Fleming, Political-Military Officer at US Embassy to BiH (Sarajevo, November 2007).

Mr. Tobias Flessenkemper, Chief of EU Coordination Office at EUPM (Sarajevo, December 2007).



Ms. Sabine Freizer, Director of the Europe Program at International Crisis Group (Brussels, November 2007).

Mr. Orlando Fusco, Political Advisor, EUSR (Sarajevo, June and December 2007).

Mr. Michael Giffoni, Council Secretariat, Policy Unit, Western Balkans Task Force, Policy Unit of the EU Council Secretariat (Brussels, June and December 2007).

Mr. Luca Gori, Counselor at the Permanent Mission of Italy to the EU, participant to the COWEB (Brussels, March 2007).

Mr. Drino Galičić, Legal Advisor to the EU Special Representative (Sarajevo, December 2007).

Mr. Damir Gnjidić, Legal Advisor for Public and Administrative Law at OHR (Sarajevo, December 2007).

Mr. Vedran Hadžović, Central Electoral Commission, Bosnian National Parliament (Sarajevo, June 2007).

Mr. Mudzahid Hasanbegovic, Legal Adviser at EUSR (Sarajevo, December 2007).

Ms. Anna Ibrisagic, Swedish MEP (EPP-ED, DE) member of the Foreign Affairs Committee and Sub-Committee for Security and Defence (Brussels, October 2007).

Ms. Tatjana Jancević, Deputy Chief Legal Advisor at EUPM (Sarajevo, December 2007).

Ms. Barbara A. Leaf, Head of the Political Section at the US Embassy to Italy (Rome, November 2009).

Mr. Gianni La Ferrara, Policy Consultant at CPM Group (Sarajevo, June 2007).

Ms. Alessandra Londero, Deputy Chief of Political Unit at EUPM (Sarajevo, December 2007 and June 2008).

Mr. Steve Lee, Legislative Strengthening Program, OSCE Mission to BiH (Sarajevo, June 2007).

Mr. Stephan Lehne, Director and EU special envoy for the Kosovo status talks, Policy Unit of the EU Council Secretariat (Brussels, October 2007).

Ms. Maja Lolić, Political Advisor, Office of the EU SAA Negotiator Team (Protaras - Cyprus, April 2007).

Ms. Catriona Mace, Counselor at the Permanent Mission of the United Kingdom to the EU, participant to the COWEB (Brussels, May 2007).

Ms. Angela Marques De Athayde, Unit 1 Albania, Bosnia & Herzegovina Project Manager - policy desk officer horizontal coordinator, DG Enlargement, EU Commission (Brussels, September 2007).

Mr. Joseph Marko, Adviser for Legal Affairs at EUSR and former Judge of the Bosnian Supreme Court (Sarajevo, June 2007).

Mr. Dusko Maslesa, PDP Bosnia and Herzegovina (Sarajevo, June 2007).

Mr. Emir Mehemedovic, BiH Ministry of Defence (Sarajevo, June 2007).

Mr. Žiga Mirvad, Political Assistant, US Embassy to BiH (Sarajevo, November 2007).

Ms. Rasa Ostrauskaite, Council Secretariat, Policy Unit, Western Balkans Task Force Policy Unit of the EU Council Secretariat (Brussels, May 2007).

Ms. Doris Pack, German MEP (EPP-ED, DE) Member of the Foreign Affairs Committee and Chair of the EP Delegation for South-East Europe (Brussels, July 2007).

Mr. Nenad Pandurevic, BiH Ministry of Foreign Trade (Sarajevo, June 2007).

Ms. Sladjana Pantelic, Counselor at the Permanent Mission of The Netherlands to the EU, participant to the COWEB (Brussels, December 2007).

Mr. Gernot Pfandler, Counselor at the Permanent Mission of Austria to the EU, participant to the COWEB (Brussels, May 2007).

Mr. Sanjin Plakalo, Researcher, Working Table 1, Stability Pact for South-eastern Europe (Brussels, May 2007).

- Mr. Alessandro Rotta, Cabinet, Political Advisor Stability Pact for South-eastern Europe (Brussels, October 2007).
- Mr. José L. Sanchez Alegre, Desk Officer for Bosnia, DG Enlargement, EU Commission (Brussels April 2007).
- Mr. Lucio Valerio Sarandrea, Legal Adviser on Judicial and Legal Reform OSCE Mission to BiH (Sarajevo, December 2007).
- Ms. Seemab Sheikh, Counselor at the Permanent Mission of Denmark to the EU, participant to the COWEB (Brussels, September 2007).
- Mr. Lars Schimdt, Counselor at the Permanent Mission of Sweden to the EU, participant to the COWEB (Brussels, April 2007).
- Mr. Stephan Simosas, Officers for political affairs in BiH, DG Enlargement, EU Commission, (Brussels, April and November 2007).
- Ms. Kypriani Stavrinaki, Counselor at the Permanent Mission of Cyprus to the EU, participant to the COWEB (Brussels, April 2007).
- Mr. Hannes Swoboda, Austrian MEP (PSE) Member of the Foreign Affairs Committee and vice-Chairman of the Delegation for relations with the countries of South-East Europe (Brussels, December 2007).
- Mr. Charles Tannock, British MEP (EPP-ED, DE) member of the Foreign Affairs Committee and of the EP Delegation for South-East Europe (Brussels, October 2007).
- Mr. Boris Tihi, University of Sarajevo (Sarajevo, June 2008).
- Ms. Miriam Toplanska, Institution Building, TAIEX, TWINNING Project Manager, DG Enlargement, EU Commission (Brussels, September 2007).
- Mr. Ahmed Turkic, Personal Assistant to the EU SAA Negotiator (Sarajevo, December 2007).
- Mr. Archie A. Tuta, Head of Strategy and Planning, OHR (Sarajevo, June 2007).

Mr. Mark Wheeler, OHR Liaison Officer, OSCE Mission to BiH (Sarajevo, June 2007).

Mr. Giulio Zanni, Political Adviser at EC Delegation to BiH (Sarajevo, June 2007).

Mr. Alessio Zuccarini, Principal Political Advisor and Deputy Head of Mission at EU Planning Team for Kosovo (Pristina, December 2007).

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# Notes

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<sup>1</sup> The DPA was initiated on 22 November 1995 at the 'Wright-Patterson' Air Force Base in Dayton, Ohio (USA) after twenty days of formal negotiations. The agreement was then signed in Paris on 14 December 1995. The DPA is formally titled General Framework Agreement for Peace in Bosnia and Herzegovina. In some scholarly publication, as well as in some official documents, it therefore appears with the other acronym 'GFAP'. See [http://www.ohr.int/dpa/default.asp?content\\_id=380](http://www.ohr.int/dpa/default.asp?content_id=380)

<sup>2</sup> For further details and information, see <http://www.crs.state.gov/>

<sup>3</sup> That of 'international community' can be a vague and tricky term if it is used without the proper clarifications. In this thesis, the concept of international community is employed to summarize the complex firmament of intergovernmental organizations and states. When the expression is followed by the specification 'in BiH', it refers to all the intergovernmental organizations (including military organizations and missions) that operate in BiH, as well as to the totality of the diplomatic community posted in BiH.

<sup>4</sup> European Security and Defence Policy.

<sup>5</sup> For further information on the European External Action Service (EEAS) see [http://eeas.europa.eu/background/index\\_en.htm](http://eeas.europa.eu/background/index_en.htm)

<sup>6</sup> After the entry into force of the Lisbon Treaty all Delegations of the Commission abroad have become Delegations of the European Union (EUDEL).

<sup>7</sup> COWEB gathers twice a week in Brussels. On average, twice a month the so-called 'COWEB Capitals' gathers all the Directors (in most cases for EU Integration) from the national foreign ministries. Western Balkans affairs are also covered by the Political and Security Committee (PSC or COPS, according to the widely used French acronym) that twice a week gathers diplomats at ambassadorial level from each EU member states' permanent representations in Brussels, as well as senior officials from the External Relations DG (Relex) of the Commission. It is now customary at the EU Council that, when issues are of particular relevance, the work of COREPER II is prepared directly by COPS, at least for the most general guidelines. When this happens on a given issue, COWEB is usually asked to develop concrete proposals on the technical and implementation aspects of the general policies agreed upon by COREPER II.

<sup>8</sup> The Permanent Representatives Committee works in two configurations: the so-called Coreper I is composed of the deputy permanent representatives and deals with technical dossiers; the Coreper II instead gathers all the ambassadors and deals with all political, economic or institutional matters. For further details, see [http://europa.eu/scadplus/glossary/coreper\\_en.htm](http://europa.eu/scadplus/glossary/coreper_en.htm)

<sup>9</sup> For a juridical analysis of the functional decentralization of the international system, see Ronzitti (2004: 5-7).

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<sup>10</sup> For further elements on the humanitarian intervention debate, see (Chopra 1992; Lyons 1995; Bettati 1996) For more recent analyses, see (Ayoob 2002; Bellamy 2003; Holzgrefe 2003; Bastian 2005)

<sup>11</sup> The commitment to prevent and responsibility to rebuild are extensively elaborated in the report of the ICISS (2001: 19-28, 39-46). Further clarifications on these concepts will be provided in section 2.2.

<sup>12</sup> For more detailed elements also see Etzioni (2004).

<sup>13</sup> In Annex 1-B (Art. V) of the DPA, which is dedicated to the negotiations on a regional arms control agreement, there is the famous expression 'regional balance in and around the former Yugoslavia'.

<sup>14</sup> Interview with Michael Giffoni, EU Council (Brussels, 30 March 2007).

<sup>15</sup> Interview with Michael Giffoni, EU Council (Brussels, 4 May 2007).

<sup>16</sup> The PIC gathers fifty-five members, including both states and international organizations. The PIC-SB includes the following members: Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and Turkey. The latter sits in the PIC-SB also as representing the Organization of the Islamic Conference. At the first Peace Implementation Conference – which was hosted by the UK in London on 8-9 December 1995 – the PIC-SB was created to act as 'the executive arm of the PIC' (OHR 2006). The PIC-SB is convened by the HR once every week in Sarajevo at the level of Ambassadors. The PIC-SB gathers at the level of Political Directors every three months in average. Most of these meetings take place in Brussels. Apart from defining the key role of the PIC-SB, the London 1995 Conference provided an occasion to debate four main areas of the upcoming peace implementation process in post-war BiH: coordination mechanism, humanitarian assistance, political sector (including vote monitoring), and assistance for rehabilitation.

<sup>17</sup> Interview with José L. Sanchez Alegre, DG Enlargement - EU Commission (Brussels, 4 June 2007).

<sup>18</sup> Interview with Counselor Lars Schmidt, Swedish Permanent Mission to the EU and member of the COWEB (Brussels, 22 May 2007).

<sup>19</sup> For further details on the handover between NATO and the EU, see Eichberg (2004b: 27-34).

<sup>20</sup> During the Ottoman Empire, the Viziers were representatives of the Sultan in the provinces of the Empire. The 'Grand Vizier' was instead serving in Istanbul as sort of Prime Minister.

<sup>21</sup> The ICTY sentenced Biljana Plavšić to eleven years in prison for war crimes (ICTY 2003).

<sup>22</sup> Interview with a former OHR official, employed at the OHR legal office in 1998-1999 (Sarajevo, 11 June 2008).

<sup>23</sup> Interview with Tobias Flessemkemper, EUPM (Sarajevo, 21 November 2007).

<sup>24</sup> Interview with Stephen Simosas, DG Enlargement - EU Commission (Brussels, 11 November 2007).

<sup>25</sup> For a detailed analysis of the institutions, the procedures and the balances designed at Dayton for the Bosnian state, see Ridinò (2001: 125-132).

<sup>26</sup> For further information, see [http://ec.europa.eu/world/enp/index\\_en.htm](http://ec.europa.eu/world/enp/index_en.htm)



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<sup>27</sup> Interview with Steve Lee, OSCE Mission to BiH and chair of the Ottawa sessions of the ICISS (Sarajevo, 22 June 2007).

<sup>28</sup> For further information, see <http://www.ardanw.org/>

<sup>29</sup> For further information, see <http://www.nerda.ba/>

<sup>30</sup> For further information, see <http://www.redah.ba/>

<sup>31</sup> For further information, see <http://www.rez.ba/>

<sup>32</sup> For further information, see <http://www.serda.ba/>

<sup>33</sup> Interview with Maja Lolić, Office of the Bosnian EU SAA Negotiator (Protaras - Cyprus, 22 April 2007).

<sup>34</sup> Interview with Šukrja Bakšić, University of Sarajevo - Faculty of Law (Sarajevo, 26 June 2007).

<sup>35</sup> Formulas like the one above are encompassed in the program and the rhetoric of the RS premier's party, the Alliance of Independent Social Democrats (SNSD), but are made explicit also by other political groups. For instance, the Party of Democratic Progress (PDP, founded by and still run under the guidance of Dragan Ivanić) identified the motto "Europe, the house of the future" as first pillar of its strategy. Commenting on this choice, a member of the party's executive board admitted: "The first point of our new strategy makes explicit what is actually clear since 1999, which was the beginning of our activity. We defined ourselves as an 'EU-party', whose main objective is the integration of RS and BiH into European networks and the EU". Interview with Dusko Maslesa, Party of Democratic Progress (Sarajevo, 22 June 2007).

<sup>36</sup> Started in April 1992, the siege of Sarajevo by the Serb militias was ended in February 1996.

<sup>37</sup> The report, adopted by the Venice Commission at its 62<sup>nd</sup> plenary session, was drafted by five rapporteurs: Mr. J. Helgesen (Member, Norway), Mr. J. Jowell (Member, United Kingdom), Mr. G. Malinverni (Member, Switzerland), Mr. J. C. Scholsem (Member, Belgium), and Mr. K. Tuori (Member, Finland).

<sup>38</sup> For further information on the issue, cf. Chapter III section 4.2.

<sup>39</sup> These interviews have been conducted in Brussels and in BiH. The list of interviewees includes both permanent staff and seconded personnel at the Brussels offices of the EU Commission and Council; diplomats from the member states employed at their respective national permanent missions to the EU and serving in the COWEB (the committee that prepares the work of the COREPER on the Western Balkans); officers employed at the various EU offices in BiH, at the OSCE Mission to BiH, and at the OHR/EUSR; members of the European Parliament (MEPs).

<sup>40</sup> Interview with an Official from the EU Council Policy Unit (Brussels, 22 May 2007).

<sup>41</sup> Interview with Counselor Lars Schmidt, Swedish Permanent Mission to the EU and member of the COWEB (Brussels, 22 May 2007).

<sup>42</sup> Interview with Stephen Simosas, DG Enlargement - EU Commission (Brussels, 8 June 2007).

<sup>43</sup> Sepp Kusstatscher (MEP), 9<sup>th</sup> EP-BiH Inter-parliamentary Meeting (Brussels, 28 June 2007).

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<sup>44</sup> For further details on the various steps listed in the EU Road Map for BiH, see <http://www.ceps.be/files/ESF/Monitor11.php>

<sup>45</sup> On the handover between the EU and NATO, see Alic (2004: 28-34), Eichberg and Venneri (2004b).

<sup>46</sup> At present, the EC delegation to BiH involves the work of over 100 officers, and it has thus become one of the largest EC missions abroad. For further details, see <http://www.delbih.ec.europa.eu/>

<sup>47</sup> Some interesting consideration on the OHR/EUSR can be found in Recchia (2007).

<sup>48</sup> On the methodology employed by The Dayton Project, see Hayden (2006).

<sup>49</sup> Interview with an Official of the DG Enlargement - EU Commission (Brussels, 8 June 2007). The SAP was officially launched in November 2000 at the Zagreb Summit.

<sup>50</sup> Interview with Luca Gori, Italian Permanent Representation to the EU (Brussels, 26 March 2007).

<sup>51</sup> Interview with Michael Aldaya, EU Commission – DG Enlargement (Brussels, 24 September 2007).

<sup>52</sup> According to an Italian diplomat: ‘if the EU has not had yet any role with regards to the Constitutional debate in Bosnia this can be understood by looking at the attitude of the Commission. At the very beginning, the Commission was particularly reluctant to think that it might have had some kind of interference with regards to the Bosnian constitutional debate; even the mere possibility of acting to facilitate the talks was seen as a task falling outside the possibility, the powers, and the intensions of the Commission. The constitutional restructuring of the Bosnian state is not seen as essential *per se*, what is truly essential for the Commission in particular is that reform for a more functional state takes place through the SAP’. Interview with Luca Gori, Italian Permanent Mission to the EU (Brussels, 26 March 2007).

<sup>53</sup> Interview with Doris Pack, MEP (Brussels, 7 July 2007).

<sup>54</sup> For some interesting information on Lajčák’s background and nomination as EUSR/HR, see (Alic 2007)

<sup>55</sup> Interview with an official from the EUSR legal department (Sarajevo, 26 June 2007).

<sup>56</sup> The following analysis has been developed by monitoring since early 2007 the work of the EP Foreign Affairs Committee, its Sub-Committee on Security and Defence, the Delegation for SEE, as well as the preparatory work and final 9<sup>th</sup> EP-Bosnia and Herzegovina Interparliamentary Meeting.

<sup>57</sup> Doris Pack (MEP), 9<sup>th</sup> EP-BiH Inter-parliamentary Meeting, Brussels (June 28, 2007).

<sup>58</sup> Hannes Swoboda (MEP), 9<sup>th</sup> EP-BiH Inter-parliamentary Meeting, Brussels (June 28, 2007).

<sup>59</sup> Ivo Miro Jović (Bosnian MP, member of the HDZ, first vice-president of the Joint Committee for European Integration of the Bosnian Parliament), 9<sup>th</sup> EP-BiH Inter-parliamentary Meeting, Brussels (June 28, 2007).

<sup>60</sup> Interview with a senior US diplomat, serving at the political section of the US Embassy to BiH in 2005 (Rome, 12 November 2009).

<sup>61</sup> Amb. Donald S. Hays was Deputy High-Representative for almost four years, precisely between July 2001 and March 2005.

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<sup>62</sup> Interview with a senior US diplomat, serving at the political section of the US Embassy to BiH in 2005 (Rome, 12 November 2009).

<sup>63</sup> A more detailed analysis of the content of the April Package has been made by Roberto Belloni (2007: 54-58) and, more recently, by Jens Woelk (2008: 241-53).

<sup>64</sup> Interview with a senior US diplomat, serving at the political section of the US Embassy to BiH in 2005 (Rome, 12 November 2009).

<sup>65</sup> Interview with Fabrizio Di Michele, Italian Permanent Mission to the EU (Brussels, 1 October 2007).

<sup>66</sup> Reference to this last mediation is provided in section 3.3.

<sup>67</sup> It is important to stress that, between these two extremes, Tihčić launched the proposal to reduce entity voting only to the competences shared at state level.

<sup>68</sup> Dirk Lange is Head of Unit C1 - Albania, Bosnia & Herzegovina at the DG Enlargement of the EC.

<sup>69</sup> Interview with an Official from the EUSR legal department (Sarajevo, 26 June 2007).

<sup>70</sup> Apart from Sarajevo, Vice-President Biden actually made a broader tour of the Western Balkans on May 19-21, and he also visited Belgrade and Pristina.

<sup>71</sup> The organization of retreats to push Bosnian political leaders to reach consensus on key reform processes is not new. This tradition was inaugurated in 2003, in the weeks that preceded the EU/Western Balkans Thessaloniki Summit. In April of that year, the representatives of the International Community in BiH gathered with local party leaders, governmental officials and MPs in the city of Bjelasnica for a two-day retreat (cf. Chapter III, section 2). The main outcome of the meeting was a declaration on key reform and a 'wish list' sent to the attention of the EU in view of the Thessaloniki initiative (OHR 2003b).

<sup>72</sup> E-mail communication to the author from a EUSR Official (15 September 2009).

<sup>73</sup> The paragraph dedicated to this issue proceeds as follow: 'The Court observes that in order to be eligible to stand for election to the House of Peoples of Bosnia and Herzegovina, one has to declare affiliation with a "constituent people". The applicants, who describe themselves to be of Roma and Jewish origin respectively and who do not wish to declare affiliation with a "constituent people", are, as a result, excluded (see paragraph 11 above). The Court notes that this exclusion rule pursued at least one aim which is broadly compatible with the general objectives of the Convention, as reflected in the Preamble to the Convention, namely the restoration of peace. When the impugned constitutional provisions were put in place a very fragile cease-fire was in effect on the ground. The provisions were designed to end a brutal conflict marked by genocide and "ethnic cleansing". The nature of the conflict was such that the approval of the "constituent peoples" (namely, the Bosniaks, Croats and Serbs) was necessary to ensure peace. This could explain, without necessarily justifying, the absence of representatives of the other communities (such as local Roma and Jewish communities) at the peace negotiations and the participants' preoccupation with effective equality between the "constituent peoples" in the post-conflict society' (ECtHR 2009: §45).

<sup>74</sup> It was not by chance that the exercise was undertaken under the Swedish Presidency of the EU, with Carl Bildt, former HR, playing all his diplomatic cards in Brussels to bring BiH among the top priorities of the EU agenda.

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<sup>75</sup> Paul Szasz was a legal expert with a fifty-year experience in several UN institutions, agencies and field missions (these include: IAEA, IFAD, UNIDO and the UN Legal Department in New York) and the World Bank. Between 1992 and 1995, he served as legal adviser to SoS Cyrus R. Vance and Lord Owen and then played a key role in the preparation of the constitutional framework that was attached to the DPA.

<sup>76</sup> In this capacity, Amb. Botsan-Kharchenko was member of the ‘Troika for the negotiations on the future of Kosovo’ with the EU envoy the German diplomat Wolfgang Ischinger and the US representative Amb. Frank Wisner.

<sup>77</sup> The Bosnian team for the negotiation of the SAA was created at the end of 2005 and put under the guidance of Igor Davidovic, former BiH ambassador to Washington (Prienda 2005).

<sup>78</sup> For further details on the EU enlargement to SEE, see [http://ec.europa.eu/enlargement/potential-candidate-countries/bosnia\\_and\\_herzegovina/eu\\_bosnia\\_and\\_herzegovina\\_relations\\_en.htm](http://ec.europa.eu/enlargement/potential-candidate-countries/bosnia_and_herzegovina/eu_bosnia_and_herzegovina_relations_en.htm)

<sup>79</sup> A complete list of the actions undertaken in this specific field by the HR/EUSR in 2004 is available at <http://www.ohr.int/decisions/war-crimes-decs/archive.asp?m=&yr=2004>

<sup>80</sup> The details of this decisions are available at [http://www.ohr.int/decisions/war-crimes-decs/default.asp?content\\_id=32753](http://www.ohr.int/decisions/war-crimes-decs/default.asp?content_id=32753)

<sup>81</sup> The unification of the Bosnian army and the creation of a defense ministry at state level are considered as one of the most important successes achieved during the tenure of Paddy Ashdown. However, it should be noticed that the old armies still exist at regimental level as traditional units.

<sup>82</sup> Article 2 of Ashdown’s decision listed the auspices of the police reform: ‘The Commission shall fulfil its mandate in accordance with the following principles: 1. Ensuring that policing in Bosnia and Herzegovina is structured in an efficient and effective manner; 2. Ensuring that the Institutions of Bosnia and Herzegovina are able to carry out fully and effectively their law enforcement responsibilities; 3. Ensuring that policing in Bosnia and Herzegovina is cost-effective and financially sustainable; 4. Ensuring that policing staffing levels and conditions in Bosnia and Herzegovina are in line with European best practice and cognizant of prevailing social factors; 5. Ensuring that policing in Bosnia and Herzegovina generally reflects the ethnic structure of the population of Bosnia and Herzegovina; 6. Ensuring that policing in Bosnia and Herzegovina is adequately protected from improper political interference; 7. Ensuring that policing will be discharged in accordance with democratic values, international human rights standards and best European practices; 8. Ensuring that policing will be delivered through inclusive partnership with the community and civil society; 9. Ensuring that policing will be discharged within a clear framework of accountability to the law and the community; 10. Ensuring that the effective capacity to investigate war crimes is guaranteed throughout the entire territory of Bosnia and Herzegovina; 11. Ensuring the examinations of necessary linkages to broader justice system matters; 12. Ensuring that Bosnia and Herzegovina as a state can effectively participate as a partner with other EU states in common actions, planning and operations on internal affairs matters’.

<sup>83</sup> Interview with an Official from the OSCE (Sarajevo, 11 November 2007).

<sup>84</sup> Interview with Ms. Anna Ibrisagic, MEP (Brussels, 3 October 2007).

<sup>85</sup> The acronym SBiH indicates the Party for Bosnia and Herzegovina (*Stranka Za Bosnu i Hercegovinu*), which is guided by the Bosniak leader Haris Silajdžić. SNSD or Alliance of Independent Social Democrats (*Savez Nezavisnih Socijaldemokrata*) is guided by the Bosnian Serb Prime Minister of RS Milorad Dodik.

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<sup>86</sup> Interview with a diplomat serving in the COWEB, Ms. Nadine Athanassiadou, Permanent Representation of Greece to the EU (Brussels, 21 September 2007).

<sup>87</sup> Interview with Giulio Zanni, Political Adviser and Acting Head Political Economic Section at the EC Delegation to Bosnia (Sarajevo, 14 November 2007).

<sup>88</sup> Unofficial translation from the TV broadcast of the ceremony.

<sup>89</sup> The Srpski/Bosanski Brod oil refinery had been seriously damaged at wartimes. First re-opened on May 2000, the refinery started to produce lead-free gas and euro-diesel in mid-2004.

<sup>90</sup> The whole text appeared on the OHR website proceeds as follows. ‘Myth One: Police restructuring is a step towards abolishing the Entities. Fact: No it isn’t. Police re-structuring is only about establishing a professional police service and will not abolish the Entities. There is no plan to abolish the Entities. Myth Two: Police restructuring will abolish the RS Ministry of Interior. Fact: No. There is nothing being proposed that requires the abolition of the RS Ministry of Interior. Anyone who says this is mistaken. Myth Three: The High Representative will impose police restructuring. Fact: No. He won’t and can’t. It will be up to BiH’s leaders to decide whether to give their agreement. However, police restructuring is an EU requirement: if political leaders say no to it, they will say no to the EU. Myth Four: It means centralizing policing in Sarajevo. Fact: No. Police restructuring will have decentralized local police services responsible for your local area. To help protect local interests, your local area will have its own Community Oversight Council. Also, as with the ITA, there is no reason the location of the new local police service must be in Sarajevo. Myth Five: There are no EU requirements for police reform. Fact: Not true. The EU has said clearly that BiH must adopt police restructuring if it is to move forward towards the EU. The 3 key principles must be adhered to and the Police Restructuring Commission report is one way to do this’.

<sup>91</sup> One of the founders of the Party of Democratic Action (SDA), Sulejman Tihić served from October 2002 until end 2006 as Bosniak representative in the tripartite presidency of the country.

<sup>92</sup> Interview with Ms. Sladjana Pantelić, Permanent Mission of The Netherlands to the EU, Member of the COWEB (Brussels, 17 December 2007).

<sup>93</sup> The Italian politician Franco Frattini was then the EU Commissioner for Justice, Freedom and Security and vice-President of the European Commission.

<sup>94</sup> The Decalogue proceeds as follows: (1) Police restructuring will make police accountable to the citizen first not to politics. (2) Police restructuring will make BiH safer for citizens, tougher for criminals. (3) Police restructuring will *get rid of the barriers that help criminals and hinder the police*. (4) Police restructuring will *cut bureaucracy and beef up crime fighting*. (5) Police restructuring will *rationalize the use of scarce resources*. (6) Police restructuring will *give the police modern equipment to fight crime*. (7) Police restructuring is a *European Union requirement*. (8) Without police restructuring, there will be *no change in European visa requirements for BiH citizens*. (9) Police restructuring will mean *new career opportunities for police officers across BiH*. (10) Police restructuring will mean *that a police officer will receive the same pay for the same job anywhere in BiH*. Police restructuring is common sense.

<sup>95</sup> The laws have been published on the ‘Official Gazette of Bosnia and Herzegovina’, 36/08.

<sup>96</sup> Interview with an Official from the EUSR (Sarajevo, 12 June 2008).

<sup>97</sup> Interview with Gen. Vincenzo Coppola (Sarajevo, 12 June 2008).

<sup>98</sup> Interview with Tobias Flessemkemper, EUPM (Sarajevo, 21 November 2007).

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<sup>99</sup> For instance, meeting the members of the BiH SAA negotiation team, it was no surprise to find out that the majority of them had received advanced university education in western European universities (particularly at the EU-funded College of Europe).

<sup>100</sup> This French adjective is used by constitutional historians to refer to a custom in XVIII and early XIX century Europe, whereby self-professed enlightened kings conceded as a favour, in a top-down manner, constitutional schemes to the people they ruled.

<sup>101</sup> In 1991, when confronted by the breaking-up of Yugoslavia, Jacques Poos, foreign minister of Luxembourg then holding the EU Presidency, made the unfortunate prediction that ‘the hour of Europe’ had eventually come.