

Chapter 5

The Police Reform in Bosnia and Herzegovina

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Introduction

The Dayton Peace Agreement (DPA) signed in Paris on 14 December 1995 put an end to the ethnic conflict that erupted almost four years before when President Alija Izetbegovic declared independence for Bosnia and Herzegovina on 29 February 1992.¹ The brokered peace agreement partitioned the country into two strong units, called the Entities – the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (hereafter Federation) - with only weak institutions at the national state level. The Republika Srpska adopted a central constitutional model, while the Federation's decentralized constitution was based on the Swiss example and instituted ten cantons with large portfolios of public policies. The origin of the Federation's constitution was an earlier agreement signed in Washington on 1 March 1994 that ended the war between the Croats and the Bosniaks. The Dayton Agreement contained 11 annexes, instituting a large set of mechanisms from the Bosnian constitution to the supervision and coordination of the implementation of the Agreement, return of refugees, elections, and reform in many sectors, including the police.

¹ I would like to acknowledge the input I benefited from Lt. Col. of Carabinieri Luigi Bruno, Chief of Programme Development and Coordination Department at EUPM, who commented on an earlier draft of this paper, as well as from the participants at the workshop of the Security Sector Reform Working Group organized by the Geneva Centre for the Democratic Control of Armed Forces in Budapest, December 1-3 2004.

The Main Actors of the Policing Reform

The main actors of the policing reform process instituted by Dayton were the local authorities themselves, the United Nations International Police Task Force, the NATO-led troops, and the Office of the High Representative. Their respective roles, positions, and visibility, even identity, in the policing reform process have changed over the years. Let us introduce them briefly.

During and immediately after the war the police were organized in parallel structures along ethnic lines in Bosnia and Herzegovina. These lines were also territorial after the internal displacement and wave of refugees of over 1.2 million persons. The Croats controlled the Western part which they called the Croatian Republic of Herzeg-Bosna. The Serbian police had their headquarters in Pale, while the Bosniak police force was based in Sarajevo and controlled the districts of Central Bosnia (Palmer 2004a: 176). The police were further under the influence of the intelligence services and operated as a tool in the service of the political regime via the respective Ministers of the Interior. The DPA, with the new constitution, created a totally new policing system. A crucial decision of Dayton was to fully decentralize the order-producing power, namely policing, to the territories in Bosnia. No policing competencies were created at the national level. Policing was delegated to the Entities and, in the Federation, mainly to the cantons. In a later international arbitration, the autonomous district of Brcko was created with its own police force. This created 13 autonomous law enforcement agencies: 1 unique centralized police force in the RS within the Ministry of Interior with headquarter in Banja Luka, the capital of the RS; 1 federal police force in the Federation with limited competencies for complex and organized crimes, inter-cantonal crimes, anti-terrorism and VIP protection; 10 cantonal police agencies with most policing competencies; 1 district police force in the about 100,000-inhabitants-large district of Brcko with Entity-like policing competences. Later on during the mission, as part of the police reform, new law enforcement agencies were created at the state level: the State Border Service (border guards) in 2000, the Court polices, an Interpol office, and recently, a judicial police (the SIPA or State Investigation and Protection Agency).

All these new national agencies, with the exception of the court police organizations, have been integrated in the 2004-created Ministry of Public Security at the state level.

The United Nations Mission in Bosnia and Herzegovina (UNMIBH) started the implementation of annex 11 of the DPA with the creation of the International Police Task Force (IPTF) to implement the CIVPOL tasks listed in Annex 11 of the DPA. These tasks were essentially monitoring and inspecting, training as well as advising the local enforcement agencies, while the IPTF was expected to work in accordance with “internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms” (Annex 11). The DPA stated that the IPTF would be headed by a commissioner who would report to the High Representative² as well as the Secretary-General of the United Nations (who created a position of Special Representative of the Secretary-General in Bosnia and Herzegovina). The IPTF, which was ultimately created by a UN resolution, was 1,721 strong and, subsequently via several UN resolutions which gave the IPTF additional tasks, became a 2,057-large CIVPOL mission. The IPTF mission lasted until 31 December 2002 when it was replaced by the European Union Police Mission with an initial three-year mandate.

The NATO Implementation Force (IFOR) was tasked by Dayton to implement the military aspects of the Agreement contained in annex 1A. The 60,000-strong force IFOR had a one-year mandate and was replaced in December 1996 by the follow-up NATO-led troop organization, the Stabilization Force (SFOR), who maintained initially 32,000 troops in BiH. At the end of 2004, the SFOR was replaced by a 7,000-strong European Union military force (EUFOR).

The last crucial actor for the policing reform was the High Representative (HR) who represented the Peace Implementation

² Article 2, par. 4 of Annex 11. During the IPTF period, however, it seems that the Commissioner “reported” to the SRSG and “worked closely” with the HR (see the contribution of General Vincent Coeurderoy in this volume).

Council, the PIC,³ and was tasked with overseeing the implementation and coordinating the civilian aspects of the DPA. The High Representative's role in the implementation, as we will see below, was significantly reinforced in December 1997 when it was asked by the PIC to exercise its "final authority" in matters regarding the implementation.⁴ On 1 January 2003, the HR was designated with an additional function as special representative of the European Union in Bosnia and Herzegovina giving him even more leverage on the EUPM and the EU funding for the police reform.

The Agenda and Levels of Interventions

For the discussion of the evolution of the CIVPOL mission in Bosnia, for each phase that I identified I will present the main agenda of the phase as well as the levels of intervention. For analytical purposes, I will distinguish between three levels of interventions: the micro, the meso and the macro levels. Micro interventions deal with individuals. A training project deals with individual capacity and is therefore a micro-level project. The meso level is the level of the organization. A reorganization project dealing with the internal structure of a police force for example is considered here to be a meso-level project. Macro-level projects are projects that deal with organizations at the state level and with inter-organizational projects. A "restructuring project" as long as it redistributes competencies between the various levels of government is a macro-level project.

This distinction will be useful to structure the phases of the CIVPOL mission in Bosnia. I will argue that after a first phase during which the CIVPOL classically monitored the situation during the first year of implementation of Dayton, reforms in the police commenced with micro-level programs. In the second phase, the mission became increasingly concerned with the meso level of the law enforcement

³ The PIC is a group of 55 countries and international organizations that "sponsor and direct the peace implementation process" and the HR is nominated by the steering board of the PIC.

⁴ See the conclusions of the Bonn Conference of the PIC (http://www.ohr.int/pic/default.asp?content_id=5182)

agencies while, in the last phase, starting on 1 January 2003 with the transfer of the mission to EUPM, a large program commenced at the macro level. There is, however, nothing natural or nicely planned in this evolution from the micro to the macro. Instead, it has been mostly the result of the evolution of a combination of factors that were peculiar to the BiH situation. Three factors seem to have had a crucial importance to “explain” the evolution of the CIVPOL mission: the changing local political alliances or local power configuration, the interpretation of the Dayton mandate by the main international actors, and what I will call the “mission cycle”.

The local power configuration mattered since the IPTF received only a weak mandate and, according to annex 11 of the Dayton Agreement, the enforcement of the rule of law rested entirely upon the local actors. We will see, for instance, that a power struggle within the nationalist party in the RS during the years 1997-98 and the results of the November 1997 special elections in the RS and the 1998 general elections opened a window of opportunity for the UNMIBH to negotiate with the local authorities an agreement to reform the Republika Srpska police in December 1998.

The interpretation of their mandate by the main international actors of the security sector reform – the NATO troops (IFOR/SFOR), the UN-IPTF/EUPM, and the Office of the High Representative (OHR) – mattered also regarding the type of intervention taken by them. During the mission, there were considerable changes made by all actors in the interpretation of their own role and a change in one actor’s posture obviously had an impact on the other actors involved in security sector reform. One example is certainly the support granted by the Peace Implementation Council to the High Representative’s stronger interpretation of his own mandate, moving from a coordinating role to a “final decision” function in December 1997. This decision allowed the OHR to remove from public office officials who violated the law and the implementation of the DPA as well as to impose “laws as he sees fit if Bosnia and Herzegovina’s legislative bodies fail to do so.”⁵ This led to

⁵ See OHR description of its mandate: <http://www.ohr.int/ohr-info/gen-info/#pic>

many authoritative decisions by the HR and opened the door for a more assertive program by the IPTF in the internal reorganization of the police forces.

The interpretation by an actor of its own mandate is partially determined by what I would call an “agency style” or “agency culture”. Under the United Nations leadership, the IPTF has remained “legalist”, looking at the Dayton Peace Agreement as a ceiling, and focused on local “ownership” when it came to negotiating reform programs. It is less clear if one speaks of an agency style in the case of the EUPM. We will see that legalism, or, Daytonism and ownership issues have become less important in the latest stage after the EUPM took over the policing mandate and that the source of power of the OHR seems today to be represented less in the legal agreement of Dayton than in the politics of the great powers of the European Union which he started to represent officially on 1 January 2003.

Finally, an equally important factor is what could be called the “mission cycle”. The agenda varies depending on the position within the mission cycle. When the IPTF, as we will see, begun to accredit the 14 Law Enforcement Agencies in Bosnia, many observers believed that this move, which they considered came too early, was intended to crown the IPTF mission with a final glorious success before its handing to the European Union (Palmer 2004a). Even more to the point, I will argue that the recent changes in the agenda of the police reform at the macro level, which is dominant during the EUPM phase of the mission, is due in large part to the search by all actors for an exit strategy and a general sense that the implementation of Dayton is approaching an end. The notion of financial viability or sustainability in a mission cycle end is becoming almost obsessive and it has had a considerable influence on the current reforms under way in the public security sector in Bosnia and Herzegovina.

The First Phase: the Public Order Security Gap⁶

In the immediate post-Dayton Agreement period, a number of events (elections, transfer of authority of 5 Serbian suburbs to the Federation side of Sarajevo, the resettlement of Moslems to strategic locations in the Zone of Separation between the Entities, the return of refugees) were planned with a critical potential for escalation and other, unplanned, such as roadblocks mainly at the inter-entity line but also in the Croat controlled areas contravening Dayton, were going to seriously challenge the civilian police force – the IPTF.

An additional risk factor was the fact that the pace of the IPTF's deployment was relatively slow and that only 392 monitors were deployed in the first week of March 1996 when the transfer of the Serbian suburbs was starting (the problem has been identified as the "deployment gap"). The potentially escalating events, combined with the deployment gap and the fact that the CIVOL was unarmed and not entrusted with law enforcement capacities posed an extraordinary challenge to a CIVPOL mission. Indeed, the mandate received by the IPTF from annex 11 of the DPA only stipulated a mission with monitoring/inspection, training and advisory functions whereas the entire enforcement of the rule of law was maintained within the functioning police forces of the Parties.

A public order security gap arose clearly from the fact that the NATO troops and the IFOR also received a weak mandate. The "U.S. military wanted a crisp clean mandate which could be fulfilled within a year and could allow them to avoid either "mission creep" or involvement in any policing function." The first phobia stemmed from the 1993 debacle in Somalia and the second from disquiet over the otherwise successful intervention in Haiti in 1994." (ICG, 2002, p. 5). During the first months of the mission it became clear to the IPTF that the IFOR would indeed interpret their mandate as weak and deny being the "911" for IPTF emergencies, as put by Dziedzic and Bair (1998:24).

⁶ This section is based mainly on the account by Dziedzic and Bair 1998.

Even if there were formal mechanisms of information exchange between the IFOR, the Office of the High Representative and the IPTF with the Joint Civilian Commission and a Joint Consultative Committee, the High Representative, which under annex 10 of Dayton had the mandate to coordinate all civilian aspects of Dayton, had “no authority over the IFOR nor could he or she interfere in the conduct of military operations or the IFOR’s chain of command.” (Annex 10).

The public order gap was narrowed down in size with the subsequent SFOR and the routinization of support to the IPTF. After a few months into the mission, the IFOR became more supportive of the IPTF and important events, such as the 1996 election, were jointly planned by the OSCE, the IPTF and the IFOR. The elections were a crucial test for the IPTF and the mission in general.

The task of the international community was facilitated by the fact that the nationalists were supporting the electoral process looking for legitimization by the electoral victory they expected.

Later on, as previously mentioned, support mechanisms would be routinized with the IFOR follow-up NATO mission, the Stabilization Force (SFOR), to ensure freedom of movement and the dismantling of police roadblocks for instance. Roadblocks and checkpoints were in general forbidden by the IPTF, but were nevertheless often conducted along the inter-entity line. The SFOR provided assistance to the IPTF to dismantle them when persuasion did not work. The SFOR also conducted regular inspections on the special police forces in the RS confiscating illegal weapons and equipment. Later in the mandate, the SFOR also conducted operations to search criminals wanted by the International Tribunal for War Crimes.

Two innovations established during the mission were significant in closing the public order security gap. Dziedzic and Bair stress the importance of the civilian affairs specialists in the early phase who were detached to the IPTF by the IFOR to plan contingencies, assure the link between the two agencies and insure the logistical support the IPTF crucially needed in its deployment phase.

The second linkage was the creation on 2 August 1998 of the Multinational Specialized Unit (MSU) within the SFOR. The MSU is an innovation of the Bosnian peacekeeping mission. It consists exclusively of police forces with armed force status (gendarmerie, carabinieri, guardia civil, etc.), is an integral part of the SFOR, and was conceived to take on large public order tasks. The MSU was originally deployed in preparation for the second national elections of October 1988 and was believed to be the best tool to bridge the public order gap identified during the first phase of the mission. Lutterbacher mentions that the MSUs seem to have been used relatively rarely, but their significance was considered to be important since they were adopted by the Kosovo mission and, with the transfer of the SFOR to the European Union by the end of 2004, the MSU would become an integral part of the new force under the new name of Integrated Police Unit. Currently, it has 600 personnel from Italy, Hungary, Romania, and Slovenia.⁷

The Second Phase: Democratization Phase, Confidence-Building, and Personal Integrity

As IFOR's one-year mandate of implementing peace came to an end on 20 December 1996, the follow-up NATO organization, SFOR, took over the implementation of Dayton military aspects with a new emphasis on peace consolidation. The SFOR mandate is anchored in the UN Resolution 1088 of 12 December 1996. The number of troops was cut by almost half to arrive at 32,000. At the same time, the same UN Resolution 1088 reinforced the mandate of the IPTF by the significant task to investigate or assist investigation on human rights abuses committed by local law enforcement personnel. This resolution, and the subsequent UN resolutions that increased the number of IPTF personnel from an initial 1,721 to about 2,057, manifested in fact an important change of focus of the IPTF mission after one year of mainly monitoring activities.

⁷ <http://www.nato.int/sfor/factsheet/msu/t040809a.htm>

The second phase did not start at the same time in both Entities. In the Federation, it was facilitated by the signing of the Bonn-Petersberg agreement between the UNMIBH and the Federation on 25 April 1996. The December 1988 Framework agreement with the RS allowed the program to start in the RS over two years later.

During the war, the lines between the police and the military were fluid. The police forces had contributed to the protection of cities throughout the conflict but were also involved in ethnic cleansing. They had grown to an estimated force of 45,000 altogether, corresponding to about 1 police officer per 75 inhabitants. Police forces were entirely mono-ethnic. The Bonn-Petersberg agreement's strategic objective was to transform the police in the Federation into a force trusted by the public. Its approach was mainly a bottom-up approach via measures that would bring democratic practices to the police patrol level. The Agreement entailed provisions for a significant reduction of the forces (from 32,750 to 11,500), minority quotas based on the 1991 census and recruitment, one uniform for the whole police force in the Federation, the adoption of a code of conduct, and the initiation of a vetting process.

The core issue throughout this phase was the vetting process of the police forces. UNMIBH created a certification process with three stages: the first stage was the registration of all personnel with law enforcement power; the second stage was the screening of personnel which were to pass a number of conditions in order to be provisionally authorized; provisionally authorized personnel were issued a UNMIBH ID card which they were required to wear on duty; in the last stage for final authorization personnel were required to meet a number of standards in order to qualify for service in a democratic police force.

This process of increasing the quality of the authorized officers and removing inappropriate personnel was accompanied by numerous training courses organized by the IPTF and other agencies with bilateral programs. Despite the fact that the IPTF created a function of donor aid coordinator, bilateral programs, including those of the Council of Europe, were mostly uncoordinated. Moreover, while a database was created to register authorized personnel, this database was not used to

register the courses that each police officer attended. Still in 2003, no such database existed. A survey conducted by the police academy of Sarajevo, at the occasion of a short course on the new penal code that all authorized officers of the Federation were attending during 2004, gave the following results: about 50% of all officers in the Federation had overall less than one month in training while only 10% had received basic police academy training.⁸

The Third Phase: Democratization of the Police Organizations

During this phase, which started in 1999 and lasted until the end of the IPTF mission on 31 December 2002, the emphasis of democratic reform shifted from the individual level to the organizational level and, this time, included the Republika Srpska. Two events were of critical importance in explaining the ability of the IPTF to commence the reform in the Republika Srpska on the one hand and to shift the emphasis of its core programs on the other.

In the RS, the internal political struggle within the nationalist party, SDS, between 1997 and 1998 offered an opportunity for the UNMIBH to overcome the years-long resistance to cooperation with the IPTF and broke an agreement with the moderates on 9 December 1998 that was similar to the April 1996 agreement with the Federation.⁹ The access to the Presidency of the RS by Biljana Plavsic opened a conflict with the hard-liners around Radovan Karadzic which culminated with the sacking of the Minister of the Interior, Kijac, in June 1997. Plavsic was supported by the international community. After the holding of special elections in November 1997 to replace the dissolved National Assembly of the RS, Plavsic was able to constitute a thin majority government. Dodik, who was regarded as a moderate by the international community, became prime minister in January 1998. This led the international community and the financial institutions to release the fundings to the RS that had been held back under the conditionality clause and,

⁸ These are unofficial figures from the survey.

⁹ This paragraph is partially based on the account by ICG report ("The Wages of Sins", 2001 p. 9).

importantly for the police reform, the Framework agreement with the RS in December 1998.

The second event that was of crucial importance for this new phase was the change in power configuration at the High Representative level. The High Representative's function in the implementation of the DPA was, indeed, significantly strengthened by the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding the interpretation of the Agreement on the civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary." This new authority was significant in its ability to exercise pressure on the local authorities to adopt far-reaching reforms and set the basis for the start of an important reorganization of the police forces according to democratic principles.

In January 1999, the IPTF published a strategy document clarifying what it meant by democratic policing. The strategy contained three axes: 1) more post-communist, post-paramilitary restructuring; 2) more rigorous training, selection, certification and de-certification procedures; and 3) more democratization by establishing de-politicised, impartial, accountable, and multinational police forces dedicated to the principles of community policing (ICG, 2002:7). While there was a continuation of the training efforts and the certification process,¹⁰ the emphasis of this phase was the reorganization of the police force in order to adjust it to the principles of democratic policing. The centre of gravity of the programs shifted from the individual level of integrity to the organizational level of integrity. The reform efforts that were at the forefront during this period were mainly concerned with the internal reorganization of the LEAs even though some projects were clearly also restructuring projects, the most important of these being the

¹⁰ By the end of 1997, the provisional certification process was finished for the Bosniak police in the Federation; beginning in 1998 it started with the Croatian side (ICG, 2002, 6) and, in 1999, commenced in the Republika Srpska.

establishment of the national State Border Police imposed by the High Representative.

The change of the IPTF's focus was reflected in the creation of the position of senior co-locators in the Ministries of the Interior at Entity, canton and PSC levels in 1999 (Palmer 2004b:4) and reinforced in 2001 with the new "manage the managers" project. The central piece of the democratization program at the organizational level was the so-called "police commissioner project". The idea was to create the position of police chief or police commissioner, within the police organograms, who would be responsible for all operational aspects of the police force while the role of the Minister of the Interior would be confined to the policy-making process. To ensure this depoliticization process, a mechanism of selection of the commissioners for a four-year period was set up marginalizing the influence of the Minister of the Interior. The police commissioner project obviously targeted the nationalists who traditionally "owned" the Ministry of Interior, and exercised considerable influence in the operational aspects of the police force. In addition, the project served in the canton of Mostar to integrate into a single chain of command the police which were still operating under separate ethnic lines of command.¹¹

A second important project was the complete reorganization of the forces and their formalization in rule books. The project was conducted mainly by the US Agency for Cooperation in the field of Justice (ICITAP). All LEAs were restructured according to one basic scheme and rule books were issued for each LEA specifying and describing the ToRs of all functions, the number of staff in the various functions, as well as the ranks of the personnel in each function.

The third significant project that commenced as the mission was closing, probably with the intention of sending a signal to the public that significant progress had been made towards the democratization of the forces, involved the IPTF's launching of an accreditation program of the 14 LEAs. The recommendation for improvement and the final

¹¹ Another project along this line involved the physical separation of the intelligence services and the police which often worked on the same premises.

accreditation were issued within one year in 12 areas of policing. The audit team, which was composed of organizational and financial specialists, commenced its work in the District of Brcko. The other 13 LEAs were subsequently audited individually and successively.

At the end of the democratization process initiated by the IPTF, there had been many palpable successes, especially in terms of impact. The level of street crimes and burglaries in BiH was lowered, particularly in comparison to regional levels; subjective security was relatively high, despite cases of ethnic riots. These cases remained exceptional. The Property Law, a fundamental basis for the return of refugees, was enacted and nearly completed in 2003 with its responsibility transferred to local governments. Refugees started to return at a high pace in 2000 and this continued in subsequent years. According to the UNHCR, over 1 million externally and internally displaced persons returned to their original place of residence in 2004. The democratization of the police has contributed to this process.

The Fourth Phase: Between State-Building and Sustainability under EU Influence

Despite all the achievements attributed to the EUPM's takeover of the police mission on 1 January 2003, many weaknesses in the police organizations and the police structure remained and came under increasing scrutiny. The 23-24 May 2000 meeting in Brussels of the PIC was the first to call for structural reforms with a clear state-building agenda.¹² This "national" agenda, as well as the search for an exit strategy, prompted the European Police Mission (EUPM) to bring the sustainability issue and state-building reforms centre-stage. In addition, this fourth phase which started on 1 January 2003 with the transfer of the CIVPOL mission from the United Nations to the European Union and the EUPM, brought a radically new logic with it. Dayton no longer constitutes the main source of power of the OHR; Brussels and the EU

¹² See ESI paper "Turning Point. The Brussels PIC Declaration and a state-building agenda for Bosnia and Herzegovina", 7 June 2000

do. The HR is at the same time High Representative of the PIC but also Special Representative of the EU in Bosnia and Herzegovina. This change opened the door to a new era of *realpolitik* in Bosnia by the EU and a departure from the “Daytonism” that had been predominant during the first three phases.

Stated in general terms, a major weakness that became obvious after the departure of the IPTF was the strong underdevelopment of all so-called support processes of the police forces. While the capacity-building cooperation programs had focused for many years on strengthening the operative police functions (traffic police, community policing, criminal investigation, public order, crowd control, etc.), almost nothing had been done to rehabilitate and develop the support functions of the police. Indeed, in comparison, little had been done in areas such as policy-planning, budgeting and human resources (carrier plans, selection, etc). Training had been an exception, with a large investment by the IPTF and other donor communities. Police academies had been entirely remodelled and courses were adapted to international good practices. However, typically, training for managers and other support functions had not been promoted by the IPTF.

This issue was recognised during the preparation phase of the EUPM mission. Consequently, the EUPM decided to keep the successful co-locator program but move it this time from the patrols to the senior officers’ positions. Thus, co-locators are currently positioned at the management level of police headquarters. Various kinds of specialists – such as financial officers - are also co-located within the respective function of the Ministries of the Interior. The profiles for CIVPOL officers required for the EUPM mission have been modified accordingly. An investment in these support processes is likely to bring with it productivity gains and will stimulate contributions to the current lack of sustainability of the police in BiH and, as I will discuss below, the importance of the problem and the size of the sustainability gap.

These managerial weaknesses are important, but they are “fixable”. They do not point towards a fundamental flaw in police reform in Bosnia. It is debatable as to whether they could or should have commenced earlier in

the mission. However, the next two weaknesses that I will stress are more structural in nature. By “structural”, I mean that they underline the fundamental limits of a reorganization strategy that is exclusively concentrating on democratic principles and the professionalization of the police. They probably also show the limits of the confederal model that was instituted by the Dayton Agreement. These weaknesses are made visible by two issues that are pregnant in the fourth phase: a) the current reorganization of the state-level judicial court (with a Chamber on organized crimes) and the perspective of a domestic trial capacity for war crimes are likely to be functional only with the full cooperation of the local police forces which, up to now, have had their limitations, b) the police forces in the country are a long way from being financially sustainable, they currently consume a very high percentage of the public budget, and part of the problem lies in the absence of binding coordination mechanisms that guarantee, for instance, interoperability between the LEAs, communication and exchange of information.

The limit to the police commissioner project or, more generally, to the democratic model of policing, lies in the politics itself of the confederal constitution. The “territorialisation” of policing that was instituted by Dayton constitutes a fundamental obstacle, given the local political realities, to the success of a fully professional model of police. In 2002, the nationalists made significant electoral gains and became the dominant party in their respective ethnic group. Despite the constant vigilance by the IPTF and EUPM and the pressures they exercised and continue to exercise on the various Ministers of the Interior to “keep” independent commissioners, it is obvious that police commissioners cannot always resist political influence.¹³ The ICG notes that “the apparent incompetence of the police is often a strategy to mask the influence of well-connected individuals and nationalist agendas.”¹⁴ What puts additional pressure on the need to strengthen the independence of police has been the recent creation of the State Court with Special Panels dealing with organized crime, economic crime and corruption

¹³ In addition, the organizational reform of the police and the Ministry of the Interior led by the IPTF failed to put the support services under the police commissioner’s authority. Instead, they remained under the direct authority of the Ministers of the Interior.

¹⁴ ICG, *Policing the police in Bosnia*, p. 2

(reinforced by the appointment by the OHR of an “international judge” supposed to bring competencies but also “independence”) as well as the plans to create a state-level domestic capacity for prosecuting war crimes.¹⁵ In order to avoid the nightmare of empty benches in these courts and given the obvious lack of enthusiasm of local police to arrest war criminals, the initial response by the OHR was to strengthen the State Information Police Agency (SIPA).

Indeed, it quickly became clear to the initiators of the SIPA project that this national Agency needed to have investigative capacity to investigate the crimes of the competence of the State Courts. The SIPA was later renamed State *Investigative* Protection Agency and its target strength is about 1,500 officers. The intention of this project is clearly to de-territorialize the investigative capacity as a way to circumvent the nationalists’ control of the Ministries of the Interior and the police at Entity or cantonal levels. This is the recognition of the limit of the strong version of the confederal model contained in the DPA. It might be the beginning, as I will argue below, of the recognition that policing cannot be territorialized or at least not entirely territorialized and a sign of a fundamental change of strategy by the OHR and the CIVPOL mission. An additional motive that is probably behind the deterritorialization of the fight against organized criminality is the belief that nationalism and organized crime nurture each other and only a non-nationalist-based institution can cut into the food chain.

In addition to this, the very fragmented policing structure in BiH and the current organization of the crime-fighting process within the LEAs are negatively affecting the performance of the fight against serious and organized crime. In BiH, the fight against crime is currently performed by 15 different agencies; tasks and competencies are distributed at 5 different administrative or governmental levels; there is currently no single police database - all this while the personnel is operating with very little training and poor salaries. There are many very important

¹⁵ See the program “state-level criminal justice institutions” of the 2004 Implementation Plan of the OHR. The War Crime Chamber is expected to hear cases as soon as in January 2005 and will be composed by local and international judges (see: “War Crime Chamber Project”, OHR publication, November 2004).

projects that have the potential to and will technically improve the situation. National databases are established for passports, residency permits and driving licenses (the OHR and ICITAP sponsored the so-called CIPS project). National police databases, allowing searches for vehicles and persons, are currently being built as well as the necessary electronic communication network. The latter project is financed by ICITAP and the EU CARDS program. But with all these projects which will aim at “integrating from below”, the crime-fighting process in Bosnia will be no guarantee that the relevant data will be input into these bases or that action will be taken when vital interests might be at stake in the respective territorial units of Bosnia and Herzegovina.

The other independent issue that is currently affecting the agenda of the EUPM is the lack of financial sustainability of the police forces. The financial viability of the Bosnian State has moved to the center of the agenda of the donors and financial institutions as they look today for an exit strategy after almost a decade of assistance. The financial viability of the police forces is a prime concern of the EUPM, who has a 3-year mandate, and is one of the four strategic areas of intervention in its strategic plan. It is also a prime objective of the OHR as stated in its mission statement: “To ensure that Bosnia and Herzegovina is a peaceful, viable state on course to European integration.”¹⁶ There are additional pressures for a viable state in Bosnia exercised by the EU who opened the door to Bosnia for a European future in its meeting in Feira in June 2000. Virtually all financial institutions and international organizations have set the goal of financial viability as the primary objective for Bosnia in the years to come.

The state, indeed, is not sustainable in BiH. The state budget accounts for 47% of GNP in 2002, which is a high figure in regional comparison. The police forces concur to this high spending situation by consuming 9.2% of the public budget (all levels of government aggregated). Again, in international comparison, this share is extremely high. In relative terms, this is three times higher than in Slovenia and about five times higher than in Europe on average. There are several additional features

¹⁶ OHR Mission Implementation Plan 2003/2004

to this financial problem that point towards the necessity of a radical restructuring of all police forces in BiH to make them more productive and less costly.

One of them is the unjustifiable disparity of police density in the various cantons of the Federation. The rural cantons, in general, have a higher police density than the urban cantons. This is not justifiable either with regard to the levels of criminality or with regard to the otherwise very weak financial capacity of the rural cantons. In several rural cantons,¹⁷ the police consume as much as 20% of the cantonal budget while in others they consume less than 10%. The police density for a mostly rural country is very high in regional and European Union comparison. There is currently 1 authorized officer per about 220 inhabitants and 1 officer per 150 if the support process personnel are included in the calculation.

A second crucial problem is that currently the quasi totality of the police budget is consumed by salaries (80%) and operating costs. There is no room in the already very high current budget for investment in the necessary technology to increase the performance of the police. Without a heavy restructuring program and a reduction of police officers, the international community will have to continue to finance virtually all investments in the police force for many years. Finally, the autonomy of the cantons and entity in procurement issues creates situations that are unacceptable in this financial context as well as for the performance of the fight against crime. Cantons purchase communication material or develop softwares for instance that are not compatible or interoperable with their neighbors' creating the conditions for a continuing weak performance of policing functions.

The prospect of empty benches in higher courts and the recognition that the territorial approaches to policing in Dayton have meant that there are many policing problems yet to be solved in this nationalist political environment. The limits experienced with the democratic and professional model of policing and the search for an exit strategy have prompted the High Representative to totally and fundamentally

¹⁷ Livno, Gorazde, Orasje, see EU Police Assessment Report, p. 87

reconsider the country's policing structure. On 2 July 2004, a Police Restructuring Commission (PRC) was established with the mission to propose "a single structure of policing for Bosnia and Herzegovina under the overall political oversight of a ministry or ministries in the Council of Ministers." The PRC is guided by 12 principles in its work. Most prominently among these principles appear four goals: efficiency, sustainability, multiculturalism, and accountability. The preliminary results of the PRC were made public on 15 December 2004. The new model proposed is a single structure model with two levels of policing: central services (SIPA, State Border Service, central support services) are regrouped at the central level while groupings of municipalities will be served by local polices supervised by a national director for local police.¹⁸

At this point, it should be reiterated that no federal countries in Europe have delegated the competencies to fight organized crimes to their territorial units and most of them, with the exception of Switzerland, have kept a public order operational capacity at the national level. The PRC proposal, however, goes more into the direction of a national police which is at odds with the current confederal institutional model of the country. The fate of the proposal remains to be seen, knowing that the HR can no longer rely on its powers granted by Dayton and the Security Council to impose a new law and that the national police model is likely to trigger strong resistances in the Republika Srpska and the Croat cantons. As special representative of the European Union, the HR has a powerful bargaining power if the adoption of the new model is declared to be a condition for advancing a European future in the current negotiations with the EU.

¹⁸ Bosnia and Herzegovina Police Restructuring Commission, Executive Summary, 15 December 2004

Conclusion

What has emerged from the CIVPOL mission in Bosnia and Herzegovina as a major paradox is the apparent contradiction between local ownership and state-building. The IPTF democratization strategy conceived Dayton as a ceiling. Its initiatives were constrained by the limits set by the DPA and its reform program has remained largely legalistic in this sense. Building on an agency style, the IPTF under the UN leadership has also often negotiated its reform programs. An example of this negotiation style is the fact that the IPTF initiated the reform in the Republika Srpska in 1998 only after the moderates gained influence in the RS government and agreed to negotiate with the international community. It is, however, true that this negotiating style lessened as the High Representative became more dominant in the process and as the state-building objective moved center-stage. Even so, however, Dayton remained viewed as the “ceiling” and the negotiated police reforms have continued to enjoy reasonable local support.

Since 1 January 2003, a new dynamic has been instilled into police reform in Bosnia and Herzegovina. The disappointment with progress in police reform, the continuous politicization of the police, the lack of successes and police cooperation in arresting war criminals and in curbing organized crime, the lack of financial sustainability, all these considerations have radicalized the approach of the OHR to police reform. Restructuring rather than reorganizing became the master frames of the OHR. State-building and rationalization became the panacea. They are the driving principles of the reform proposal issued by the Police Restructuring Commission that was commissioned by the OHR to design a new model of the policing system in Bosnia and Herzegovina. This reform is unlikely to be imposed by the OHR since it cannot be reasonably framed anymore as an implementation of Dayton and an authoritative decision in this respect would therefore lack a legal basis. Instead, the reform will need to be debated in the public sphere and the law will need to be passed by the national parliament. Since it is likely that it will be opposed by the Serbs and the Croats who will lose their traditional grip on policing, the fate of this proposal in the national parliament is uncertain. The police reform will, however, almost

certainly be included in the catalogue of conditions of the EU for advancing in the pre-negotiations over an adhesion. The police reform is likely to become a crucial test for the future of Bosnia and Herzegovina. It will also be a test of the capacity of the local actors to deal with the state-building agenda in a post-Dayton era.

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