

STATE-BUILDING IN BOSNIA: THE LIMITS OF 'INFORMAL TRUSTEESHIP'

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Abstract

Many commentators suggest that the transition to Bosnian ownership has been held back by the Dayton framework, which created a weak central state and a country divided into two separate Entities, the Republika Srpska and the Muslim-Croat Federation, with ten cantonal governments, as well as an autonomous region, Brcko. Ten years on, the idea that the post-war transition has been frustrated by a surfeit of Bosnian governing institutions, protected by their Dayton status, could not be further from the truth. Rather, the international powers of administration, under the Office of the High Representative, have been vastly increased, reducing the Bosnian institutions established by Dayton to administrative shells. There has been a transition away from Dayton, but this has been from the ad hoc regulatory controls of the self-selected 'coalition of the willing', the Peace Implementation Council, towards an expanded framework of European Union regulation, covering all aspects of the post-Dayton process. Dayton has created an 'informal trusteeship', with external institutions rewriting their mandates and powers. But despite the transformation in post-Dayton mechanisms, it is still too early to talk of any indications of a shift towards Bosnian 'ownership'.

Introduction

There is a consensus about Dayton – that is repeated so often it is virtually a mantra of international officials – that the 1995 peace agreement was a treaty 'designed to end a war, not to build a state' (for example, Ashdown, 2004; Denitch, 1996). Commentators regularly argue that Dayton was negotiated by the nationalist parties, whose leaders caused the war in the first place, and that it therefore secured the power of these ethnically-based political parties (for example, Kaldor, 1997: 28-30). Essentially, therefore, the political process since Dayton has been seen as 'the continuation of war by other means', in an inversion of Clausewitz's doctrine (Ashdown, 2004). The domestic political process in Bosnia is seen as illegitimate and fundamentally flawed. It is alleged that the numerous annexes and small print of the Dayton agreement have tied the hands of the international community and created a complex set of political institutions which stymie the building of a strong centralised state and continue to enable ethnically-based

political parties to dominate the policy-making process. Dayton and, by implication, the Bosnian voters and their representatives, in this reading, bear the responsibility for the weakness and lack of legitimacy of central state institutions and the failure of the state-building aspirations of Bosnia's international benefactors.

This article seeks to establish that this consensus is based on a myth and that the Dayton agreement has, in fact, created an 'informal trusteeship' which has made opaque the relations of authority and accountability. The framework created at Dayton was an extremely flexible one, which has enabled international actors, unaccountable to the people of Bosnia, to shape and reshape the agenda of post-war transition. The Bosnian experience, the ambiguity of the Dayton framework and the confusing 'dual regime' of elected governments and external overseers is highly relevant to current discussions of post-conflict state-building. There are increasingly vocal calls among academics and policy-advisors for the extension of similar forms of external management where, it is asserted, post-conflict state-building 'cannot be adequately addressed within the confines of conventional sovereignty' (Krasner, 2004: 1). For example, Robert Keohane (2002; 2003) suggests that 'regaining sovereignty need not be [the] long-term objective' for external state-builders; Stephen Krasner (2005) argues for experiments in 'shared sovereignty'; James Fearon and David Laitin (2004) have called for the establishment of 'neotrusteeships'; and the International Commission on the Balkans report, led by former Italian Prime Minister Giuliano Amato, has suggested new forms of 'guided sovereignty' for Yugoslav successor states such as Kosovo (ICB, 2005).

The study of Bosnia's experience of 'informal trusteeship' or 'shared sovereignty' – where international legal sovereignty exists without the rights of traditional or 'unconditional' sovereignty (see Krasner, 1999) – demonstrates some of the limitations of this approach to international state-building. Without the traditional rights of sovereignty there has been little need to politically engage Bosnian citizens in the post-conflict process of transition. The main transition which has taken place has been from the ad hoc policy-ownership of self-selected members of the Peace Implementation Council (PIC) to direct regulatory control under the aegis of the European Union (EU). This transition has taken place through informal and unaccountable mechanisms of external regulation, and has been imposed 'from above' without any debate or genuine involvement of the people or elected representatives of Bosnia.

The relations of 'informal trusteeship' have resulted in a situation where there is little accountability for the policy results of external rule. Formally, Bosnia is an independent state and not an international protectorate. The ambiguity between the formal international legal status of Bosnia and its de facto status, under international administration, has resulted in a discourse which pins the blame for the lack of post-conflict transition on Bosnian institutions, established under the Dayton settlement, and Bosnian voters and representatives. Focusing on the 'informal' relations of power and political influence allows a different picture to be drawn, which questions the common assumption that Bosnian political institutions have too much power and influence and the

conclusion that international administrative authority needs to be further strengthened. In fact, it is suggested here that the flexibility of external mechanisms of regulation has been a central factor in ‘sucking-out’ the capacity of Bosnia’s political institutions and undermining the legitimacy of the Bosnian state (see further, Fukuyama, 2004: 139ff; Ignatieff, 2003: 98-101).

The following section briefly considers the growing shift towards ‘informal trusteeship’ mechanisms of regulation in both post-conflict policy discussions and in international practice. There then follows an analysis of the origins of the Dayton agreement, after which the post-Dayton developments are briefly analysed in two stages. The first period is from 1995 to 1999, during which time the powers of the PIC High Representative were extended, but with little clear policy direction or end point for the ad hoc international administration. The second period, from 2000 to 2005, saw a gradual transformation of external regulative mechanisms under the leadership of the European Union, which laid a comprehensive framework for European ‘ownership’ of the post-Dayton process. Throughout both these periods, Bosnian input or ownership of the policy-making process has been little more than rhetorical. Dayton has provided the framework in which the external process of managing the post-Dayton peace has been transformed beyond recognition, while the population of Bosnia and their elected representatives have been marginalized from the political process and the elected bodies bypassed by the creation of new ad hoc mechanisms of direct and indirect EU interference.

Informal Trusteeship

If the twentieth century marked the extension of an inclusive international order based on equal rights of sovereignty, the twenty-first appears to be one where post-conflict states are increasingly excluded from the traditional rights and protections of international society. The United Nations (UN) Charter framework was based on pluralism: the acceptance that different political communities were entitled to reach their own agreement on how society should be organised. However, international regulation of post-conflict states reflects today’s broader anti-pluralist consensus which has focused on the state as a central international security concern. States are being judged according to their protection and enforcement of human rights, their political make-up, and the level of social provision and wealth distribution (Jackson, 2000; Bain, 2003). States which are considered to be suspect or to be on the ‘continuum of state failure’ are liable to demands that international institutions or external powers intervene to assist and ‘capacity-build’ them (see Straw, 2002). Resistance to these demands may well provoke further international pressure and calls for sanctions or more coercive forms of intervention (ICISS, 2001a: 23).

The influential International Commission on Intervention and State Sovereignty report (ICISS), *The Responsibility to Protect*, spells out that, in its view, ‘sovereignty then means accountability to two separate constituencies: internally, to one’s own population; and internationally, to the community of responsible states’ (ICISS, 2001b: 11). This shift in accountability clearly has major implications for sovereignty because a power which is accountable to another, external, body clearly lacks sovereign authority. As the Commission co-chairs note, this shift changes ‘the essence of sovereignty, from control to responsibility’ (Evans and Sahnoun, 2002: 101). Sovereign rights to political autonomy and self-government are now deemed to be conditional – not rights but privileges, granted on the basis that the state concerned is held to be acting in a ‘responsible’ manner by external powers.

While traditional rights of sovereignty have been undermined, states themselves have been at the centre of international security concerns. The hostility to sovereignty has rarely been reflected in critiques of the state form as such. This is because sovereignty and statehood are no longer seen to be codeterminous. Though post-conflict state-building may be at the top of the international security agenda, the states which are being capacity-built today have little relationship to states established in the past. Sovereignty has been partially suspended or delegated in states such as Cambodia, Bosnia, Kosovo and East Timor, Afghanistan and Iraq. Law and reality no longer coincide when considering the location of sovereign power and authority (Yannis, 2002: 1049). Bosnia is formally a sovereign state and member of the United Nations but, as we shall see below, there is nevertheless a question of where sovereignty lies: is it with the Bosnian government and people or with the international High Representative and the council which appointed him? Kosovo is, at the time of writing, formally part of the state of Serbia-Montenegro, but again there is an unresolved question regarding sovereignty over the province: does it lie with Belgrade, with the Kosovan government, or with the United Nations? Similarly, did the formal transfer of Iraqi sovereignty from the US-led Coalition Provisional Authority to an Iraqi government in June 2004 reflect any change in the real relations of authority? Bearing in mind the restrictions on their right to change existing legal regulations, to what extent does the Iraqi government have even formal political autonomy, the right to self-government (see Klein, 2005)?

While leading Western states are acquiring special privileges of hegemony other states are losing the basic rights of sovereignty. This transformation, from sovereign equality to a stratified hierarchy of states, is clearly expressed in the enlargement policy practices of the European Union. The 2005 report by the International Commission on the Balkans (ICB) recommends that the EU take over the direct management of the Balkan states rather than pursuing traditional external state-supporting policies and assistance (ICB, 2005). Bosnia is becoming a template for post-conflict international regulation, rather than an exception; and a similar process of ‘informal trusteeship’ is recommended for Kosovo with a suggested transition from the current UN-protectorate status (formal trusteeship) to ‘independence without full sovereignty’ – ‘independence’ which, while

reserving to the EU the core regulatory powers of the United Nations Mission in Kosovo (UNMIK) administration, frees the international state-builders from their formal accountability. The next stage for Kosovo is that of 'guided sovereignty', where EU leverage, as a formal 'partner', would be directed through the accession negotiations, with the final stage being that of 'shared sovereignty', when Kosovo claims EU membership (ICB, 2005: 18-23).

The International Commission report (ICB, 2005) argues that states without full sovereignty are the solution to the failure of the Balkan state-building projects. Rather than state-building, the EU will be doing 'member-state building' in the region – creating states which never have to confront the destabilising difficulties of 'unconditional sovereignty' (Keohane, 2002: 756). The Commission (ICB, 2005: 30; 38) argues that the EU is forced into this role by circumstances and 'has become a reluctant state-builder', having no choice other than state integration if it is to avoid 'allowing a black hole to emerge on the European periphery'. US liberal theorist Robert Keohane (2002: 756) argues that the EU has been the leading experimental force in developing new approaches to post-conflict state management, demonstrating 'that regaining sovereignty need not be one's long-term objective'. For Keohane (2002: 757), the EU can help the US avoid direct accountability for the outcomes of regime change – by blurring the location of sovereign power – preventing self-governing autonomy while maintaining the fiction of state independence:

The European experience suggests that the Afghans should not necessarily seek a sovereign Afghanistan to fight over among themselves. Instead, Afghans and their friends should try to design institutions for Afghanistan that would enable external authorities to maintain order...

Stephen Krasner (2004) argues that informal trusteeship, which he terms 'shared sovereignty', avoids the problems of short-termism implicit in transitional administrations, which promise the return to full sovereignty, as well as the accusations of colonialism, which would follow the development of formal trusteeships. Here, international legal sovereignty allows post-conflict states to enter into 'partnerships' which informally violate their sovereign rights:

For policy purposes, it would be best to refer to shared sovereignty as partnerships. This would more easily let policymakers engage in organized hypocrisy, saying one thing and doing another. Shared sovereignty or partnerships would allow political leaders to embrace sovereignty, since these arrangements would be legitimated by the target state's international legal sovereignty, while at the same time violating autonomy, the core principle of [traditional] sovereignty... It would allow actors to obfuscate the fact that their behaviour would be inconsistent with their principles (Krasner, 2004: 24).

As will be demonstrated below, the Dayton agreement provides an important example of ‘shared sovereignty’ in practice – an indeterminate extension of external regulation and the denial of political autonomy by voluntary agreement. However, the obfuscation of the relations of power and authority involved in this process of ‘informal trusteeship’ has meant that nearly all commentators have tended to focus on the formal institutional arrangements of the Dayton settlement rather than the informal processes involved. There has, therefore, been little weight given to the importance of Bosnia, as a leading example of post-conflict approaches which have moved beyond attempts to restore ‘traditional’ sovereignty. Once this is recognised, it is then possible to consider the pros and cons of this approach based on practical experience. In this regard, it will be suggested that the restricted nature of Bosnia’s political autonomy and informal hollowing out of central state capacities for decision-making have undoubtedly had dilatory consequences for post-conflict attempts to enhance the political authority and broader social legitimacy of state institutions.

The Origins of Dayton

Post-Dayton Bosnia is fundamentally distinct from the formal protectorates of Kosovo and East Timor, which involved the direct oversight of the United Nations under UN Security Council resolutions 1244 and 1272. Bosnia is an independent sovereign state and member of the United Nations. As William Bain (2003: 150) correctly notes, Dayton did not establish a formal protectorate relationship, instead Dayton is ‘legitimated by the principle of consent’. Rather than an external imposition, Dayton formally appears to be a treaty made by the local powers – Bosnia and its neighbours, Croatia and the rump former Federal Republic of Yugoslavia (FRY). It is not by UN Security Council resolution but by the coercive fiction of ‘local consent’ that international actors were invited to oversee Dayton and to install the temporary post-conflict administrative mechanism of the Office of High Representative. This was an office only ‘consistent with relevant United Nations Security Council resolutions’, not formally run by or directly accountable to the UN (Chesterman, 2004: 76).

The parties on the ground who consented to the agreement and had formal ‘ownership’ of it were coerced into signing it and had little say over the content of the ‘agreement’. Dayton was in essence a US-managed process and the agreement was initialled on 21 November 1995 at the Dayton air force base in Ohio (Holbrooke, 1998). The European powers resented being sidelined by the US and lobbied Washington for UN involvement in overseeing the implementation of the peace agreement. The US refused and the Europeans responded with the idea of establishing a Peace Implementation Council (PIC). This could, firstly, help to provide some sense of international legitimacy in the absence of UN involvement and, secondly, and more

importantly from the European perspective, ensure that Washington included the Europeans and others in the policy-process.

The PIC was a legal figment, designed to cohere the international management of the Dayton process, but *without* the restrictive ties of international law. Dame Pauline Neville Jones, former Political Director of the UK Foreign and Commonwealth Office and leader of the British delegation to the Dayton peace conference, was instrumental in the establishment of the PIC. As she (Jones, 2004) later described it: ‘Everybody knew that this was a phoney. Everyone also knew that we had to find something.’ On 8-9 December the first PIC conference was held at Lancaster House in London, prior to this, ‘all the agencies had been drilled’ and ‘everyone knew their lines’ and a detailed transitional programme for Bosnia was established (Jones, 2004; see also PIC, 1995). On 14 December the Dayton peace agreement was formally signed in Paris.

The Dayton process was based on the arbitrary and ad hoc use of international power to establish a unique regime of post-conflict external regulation, one without previous historical precedent. The lack of international legal accountability explains the ad hoc and flexible nature of the powers of the High Representative. Prior to the negotiations in Dayton, Ohio, the US envisaged control of both military and civilian implementation in post-war Bosnia and planned a very powerful role for the High Representative. During Dayton, the European governments made high level *démarches* insisting that the civilian role was emphasised and requesting that the High Representative be a European. The US partly conceded, but, in so doing, sought to reduce the significance of the High Representative (Bildt, 1998: 120-61). Once agreement was reached, it was understood that the High Representative would always be a European, although one chief deputy was likely to be German and one American (Cousens and Cater, 2001: 46).

The Europeans had to fight their corner for more influence for the High Representative by stealth. The definition of the role and authority of the High Representative was intentionally left ambiguous. The Europeans wanted to have more influence but could not openly state this in the formalising of the Dayton annexes in the run up to the PIC conference; otherwise the US would have opposed this. As Dame Pauline Neville Jones relates, the key victory for the Europeans was to manage to insert a role of ‘coordination and facilitation’ for the High Representative (DGFA, 1995: Annex 10). Once the job was secured, the Europeans subsequently undertook a lot of ‘underpinning’, i.e. allocating tasks to strengthen the position. This they were able to gradually do as long as the US was happy that there would be no interference with the NATO security operations. For this reason, the US prevented the European-led High Representative from developing any meaningful mechanism to coordinate relations between the civilian and military roles. However, as the security aspects of Dayton implementation became less important, the US was willing to let the Europeans bear more of the burden and the High Representative’s civilian role become more central.

The Dayton process was an ambiguous, ad hoc and unaccountable one from the outset. At the time of its establishment the Peace Implementation Council tasked with overseeing the implementation of Dayton had no international legal standing. According to Dame Pauline Neville Jones (2004), the PIC ‘was working in a legal vacuum’. It was only after the event, on 15 December, that the PIC was recognised, in United Nations Security Council resolution 1031, which cast retrospective legitimacy on the proceedings.

The Dayton peace agreement was unlike any other peace treaty of modern times, not merely because it was imposed by powers formally external to the conflict, but because of the far reaching powers given to international actors, which extended well beyond military matters to cover the most basic aspects of government and state. The majority of annexes to the Dayton agreement were not related to the ending of hostilities, traditionally the role of a peace agreement, but the political project of state-building in Bosnia, of ‘reconstructing a society’ (Bildt, 1996a).

Reconstructing Bosnian society was undertaken in the same interventionist spirit as Dayton itself. Carl Bildt (1996b), the first international High Representative for the new state, described the Dayton Agreement as ‘by far the most ambitious peace agreement in modern history.’ It was ‘ambitious’ because, under the guise of a negotiated peace settlement, it sought to build a state – a state which was not a product of popular consensus or popular involvement and was seen by many Bosnians as an external imposition. The marginalisation of the people of Bosnia from their own political system by external powers was summed up in Bildt’s (1998: 139) observations on the new constitution (Annex 4 of the Dayton framework agreement): ‘No-one thought it wise to submit the constitution to any sort of parliamentary or other similar proceeding. It was to be a constitution by international decree’.

Although often presented as a peace agreement rather than a framework for the reconstruction of Bosnia, the civilian annexes comprised five-sixths of the Dayton accords and involved a wide range of activities in which international actors, co-ordinated by the Office of the High Representative (OHR), were mandated to temporarily play key co-ordinating roles (Gow, 1998: 169). For this reason, the state-level elections, to be held within nine months of the signing ceremony, were initially held to be crucial for restoring ownership over the new state to its citizens. Under the Dayton agreement there was to be a year of internationally supervised transition, during which there would be elections and the establishment of the political institutions of the new state, which were to be elected and directly accountable to the people (see Chandler, 1999: 43-51).

1995 – 1999: Strengthening the High Representative

The planned year of internationally supervised transition to self-governing democracy was due to end with the election of state and entity bodies in September 1996, symbolising ‘the democratic birth of the country’ (PIC, 1996a: §27). Although these

bodies were elected under internationally supervised and ratified elections, the transitional international administration was prolonged for a further two year 'consolidation period' and then, in December 1997, extended indefinitely. The extension of the time-limits for international withdrawal and the creation of new mandates for international agencies, co-ordinated by the Peace Implementation Council, was initially justified by the ambiguous wording of the Dayton agreement itself but later by increasingly subjective 'interpretations' of the mandate by the High Representative, including innovative reference to the 'spirit of Dayton'.

The Dayton agreement provides little guidance for understanding the extension of international mandates or the mechanisms of international administration over the new state. This is because the agreement was ostensibly a treaty between the regional parties and not formally a treaty between the international agencies and the government of Bosnia. The Dayton agreement was rigid where it concerned the limits to Bosnia self-rule but extremely flexible in relation to the powers that international actors could exercise over this nominally independent state. As Paul Szasz (1996: 304) notes, the Dayton agreement was 'merely a part of total arrangements to bring peace to Bosnia'. It is worth quoting at length the international constitutional lawyer closely involved in the development of Dayton:

Explicitly mentioned or merely implied by those texts are a host of other agreements or arrangements, which are to be concluded...by or within the numerous international organisations assigned various roles by these texts, and which may take the form of bilateral or multilateral executive agreements, resolutions of the [United Nations] Security Council or decisions of NATO, the OSCE...and other organisations...evidently the parties to the GFA [General Framework Agreement] and the ancillary agreements could not bind these external actors...nor, of course, are these external actors precluded from taking steps not foreseen in these texts (Szasz, 1996: 304).

This flexibility has been exemplified by the extension of the powers of the Office of the High Representative (OHR). The High Representative has explained this process as one which has no fixed limits: 'if you read Dayton very carefully...Annex 10 even gives me the possibility to interpret my own authorities and powers' (Westerndorp, 1997). The pattern of ad hoc and arbitrary extensions of international regulatory authority was initially set by the PIC itself as it rewrote its own powers and those of the High Representative at successive Peace Implementation Council meetings. The most important of these were the initial strategic six-monthly review conferences: at Florence, in June 1996; Paris, in November 1996; Sintra, in May 1997; Bonn, in December 1997; and Luxembourg, in June 1998.

The PIC Florence Review conference, in June 1996, gave a mandate to the PIC Steering Board to discuss the extension of international involvement for a two year 'stabilisation period' (PIC, 1996a: §24; §27). In the run-up to the September 1996

elections, the PIC increasingly sought to downplay their importance; and top international officials, such as Flavio Cotti, Organization for Security and Co-operation in Europe (OSCE) Chairman-in-Office, stressed that the elections were merely a step in the right direction: 'We have opted to hold the elections above all because they should be viewed as a small, but still the first, step towards the path of reconciliation' (OHRB, 1996a). Clear electoral victory for the main three nationalist parties, at state, entity and cantonal levels, was then used to justify a rethink on the 'conclusion of the year-long mandates of the implementation agencies', suggesting that the peace process would not be 'consolidated' until further state and entity and cantonal elections in September 1998 (OHR, 1996: §27; §90).

The Paris Ministerial Meeting of the PIC Steering Board, in November 1996, decided to extend the year of transition, which was due to end the following month, for a further two years. During this new 'consolidation period', the High Representative was mandated to draw up two successive twelve-month 'action plans'. These OHR 'action plans' were to be approved by the PIC, in consultation with the principal international institutions involved in implementing the peace agreement, and their implementation would then be reviewed at mid-term (PIC, 1996b: §4). The new extended role of the High Representative was accompanied by reinforced powers to make recommendations to the state and entity authorities, and in the case of dispute, to give his interpretation and make his recommendations public (PIC, 1996b: §6). This period of preparation for consolidation was rounded off at the 4-5 December 1996 PIC conference in London, which approved an Action Plan for the coming year containing detailed policy recommendations (OHRB, 1996b).

The first action plan mid-term review took place at the Sintra meeting of the PIC Steering Board, in May 1997. Here a new package of measures to ensure co-operation with the High Representative was announced, including the capacity to pursue deadlines announced by the PIC and enact measures in the case of non-compliance (PIC, 1997a: §92). These measures included visa restrictions on travel abroad for 'obstructive' Bosnia representatives as well as economic sanctions targeted at a local level and the capacity to curtail or suspend any media network or programmes which contravened 'either the spirit or letter' of the Dayton agreement (PIC, 1997a: §35; §36; §70).

The extension of the international institutional mechanisms of regulation meant that the Bosnia state bodies had little influence over either policy development or its implementation. At state level, Bosnia representatives had only a limited opportunity to discuss policy proposals drawn up by the Office of the High Representative in co-ordination with other international bodies such as the World Bank and the International Monetary Fund (IMF). At the most, the Bosnia institutions could make very minor alterations to OHR pre-prepared packages or attempt to delay their implementation.

Having been relegated to the status of 'an extended working group', capable only of discussing policies drawn-up and implemented by international institutions, it was little wonder that the Bosnia state bodies were increasingly side-lined by the OHR. Even

limited discussion and debate in Bosnia government assemblies was viewed by the High Representative as unnecessary and evidence that 'Democratisation has a long way to go before one can safely say it has truly taken root in a country with no political experience of its benefits' (OHRB, 1997). The cut and thrust of democratic consensus-building, at the level of the tripartite Presidency, Council of Ministers and Parliamentary Assembly, was often seen as an unnecessary delay to vital policy implementation. These discussions created further work for the High Representative as affirmation of international policy in these bodies nearly always required 'prompting by, or support from, my Office' (OHR, 1997: §18). Compared to the swift signature of the chief administrator's pen, the joint institutions were judged to be 'painfully cumbersome and ineffective' (OHRB, 1997).

The 'cumbersome' need to acquire the assent of elected Bosnia representatives was removed when the Bonn PIC summit, in December 1997, gave the High Representative the power to directly impose legislation, giving international officials both executive and legislative control over the formally independent state. The OHR was now mandated to enact 'interim measures' against the wishes of elected state, entity, cantonal and municipal elected bodies. These decrees were to remain in place until formally assented to by the respective level of government. The 'Bonn powers' also enabled the High Representative to dismiss elected representatives and government officials held to be obstructing the OHR's task of implementing the Dayton agreement (PIC, 1997b: XI).

It should also be highlighted that the extended mandates laid down at Bonn were qualitatively different from earlier extensions to the OHR's powers: the new mandates granted by the PIC, to itself, for the purpose of overseeing Bosnia were also made indefinite (PIC, 1997b: XI). International withdrawal and the ceding of sovereignty and policy-making powers to Bosnia institutions was now to be dependent on an ill-defined set of 'benchmarks' to be determined by the PIC at a time of its own choosing (see PIC, 1998a: §108).

Since December 1997, successive High Representatives have grasped the opportunities unaccountable power has provided. Bildt's successor, Carlos Westendorp, explained the situation: 'You do not [have] power handed to you on a platter. You just seize it, if you use this power well no-one will contest it' (Rodriguez, 1998). These arbitrary powers have been regularly used to impose legislative measures against the will of elected bodies and to sack hundreds of Bosnia public officials, from members of the Presidency and entity Prime Ministers down to municipal civil servants (see OHR, 2005).

By 1999, the PIC and the OHR had accumulated an array of powers unimagined in 1995 when the Dayton agreement was signed. Yet, despite the new mandates and the indefinite extension of the power to impose legislation and to dismiss non-compliant officials, the international state-builders appeared to be running out of ideas. The international bureaucracy increasingly appeared to be running the country with little purpose or legitimacy. The war over Kosovo, and the more interventionist approach of the European Union to the region that followed, finally provided the international administrators with a new source of legitimacy (Kemp and Meurs, 2003: 63-4). This

legitimacy was not to come from any new attempt to involve or engage with the people of Bosnia, but from the promise of guiding the small and economically impoverished state to the pot of gold that was held to come with EU membership.

2000 – 2005: The Transition to EU ‘Ownership’

Prior to 2000, the EU had been closely involved in the work of the Office of the High Representative, for example, at its June 1998 Council meeting declaring the establishment of an EU/Bosnia Task Force, with the aim of increasing cooperation and assisting in policy-making in the crucial areas of judicial reform, education, media, good governance and economic reform (PIC, 1998b: VI). However, despite an increasingly direct EU input into policy-making, the EU played a subordinate and supporting role within the PIC Dayton framework rather than dictating its own terms. The PIC Declaration from the December 1998 Madrid meeting, for example, stated that Dayton implementation was the priority and that it was the Bosnia ‘performance in implementing its Dayton obligations’ that would dictate ‘the pace of integration into European structures’ (PIC, 1998b: VI). The ‘close involvement’ of the European Union in Bosnia politics was formally limited to the ‘civilian implementation of the Dayton agreement’.

From 2000 onwards this relationship was to be reversed. The flexibility of the Dayton framework was to be fully revealed as the mechanisms of regulation shifted informally from the PIC to the EU and, without the need for any formal consultation of the people of Bosnia, Dayton gradually was to become subordinate to the requirements for eventual EU membership. Even more remarkable, the ‘temporary’ powers of international policy-imposition under the OHR were to be transferred to the EU itself, operating on its own behalf. In effect, the EU would be mandated to negotiate with itself in determining every aspect of policy-making in Bosnia.

In March 2000 the European Union announced a Road Map as a first step for Bosnia in the Stabilisation and Association Process (SAP). This document established 18 key conditions which Bosnia had to fulfil in order to start the preparation of a Feasibility Study which would then form the basis of negotiations for a Stabilisation and Association Agreement. These conditions covered far reaching policy reforms concerning elections, the civil service, state institutions, border services, the judiciary, trade regulations, foreign direct investment, property laws and public broadcasting (EURM, 2000).

This shift in perspective, away from international regulation under the increasingly strained legitimacy of the High Representative’s ‘interpretation’ of the Dayton agreement, toward regulation legitimised by the requirements necessary for the EU accession process was confirmed by the Peace Implementation Council at the May 2000 meeting in Brussels (PIC, 2000). As Carl Bildt (2000) noted at the meeting, in his capacity as the Special Envoy of the UN Secretary-General to the Balkans: ‘the discussion has moved away from the exit strategies of the international community from

Bosnia towards, instead, the entry strategies of Bosnia into the international community in general and Europe in particular’.

From May 2000, the main objectives of European Union assistance have not been couched in terms of supporting Dayton but in the much more inclusive terminology of support for Bosnia within in the framework of the Stabilisation and Association Process (EC, 2003a). More importantly, the framework used by the PIC and the OHR has increasingly been shaped by the EU Road Map and subsequent EU strategies of engagement rather than by Dayton itself. In fact, too strong an attachment to the Dayton settlement, through the defence of entity rights and ‘vital interests’ protections for Bosnia’s constituent peoples, have been interpreted as a barrier to legislative progress towards EU integration (EC, 2003c: B.1.1).

At the Zagreb summit of EU and regional top officials, in November 2000, the Bosnia leaders fully committed themselves to meeting the Road Map conditions and the Zagreb Declaration has subsequently been used by the Office of the High Representative to bring EU requirements under his mandate of regulation and coordination (ECZD, 2000). High Representative Wolfgang Petritsch (2001) admonished Bosnia state leaders in June 2001 and urged ‘responsible politicians to straighten out their priorities and to increase their efforts to fulfil the conditions of the Road Map as soon as possible’ arguing that ‘integration with Europe is the only way to improve the life of citizens throughout the country and should be pursued with unrelenting determination for the benefit of all citizens’.

Following the Zagreb Declaration, the EU established a Community programme of Assistance for Reconstruction, Development and Stabilisation (CARDS) and a programme of EU technical assistance for Bosnia. In 2001, the European Commission adopted a Country Strategy for Bosnia which covers the period 2002-2006 and provides a framework for EU assistance. Since 2001, assistance of more than €240 million has been committed under the CARDS Programme, supporting Bosnia’s participation in the Stabilisation and Association Process. The EU also increasingly deployed conditionality in the granting of macro-economic support in return for recommended economic and political reforms (EC, 2004a: §3.2).

The transfer of power to the EU more directly can be seen in the OHR’s 2002 reform of the Council of Ministers with the post of Chairman of the Council no longer subject to eight month rotation but held for the whole of the legislative period and becoming a central administrative role, involving responsibility for the work of the Directorate for European Integrations (DEI) – established under the same edict and charged with the task of preparing a strategy of European integration (OHR, 2002).

The DEI has, in effect, become the key executive body of Bosnia, supported in its operational structuring and institutional linkages by funding directly from the European Commission. The DEI is the main partner to the European Commission in the SAP and has been tasked with ‘special responsibilities’, including negotiating and supervising the implementation of agreements made with the EU. Based on the centrality of the EU

accession process, the Chairman of the Council of Ministers (CoM) has been granted a high level of executive authority, becoming the de facto Bosnia prime minister; in fact, Paddy Ashdown now refers to him in this way (ICG, 2003; EC, 2003c: B.1.1.3). The Chairman has the task of coordinating strategies and policies among state institutions and between entity governments and of ensuring the harmonisation of Bosnia laws with the 'acquis communautaire' of the EU. His office has the assistance of EU advisors to draft new laws compliant with the acquis and to conduct the compliance check of all Bosnia proposed legislation.

The strengthening of executive power through the new institution of the DEI has been an integral part of the transition to more direct EU involvement, which has necessitated the 'rebranding' of the 'anomalous' Bonn powers of the High Representative. The EU has stated the problem in these terms:

They certainly raise justified questions about Bosnia's ability to sustain a SAA [Stabilisation and Association Agreement]. Nevertheless, while the 'Bonn Powers' are certainly anomalous among EU partner states, their existence in Bosnia need not automatically exclude that country from moving towards SAA negotiations. To make this case, Bosnia needs to give evidence that the powers are generally declining in relevance and that their use occurs ever less within core SAA areas (EC, 2003c: B.1.1.5).

Interestingly, the use of the Bonn Powers to impose legislation by edict is not necessarily seen as problematic for Bosnia's closer integration into the EU. There is a clear danger of 'double standards' in the EU turning a blind eye to the lack of democracy in Bosnia. For this reason, the November 2003 SAP progress report seeks to downplay the undermining of democratic processes involved in the use of High Representative edicts. The EU suggests that this is often merely a matter of imposing 'soft decisions', alleging that the OHR steps in merely to follow up policies already agreed in advance. Closer informal EU cooperation with the DEI and the Chairman of the CoM means that 'agreements' can then be imposed on governments at entity level without this appearing to be a 'hard' exercise of coercive power. The EU, in fact, wishes to conflate external diktat with freely-negotiated agreement in stating that: 'Current evidence suggests...that the "push" of the Bonn Powers is gradually being replaced by the "pull" of European institutions' (EC, 2003c: B.1.1.5).

This process of alleging a basis of 'policy agreement' which is then imposed through 'soft decisions' could be seen in the OHR's establishment of special reform commissions, involving appointed Bosnia nationals and chaired by an international representative. These commissions have helped provide a veneer of 'agreement' without going through a formally accountable political process. They have been used for policy issues where the OHR faces clear popular opposition, for example, on indirect taxation, defence, intelligence services and on Mostar city administration. Three of the four commission's findings have then been imposed by edict (the exception is the Defence

Reform Commission). In the case of the Mostar commission, the major administrative reforms were imposed despite a marked lack of any 'agreement' by Bosnia participants (CRCM, 2003; OHR, 2004). The dishonesty of the process was highlighted by the use of agreement on minor issues to argue that the imposition of the major reforms was merely the use of 'soft' power, clarifying reforms on which there was largely agreement (Perry, 2004).

At the EU Thessalonica summit, in June 2003, additional instruments to enhance EU regulation in Bosnia were developed. These included a Joint Declaration on Political Dialogue aimed at reinforcing the convergence of positions on foreign policy questions to reach alignment with the EU Common Foreign and Security Policy (CFSP) (EC, 2003c: B.3.1). The most important EU initiative, however, was the development of a new European Partnership, established to 'enrich' and 'intensify' the SAP, setting out Bosnia's political, economic and other priorities (EC, 2004b). The Partnership priorities are divided into short-term, for 1 to 2 years, and medium-term, of 3 to 4 years, and include over fifty areas where policy-reforms are required to meet EU demands for 'harmonisation', from the reorganisation of political institutions and public administration to privatisation and sensitive economic programmes to remove 'labour rigidities', 'implement bankruptcy legislation' and 'lower the ratio between government expenditure and GDP'. These restrictive economic policies are sensitive as they would mean declining social protection in a state where half the population are already according to the EU 'at or near the poverty line' (EC, 2003c: C).

The priorities of the Partnership are based on the EU's political and strategic priorities in the light of their assessments of the Bosnia government's Annual Reports. However, it should be noted that there is no relationship of accountability or Bosnian 'ownership' involved in this priority-setting process. The Partnership policy-guidelines only involve 'informal consultations' with Bosnia representatives (EC, 2003b: §2). The Bosnia government is then 'expected to respond to the European Integration Partnerships by preparing and implementing Action Plans, with a timetable and details of how they intend to address the Partnership's priorities' (EC, 2003b: §2). The EU provides security, funds the international assistance, and runs the policy programmes for Bosnia; if this is a 'partnership', it is a highly unequal one (see Chandler, 2003).

The increased intensity of EU engagement with the Bosnia policy-making process has necessitated the reinforcement of the meetings of the EU/Bosnia Consultative Task Force, to assist in the Annual Reports and annual Action Plans. The EU has also established a Coordination Board for Economic Development and EU Integration in order to develop medium- to long-term economic strategy and direct the Bosnia Council of Ministers in the formulation of a Poverty Reduction Strategy Paper in negotiation with the World Bank (EC, 2003c: B.3.7.1). In order to ensure that the DEI can cope with the huge amount of directives flying from Brussels to Sarajevo, the EU will be seconding civil servants from EU member states to work as advisers as well as providing targeted technical assistance and institution-building support under CARDS (EC, 2003b: §2).

While the real transition to European Union ownership has been largely operating at the informal level this has also begun to be reflected in formal changes, such as in the EU Police Mission taking over from the UN Mission to Bosnia at the end of 2002 and the increasing certainty that the EU will be responsible for a follow-on mission to take over the broader security tasks from the NATO SFOR force (EC, 2004a: §2.2). The ending of the UN International Police Task Force (IPTF) mandate is illustrative in this regard as it did not result in any greater 'ownership' for the Bosnian authorities. Under the EU, in the first ever civilian crisis management deployment under the European CFSP (EUPM, 2004), the mandate of the mission is no less authoritative than that of the UN IPTF. It establishes 'a broad approach with activities addressing the whole range of Rule of Law aspects, including institution building programmes and police activities' and is designed not merely to support Dayton implementation but also to support the EU's institution building under the CARDS regulations and the SAP more broadly (EUPM, 2002: §3). The Head of Mission reports to the EU's Special Representative Lord Ashdown, who reports to the Secretary General/ High Representative for CFSP, thus ensuring a 'unified chain of command': a chain of command which does not involve any Bosnia input or accountability (EUPM, 2002: §7).

Lord Paddy Ashdown was named as the first European Union Special Representative in Bosnia in March 2002, taking up his duties when he assumed the position of the High Representative that May. The creation of Ashdown's 'double-hatted' position as both EU and PIC representative marked a clear signal of transitional intent. As far as Paddy Ashdown understood his position, it was clear that he was to be the last High Representative. By this he did not understand that 'ownership' was to be given to Bosnian institutions but rather that his role would be taken over by new mechanisms of the European Union.

This move reflects other formal organisational changes. In 2002, the PIC was 'streamlined' providing a clearer European co-ordinating role. A Board of Principals was established as the main co-ordinating body, chaired by the EU Special Representative and meeting weekly in Sarajevo. In real terms it would seem that the Office of the High Representative is already more dependent on the EU than the PIC and in 2003 the EU provided over half of the OHR's operating budget, which in 2004 was €21.1 million. Contributions to the OHR budget broke down as follows: EU 53 per cent, USA 22 per cent, Japan 10 per cent, Russia 4 per cent, Canada 3 per cent, Organisation of the Islamic Conference 2.5 per cent, others 5.5 per cent (EC, 2004a: §5). The, so far, largely informal process of EU regulation will become a contractual one once Bosnia signs up to a formal Stabilisation and Association Agreement (SAA).

The SAA is an international agreement that has precedence over any other laws of the country. After being signed, the agreement becomes enforceable when it has been ratified by the Bosnia government, European Parliament and the national parliaments of EU members. Following this Bosnia will be legally obligated to undertake certain activities within SAA areas within strict time limits. Through the negotiation of the

Stabilisation and Association Agreement the EU Special Representative and the executive policy-making institution of the DEI will maintain full regulatory control over the post-Dayton process.

Conclusion

By 2005 the EU was routinely involved in every level of Bosnia policy preparation and implementation and annual Bosnia government work plans were being drawn up to meet the comprehensive SAP requirements. There can be little doubt that there has been a transition from the ad hoc, unaccountable, and largely unfocused, rule of the Peace Implementation Council. Yet this transition has not been one towards Bosnian ownership. Even the EU recognises that ‘Bosnia “ownership” of reform remains limited’ with international initiative, input and pressure guiding the process of transition (EC, 2004a: §2.3). As far as the engagement of the people of Bosnia or the elected representatives is concerned, little has changed over the ten years since the Dayton agreement. The Bosnia public have been excluded from the transition process; and while there is general support for EU membership, there has been little public discussion of the costs and benefits involved.

Rather than state-building, it would appear that ten years of ‘informal trusteeship’ or ‘shared sovereignty’ under the framework established by the Dayton agreement, have done little to either build the capacity of the Bosnia state or to legitimate it in the eyes of the population. The powers and the authority of the state have been subsumed by external actors, sucking out the life from the elected bodies, which were initially to have taken over government responsibilities following a year’s transitional period.

Today, Bosnia is administered directly through the high-handed and unaccountable powers of the EU Special Representative and policy is made in Brussels and implemented with the assistance of the EU-funded and advised Directorate for European Integrations. The only policy-input allowed for Bosnian representatives is through the token, hand-picked, and internationally managed, special commissions. Those commentators who wish to argue that the external administrators have been constrained by Dayton, and to blame the farce that is Bosnian ‘state-building’ on the people of Bosnia and their elected representatives, could not be further from the truth.

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