

Reshaping international priorities in Bosnia and Herzegovina

Part Two

International Power in Bosnia

30 March 2000

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RESHAPING INTERNATIONAL PRIORITIES IN BOSNIA AND HERZEGOVINA

INTERNATIONAL POWER IN BOSNIA

EXECUTIVE SUMMARY

This paper examines the sources of international power and influence in Bosnia, and how they can be mobilised in support of the international agenda. It studies the most basic forms of international power - the coercive power of the military; financial power; and the power to act as gatekeeper to Europe. It also studies the institutional tools which have been developed to wield international power, in particular the mandate of the High Representative.

The international community has the potential to exercise considerable power in Bosnia. A study of the most important successes in the peace process shows that, even at its current level of resources, the international community is capable of achieving lasting results. However, it has been slow at learning the lessons of its successes, and at understanding the sources of its influence. The limited progress in the peace process is attributable in large part to the failure of the international community to understand international power as a resource which must be used strategically in support of the peace mission.

The state-building agenda

Present power structures in Bosnia have a vested interest in maintaining the conditions of conflict on which their power depends. These structures are in the process of fragmenting, but remain strong enough to ensure that the dynamics of Bosnian society are not towards democratic governance, but towards institutional decay. The international mission in Bosnia is to build a sustainable state in the face of resistance from these power structures and acceptable to all of Bosnia's citizens. This requires a constitutional order which disperses political and economic power through a network of institutions operating within the rule of law. Because it strikes at the heart of the nationalist regimes, this agenda meets with systematic resistance. The remarkable feature of the Bosnian mission is the extent to which the international community has become willing to use international power to try to overcome local resistance.

Most international organisations are unused to working with the nuts and bolts of domestic institutional structures, and are unsure of how to wield power in support of a state-building agenda. The current debate over the concept of 'ownership' reflects a growing awareness that there is a limit to what the international community can achieve without the support of Bosnian leaders and institutions. While this is an important insight, it can lead towards two diametrically opposed conclusions. One is that international actors should begin to withdraw from the Bosnian political process, leaving Bosnian institutions to sink or swim on their own. The other is that the focus of international efforts must be on building local institutions which are capable of taking responsibility for the peace process. Because of what we know of the nature of the local power structures, ESI argues that the second alternative is the only way forward. The 'ownership' strategy should be to use international influence, even in an intrusive fashion, to create Bosnian institutions capable of taking responsibility for the new state.

Reconstruction, elections and local power structures

Not all international efforts to date have gone in this direction. Two major conflicts within the international mission have emerged, undermining the state-building goals. One is between the priority reconstruction program and the need to challenge local power structures. For the best of reasons, the international community approached the physical reconstruction of Bosnia as its most urgent priority, disbursing several billion dollars of aid within a few years. Most of this money was spent without any consideration of its political impact. Concerned only with efficient service delivery, international agencies have rebuilt housing and infrastructure in co-operation with whatever local authorities they found in place at the time. As a result, the reconstruction programme has had the effect of strengthening the local power structures and their capacity to resist the state-building agenda.

The second conflict is between building democracy, and at the same time using international power to overrule the democratic organs. Elections have played a prominent role in international strategy, with four rounds in four years. However, with significant elements of the constitutional order not yet in place, the weak institutional environment has meant that Bosnian democracy remains more form than substance. Repeated elections have legitimised and strengthened the existing power structures without promoting responsible governance, giving local actors who make no secret of their opposition to the state the constitutional authority to block its development. Frustrated with this vicious circle, the international community has granted the High Representative powers to overrule the democratic organs in order to advance specific goals on the international agenda.

ESI agrees that it is both necessary and legitimate to use international authority to advance the development of the constitutional order. However, the international community now finds itself in an awkward position. On the one hand, it is prevented from taking a systematic approach to institution building because of the need to secure the agreement of the parliaments. On the other hand, its willingness to overrule the constitutional process is inhibiting the development of democracy. The resolution to this conflict, which will be explored more in the third paper in this series, must lie in establishing exactly which international goals have priority over the democratic process, and using international authority systematically to achieve them, while leaving the constitutional organs autonomous in all other areas. This requires a much greater focus to the international mission.

Who is the international community?

The 'international community' is a key concept in Bosnia, suggesting the moral and legal foundation for foreign involvement in the peace process. In so far as it implies a single actor, however, it is of course misleading. The international community has established an extremely diffuse institutional structure in Bosnia, and problems of co-ordination and joint strategy development have been endemic to the mission. There is a tendency of the international community to acquire ever more objectives without any corresponding increase or rationalisation of resources, with the result that international efforts have become less intensive over time.

In a search for better institutional mechanisms to focus international power, there has been a remarkable evolution in the institution of the High Representative. In 1997, a joint campaign by OHR and SFOR achieved dramatic results in wresting the control of public broadcasting in Republika Srpska away from Karadzic loyalists. This precedent led to the Peace Implementation Council granting extensive new powers to the High Representative. The High Representative is now the principal voice of the international community in dealing with local authorities, and bears the main responsibility for developing a common score for the international community in Bosnia.

The effectiveness of the OHR's Bonn powers

The paper studies the history of the use of 'the Bonn powers' - the powers of the High Representative to impose laws and to dismiss public officials. It finds that legislative power is an essential tool for advancing the state-building agenda. However, not all of the laws imposed have been successfully implemented, and it is clear that the High Representative cannot simply decree a solution to Bosnia's problems. The legislative powers are only ever as successful as the institution-building programmes which follow them. They have been most successful when used as part of an international campaign, where more basic forms of international power were mobilised in a strategic fashion.

However, there is considerable uncertainty concerning the relationship between the High Representative and the national parliaments, and that this confusion is having a distorting effect on the Bosnian political process. This problem is at its worst when the powers are used in a reactive fashion, to resolve the political problems of the day. ESI recommends that the High Representative develop a proactive legislative agenda, encompassing the most important goals on the state-building agenda. He should be fully transparent about both process and substance. A finite institution-building agenda would help to focus the international mission.

On the other hand, the use of the Bonn powers to dismiss public officials is not an appropriate tool for advancing the peace process. A study of the dismissals reveals that they have rarely been effective, either in excluding destructive individuals from public life, or in improving the work of domestic institutions. Where the post will be filled by someone else selected by the same party and subject to the same political pressures, a dismissal is unlikely to bring any lasting benefit. Attention to personnel issues *is* a key step in breaking down the nomenklatura system, but structural approaches such as the development of public service laws are a more promising solution. There are also concerns that dismissals are being used as a sanction without any legal process, and that their effect may be to weaken the rule of law rather than strengthen it.

International military power

The international military presence is the most visible sign of international power in Bosnia, and its ability to neutralise the threat of force from the political dynamic is a precondition for all other international programmes. At Dayton, the mandate of the military mission was defined in narrow terms, and although IFOR was extremely effective at its core task of separating the three armies, it consistently refused to deploy its resources in favour of wider objectives. However, there has been a considerable process of evolution in the military mission. Since 1997, SFOR has played an important role in repressing the climate of lawlessness in Bosnia, by deploying to provide area security in support of minority return movements and through the arrest of 18 individuals indicted for war crimes.

One important task which only the military can perform is continuing to dismantle illegal coercive structures such as intelligence services, paramilitary organisations and special police. Security structures on all three sides have operated more or less openly throughout Bosnia in the post-war period, harassing minorities, intimidating political opponents and raising illegal revenue. This problem has been largely overlooked by the international community, with neither the UN International Police Task Force (IPTF) nor other civilian agencies in a position to investigate or take action. In October 1999, SFOR mounted its first major operation against Croatian and Bosnian Croat intelligence services in West Mostar, indicating that a change in policy may have occurred. This kind of operation can only be performed by the military, and offers the potential to undermine one of the most dangerous forms of local power structure. ESI recommends that, building on this success, further targeted efforts be made to restructure these security forces among all ethnic groups.

The paper also examines SFOR's efforts to keep the armed forces out of the political sphere. The office of the Inspector General is an institution-building exercise designed to ensure the maintenance of professional and democratic standards in the General Officer Corps.

Financial power

With its US\$5.1 billion reconstruction programme, the international community bears an enormous financial weight in the tiny Bosnian economy. However it has rarely been able to use this financial strength as a source of political influence. Financial power has usually been understood as 'economic conditionality', a concept borrowed from the work of the international financial institutions. However, conditionality has been poorly conceptualised in Bosnia, and rarely applied in a credible way. The paper examines three instances of its use. 'General political conditionality' is often called for by the Peace Implementation Council, but has remained largely rhetorical. 'Local conditionality' has been attempted to a degree in support of minority return programmes, but actually plays a minor role in international return strategy. Other forms of financial power have proved more appropriate in that context. 'Traditional conditionality' has been used on several occasions to good effect by the World Bank and the International Monetary Fund, in support of economic objectives.

The spending of large amounts of international money has often failed to support international goals because of the weakness or lack of definition in international strategy. International financial power is only effective to the degree that it can be brought to bear on very specific goals. The paper examines how a weak education strategy has resulted in the international community reconstructing an

ethnically segregated school system, and how a lack of attention to regulatory issues in the transport and energy sectors has ultimately proved a limiting factor on the reconstruction effort. At this moment, efforts are underway to rethink international strategy in all of these areas which is a precondition to use outside financial influence effectively.

The paper examines one of the most successful examples of institution building - the establishment of the Central Bank - and finds that it involved the use of several different forms of international financial power. Traditional conditionality was used to ensure that the legal framework as foreseen in the constitution was respected. It was also used to dismantle the extra-constitutional parallel structure, the Bosniac-controlled National Bank. International financial support from the IMF was critical to the Central Bank's early development. A sophisticated campaign was used to promote the new common currency, including the use of the High Representative's powers in overcoming political obstacles relating to the design, financial assistance in printing the currency, and use of the international community's financial weight in promoting widespread acceptance of the Konvertible Mark. As the Central Bank now performs a valuable public service in providing a stable currency, it has every prospect of surviving as the first independent state institution.

Gatekeeper to Europe

The international community has the power to exclude or admit Bosnian citizens, institutions or goods into the international arena. This constitutes an important source of political power. The paper studies how the ability to condition the right of Bosnian citizens to cross state borders proved to be a powerful lever in overcoming political resistance to the common license plates, with a dramatic and immediate effect on promoting freedom of movement. This kind of leverage has also been used effectively in the sporting field, an area of considerable symbolic importance.

While Bosnian membership of the European Union is too distant a prospect to be much of a lever, the process of integration through association agreements and trade benefits offers a tool for building a core of essential regulatory structures at state level.

Maximising international power – the managerial challenge

Certain common themes emerge from the study of each of the three basic sources of international power and of the Bonn powers. International power is a resource which must be mobilised in support of clear objectives. This is only possible where objectives are well developed and articulated to the responsible international actors, and to the Bosnian public whose support is crucial. The international community is most effective where it combines different forms of international power in sophisticated combinations. Where this has been done, the results have been impressive. Each goal on the international agenda should be approached as a campaign, where the resources (both material and political) are identified and mobilised in support of a coherent strategy. A key issue is mobilising Bosnian expertise.

Agreeing on a common score for the international institutions operating in Bosnia is, however, only one step. The other is to change the way international institutions in Bosnia and Herzegovina operate at present. Few international organisations are at present structured in a way to implement a focused strategy. To learn from and build on the success stories of peace implementation requires substantial managerial innovations. To focus limited resources requires the systematic abandonment of less successful efforts. The internal restructuring of international institutions in Bosnia may be no less painful than overhauling one of Bosnia's large inefficient public companies. It is nonetheless essential. International programs which do not contribute to the agreed priorities need to be reviewed, reduced and stopped. Accountability and transparency within international institutions must be improved. Only international institutions that do not shirk from constantly reviewing their own performance are capable of meeting the challenge of effective state and institution building in the face of often determined opposition.

RESHAPING INTERNATIONAL PRIORITIES IN BOSNIA AND HERZEGOVINA
INTERNATIONAL POWER

I. INTRODUCTION

Most current analyses of the international mission in Bosnia and Herzegovina conclude that the peace process has stalled. While giving the international community credit for keeping the peace and reconstructing war damage, they note the many international objectives which have yet to be realised. Despite regular elections, public life is still dominated by the war-time regimes. The new state institutions are little more than theatres of nationalist politics, propped up by the international community but without real function. Structural reform of the economy has barely begun, the privatisation process is fraught with problems, and foreign investment remains elusive. Vast efforts towards minority return have failed to produce a sustained process of ethnic reintegration.

The interpretation most commonly offered is that the international community has reached the limits of its influence in Bosnia, and is now doing little more than maintaining the status quo. As the High Representative put it in his New Year's letter to the people of Bosnia:

“This is the fifth year of the peace process, and Bosnia and Herzegovina cannot continue to muddle along as it has so far. There is a growing perception in Western countries that at the present rate of peace implementation, international involvement will be almost indefinite.”¹

This conclusion leads most observers in either of two directions. One is towards resignation: democracy and ethnic reconciliation cannot be imposed from the outside, and the international community should withdraw from the political fray and hope that the local actors may eventually resolve their differences. The other is towards escalation: political institutions in Bosnia are incapable of taking responsibility for the peace process, and the international community should bypass them completely, upgrading its involvement to something called a “real protectorate”.

The first alternative involves a tacit acquiescence in the partition of Bosnia. It implies the belief that, because of latent hostility between the three communities, multi-ethnicity in Bosnia is incompatible with democracy; that a peaceful Bosnia was only ever possible under autocratic empires, whether the Ottomans, the Habsburgs or Tito's communist state; and that the political structures created at Dayton, based on constituent peoples and ethnic power-sharing formulas reminiscent of Tito's balancing mechanisms, are viable only so long as the international community plays the role of imperial master. Under the guise of realism, however, it suggests a dangerous indifference to the risk of further population displacement and renewed warfare, and would represent a major failure for the international community.

The other alternative recommends the establishment of an “international protectorate”, whereby the international community expands to “take over many of the governing powers not left to the local parties, in order to force the necessary economic and political reforms”.² This is sometimes called “the Kosovo model”, a reference to the powers of direct governance

¹ OHR press release, *Can Bosnia and Herzegovina and Europe work as one? New Year's Letter by the High Representative to the Citizens of Bosnia and Herzegovina*, Sarajevo, 31 December 1999.

² Daalder & Froman, *Dayton's Incomplete Peace*, Foreign Affairs, 1999

which have been conferred by the Security Council on the UN Mission in Kosovo (UNMIK). On closer examination, however, the idea of the “protectorate”, with its echoes of a bygone historical era, is extremely thin. The UN in Kosovo faces very similar challenges to international organisations in Bosnia: illegal parallel structures, weak or absent institutions, inadequate public revenues, organised crime, deep ethnic mistrust. For all its powers on paper, it cannot simply decree a solution to these problems, but must set about building sustainable institutions and political processes from a very low base. Its strong mandate to create public administrative structures is a description of the enormous task which it faces, not a magic solution to the problem.

Along the spectrum of possibilities from partition to protectorate, most analysts offer little in the way of practical proposals. They rarely examine how existing international mechanisms in Bosnia could accomplish their tasks more effectively. Lacking alternatives, international organisations find themselves repeating with variations the programmes of the past four years. In the year 2000, the Organisation for Security and Co-operation in Europe (OSCE) will conduct still more elections, the United Nations (UN) will once again screen local police for misconduct, while the Office of the High Representative (OHR) will continue to chastise, instruct and occasionally dismiss local politicians who fail to support the international agenda.

This paper offers a different interpretation of the current state of peace implementation. There have been enough important successes in the peace process to give reason for optimism. These successes have not been confined to marginal or preliminary issues, but have occurred in core areas often in the face of sustained opposition from the local regimes. They have led to transformations in some of the most elementary features of Bosnian society. When examined closely, they suggest that the international community is not powerless to overcome resistance to the peace process, and that many of the problems of Bosnia, however complex they may appear, are susceptible to analysis and influence.

For example, the boundaries between the three ethnic groups have not hardened into permanent lines of partition, as occurred in post-conflict situations from Cyprus to Kashmir to the Middle East, and could so easily have happened in Bosnia. This was avoided by a concerted international campaign on freedom of movement, which included decisive action from IPTF and SFOR to dismantle illegal checkpoints, and a sophisticated campaign from OHR and UNMIBH leading to the adoption of common license plates. The security situation has improved remarkably. Political violence is limited, and minority returns are now taking place in almost all parts of the country, including to areas such as Prijedor, Ahmici and Dobojo where mass graves are still being discovered. Action by SFOR against paramilitary police and smuggling operations in Republika Srpska in 1997 helped to marginalise former President Radovan Karadzic and the Pale-based Serb war-time regime. The independence of local media has increased significantly in the past four years, assisted by strong SFOR action to wrest control of broadcast facilities in Republika Srpska away from Karadzic loyalists, the creation of the Independent Media Commission, and the use of the High Representative’s legislative powers to restructure public broadcasting. Targeted economic conditionality and intensive institution building has made the Central Bank the first credible state organ, and led to the achievement of a key economic goal: the introduction of a stable common currency. Entity customs services have gradually become professionalised through a long-term institution-building programme by the EC-financed Customs and Fiscal Assistance Organisation (CAFAO). The Hague criminal tribunal (ICTY) is gradually restoring public faith in the potential for justice, reducing the climate of impunity in which local leaders operate.

The common theme of each of these successes was a calculated and sustained campaign, where different forms of international influence were used in support of clearly identified goals. However, the international community has been poor at learning the lessons they offer. Most international efforts in Bosnia are unfocused and reactive in nature. Many of them centre on political developments within a narrow Bosnian elite (playing the “moderates” against the “extremists”), while structural problems are neglected. International officials become distracted by the crisis of the day, in effect allowing local politicians to dictate the international agenda. Rapid rotation of seconded personnel and poor information management inhibit institutional learning. Too often, the decision-making processes within international organisations are no more transparent than those of the Bosnian power structures.

This paper argues that with a more systematic approach to international strategy, the resources already at the disposal of the international community in Bosnia could be sufficient to overcome many of the obstacles faced by the peace process. The most impressive results of the last years have been achieved with only a fraction of the overall international resources. On the other hand, many expensive international efforts have made little impact on Bosnian society. The international community has never conducted a thorough analysis of resource allocation, instead throwing human resources and funding at the same problems from one year to the next, even where no strategy has been identified for resolving them.

What is lacking is a common score to orchestrate the many goals, institutions and resources of the international community into a concerted and coherent mission. There are also too few institutional mechanisms to ensure that once a strategy is chosen, international resources will be redirected to ensure it is followed seriously in practice.

Part One of the ESI series analysed the local power structures that define the challenge of peace implementation and state building in Bosnia. This report explores the nature and sources of international influence in Bosnia. Only by examining how international power can be mobilised to overcome local resistance and generate local support for the peace implementation project is it possible to identify concrete opportunities to advance the peace process from its current deadlock. Part Three of the ESI series will outline ESI’s suggestions for an overall international score, prior to the next Peace Implementation Council in May.

II. THE STATE-BUILDING AGENDA

A. International power and state building

The question of power has become central to the peace process in Bosnia. Four years of ethnic conflict, together with the institutional remnants of the communist system, have led to the development of local power structures, described in the first paper in this series,³ which have a strategic interest in sustaining the abnormalities of post-war Bosnia. With their extensive networks of control over Bosnian society, they are well placed to resist the process of reform. These power structures are in all likelihood not sustainable in the long term, and with external supports from Croatia and Yugoslavia diminishing over time, signs of fracture are already beginning to appear. However, these power structures remain strong enough to resist the weak forces for democratisation within Bosnian society. This leaves Bosnia trapped in a downward spiral. If the current power structures collapse, they will not leave behind the institutions of a constitutional democracy and a market economy, but a legacy of local warlords and organised criminal networks. If left to its own resources, there is no guarantee that the Bosnian peace process would move forward.

Because of these local power structures, international organisations in Bosnia are forced to deal with issues of power on a daily basis. Any international programme which goes beyond physical reconstruction or humanitarian aid delivery challenges vested interests, and meets with systematic resistance from the nationalist regimes. The larger goals on the international agenda, such as democratisation or economic reform, are explicit attempts to undermine the existing power structures by de-concentrating political and economic power across a network of independent institutions under the rule of law. Not surprisingly, the greater the threat that international programmes pose to the nationalist regimes, the more intense is the resistance which they face.

The remarkable feature of the Bosnian mission is the extent to which the international community has become willing to use international power against local resistance. Rather than abandon its objectives, the international community has come to accept that intrusive intervention in local affairs is both necessary and legitimate to break the vicious circle of power, and create the opportunity for a lasting peace process to emerge.

With its heavy deployment of resources in Bosnia, the international community should be well placed to wield considerable power. The 60,000 IFOR troops who arrived in Bosnia in the wake of the Dayton Agreement were an overwhelming military force, and four years later, the 20,000 remaining SFOR troops are well able to keep the security situation under tight control. On the economic side, the US\$5.1 billion package pledged by foreign donors for the reconstruction of Bosnia is the largest aid programme per head of population anywhere in the world, dominating the tiny Bosnian economy. Elections are closely regulated by the OSCE, the High Representative controls the legislative process, and the supervision of the Peace Implementation Council and the close attention of many high-ranking international officials ensure that all of the diplomatic resources of the international community can be deployed in support of the peace process.

Yet these resources have not easily translated into influence over local actors. Although the international community is present throughout the territory of Bosnia, the common experience

³ ESI, *Reshaping International Priorities in Bosnia and Herzegovina: Bosnian Power Structures*, 14 October 1999.

of its representatives, whether armed or not, is often one of powerlessness in the face of local resistance to their programmes. Reconstruction work proceeds at an impressive speed, but despite paying the piper, the international community rarely gets to call the tune. Only on rare occasions do international organisations find themselves in a position where they have a decisive impact on local problems.

The disparity between the resources at the international community's disposal and its limited ability to accomplish its agenda is key to understanding the deadlock in the peace process. Power is a resource, to be used in support of goals. The mere presence of a foreign army or the spending of international wealth does not of itself bring about change. The international community has not yet developed mechanisms for wielding power in ways appropriate to the task it faces.

B. Two faces of ownership

In Bosnia, as in other recent interventions in Kosovo and East Timor, international organisations face a radically new mode of operation: state building. The Bosnian state was called into existence by the collapse of the former Yugoslavia, and the international community's refusal to allow the republican borders to be changed by the use of force. However, the Bosnian state as international legal entity is not yet matched by reality. The Dayton Agreement is an agreement to create a state which in many important respects is not yet implemented. Lacking an effective central government or the ability to represent itself externally, the state does not possess the substantive attributes of sovereignty.

Local power structures within Bosnia have worked systematically and with considerable success to block the institutional development of the state. This has made it necessary for the international community to involve itself in the design and establishment of state organs. However, international organisations have little experience of working with the nuts and bolts of domestic institutional structures, and it is by no means obvious how international power can be used to support a state-building agenda.

In the face of local resistance, international organisations have tended to retreat to more familiar territory, namely, the established modes of dealing with sovereign states. Two concepts borrowed from the international development field constantly recur in PIC documents and in diplomatic circles: "conditionality" and "ownership". These are two different paradigms used by international financial institutions in their lending programmes to national governments.⁴ "Conditionality" is a means of influencing national authorities to adopt policies which are essentially external in origin, through offers of international financial assistance and the threat of its withdrawal. "Ownership" is an alternative development approach which has arisen from the perceived failure of conditionality as a reform tool. Many studies of development programmes have revealed that international aid achieves lasting results only when given in support of reforms to which national authorities are genuinely committed. A donor following this logic will try to maximise the returns on its development assistance by supporting only domestic initiatives. As the World Bank puts it:

"There is abundant evidence linking country ownership to the successful implementation of the development agenda, and the ability to sustain its benefits.

⁴ They are also becoming common in the field of democratisation. Thomas Carrothers (*Aiding Democracy Abroad – The Learning Curve*, page 260) identifies the "lack of local ownership of the aid projects" as the "first key shortcoming of democracy aid."

A major finding in the aid effectiveness literature, now widely accepted, is that development policies, projects, and programmes that are owned by those they are intended to affect are more likely to work and be sustained than those that are externally driven. In other words, reforms that are donor-driven and dependent on conditionality for their implementation compromise the success of programmes, producing reluctant acceptance by recipients of what donors want and undermining country ownership.”⁵

If externally driven reform has little prospect of success, then the implication is that the international community can achieve little in societies which suffer from political instability or weak domestic institutions. In a study of World Bank and International Monetary Fund programmes around the world, Johnson and Wasty conclude:

“What then to do in countries plagued by chronic political instability? In the worst case, it is probably an illusion to think there is anything at all to be done through programme aid. In the absence of a tolerably settled government, or when the very institutions of state are under threat, the prerequisites for effective programme aid are not met and the most that donors can do is to respond to humanitarian needs until stability is restored.”⁶

The logic of the conditionality/ownership dichotomy suggests that neither approach has much prospect of success in Bosnia. The most influential actors within the nationalist power structures are neither willing nor able to take ownership of the international agenda, while the institutional base at all levels of government (not just at state level, but also in the entities, cantons and municipalities) is far too weak and unstable to undertake ambitious reform programmes. Nor is conditionality an effective tool to force local politicians to commit to the objectives of the peace process. It is difficult to envisage any financial incentive which would persuade the nationalist regimes to dismantle their own power structures.

However, this logic does not apply to Bosnia, not least because the option of walking away and leaving local power structures to resolve their policy differences is not available. International development thinking has evolved in the context of dealing with sovereign states, where the role of international actors is restricted to advice, assistance, political pressure and other forms of non-coercive assistance. The reality of the international mission in Bosnia is very different. State building is a much deeper level of involvement in the mechanics of the state. The international community is attempting to create new institutions and political processes which will take responsibility (“ownership”) for the peace process. To achieve that, international power is being used to overcome political obstacles to institution building, and to substitute for the weak rule of law. The international community attempts to protect newly established institutions from being marginalised or co-opted by the existing power structures during their vulnerable early phases. Ideally, as these institutions acquire significant functions, controlling public resources or exercising regulatory powers, they will gradually build up legitimacy and authority in the eyes of the Bosnian public, preparing them for autonomous operation without close international supervision.

⁵ World Bank, *Partnerships for Development – Proposed Action for the World Bank*, World Bank Partnerships Group Discussion Paper, 20 May 1998.

⁶ J. H. Johnson and S. S. Wasty, *Borrower Ownership of Adjustment Programs and the Political Economy of Reform*, World Bank Discussion Paper, No. 199, World Bank, 1993. Another analyst puts it even more bluntly: “Aside from the provision of humanitarian relief, the only sensible course for donors in the face of a government’s persistent economic mismanagement is to stay away and concentrate their resources on countries that can put the aid to good use.” Tony Killick, *Aid and the Political Economy of Policy Change*, London 1998, page 180.

The end goal of the state building project is the restoration of sovereignty, meaning both the capacity to govern internally and independence from external interference. At a certain point along the way, international involvement in Bosnia can fade back to the kind of support offered to other states of the region seeking closer ties with the European Union.

The debate begun by High Representative Wolfgang Petritsch over the concept of 'ownership' reflects a growing awareness that there is a limit to what the international community can achieve without the support of Bosnian leaders and institutions. While this is an important insight, it can lead towards two diametrically opposed conclusions. One is that international actors should begin to withdraw from the political process, leaving Bosnian institutions to sink or swim on their own. The other is that the focus of international efforts must be on building local institutions which are capable of taking responsibility for the peace process. Given the nature of the local power structures, ESI argues that the second alternative is the only way forward. The essence of the 'ownership' strategy should be to use international influence, even in an intrusive fashion, to create Bosnian institutions capable of taking responsibility for the new state.

C. Setting the international agenda

State building involves the international community in a complex range of choices about the shape of Bosnian society. Some basic design features were written into the state constitution in Annex 4 of the Dayton Peace Agreement, but many more have been influenced by international decisions made over the succeeding four years, whether intentionally or not. Some of the most important constitutional issues, such as the balance of responsibilities between the state and the entities, or the relationship between key state institutions (Presidency, Council of Ministers, Parliamentary Assembly) are still in the process of evolution. As the price of securing the agreement of the warring parties, the Dayton Agreement establishes a state which is decentralised to the maximum possible degree, creating many limitations on the possibilities for institutional development. However, like any constitutional structure, the Dayton Agreement is sufficiently flexible and dynamic to leave many important choices still to be made.

The most important substantive elements of the state-building programme were set out at a meeting of governments and international institutions in London in December 1995. In what is effectively the first mission statement of the international community in Bosnia, the London Peace Implementation Conference (PIC) defined the peace process as the creation of “a state which will bring the peoples of Bosnia and Herzegovina together within a social and political framework which will enable the country to take its rightful place in Europe”.⁷ It called for the creation of “a climate of stability and security” and “a durable and lasting political settlement”, new constitutional and political arrangements “within a framework of democracy and the rule of law”, and an open, free-market economy, with assistance from international donors to “kick start economic reconstruction”.⁸ Human rights were to be protected to the highest international standards, and the population was to be reintegrated through the return of refugees and displaced persons to their homes. An “initial phase of peace implementation”, during which the international community would be deeply involved in assisting with military disengagement, the return of refugees and the first election, was to lay the foundations for

⁷ Conclusions of the Peace Implementation Conference Held at Lancaster House, London, 8-9 December 1995, Art. 1.

⁸ *Ibid.*, Art. 3.

longer term development “by the people of Bosnia and Herzegovina themselves of their institutions and economy”.⁹

In successive annual meetings and mid-year reviews, the PIC has added further objectives to the list, including rapid privatisation according to “sound schemes”, the establishment of independent media, and the adoption of flags and national symbols. The common theme of all PIC documents is that long-term peace in Bosnia requires successful democratisation and economic development. Over time, PIC documents have become more specific about the particular steps in this process of transition, and also more imperative in tone, addressing instructions to national authorities. In Madrid in December 1998, in its most ambitious statement to date, the PIC attached an annex of 35 pages containing 28 concrete deadlines for action by Bosnian authorities.

The PIC declarations to date are curious documents, serving a number of purposes simultaneously. Reading through them, it is often difficult to tell who is being addressed. On one level, the PIC is acting as the supervisory body of the international organisations working in Bosnia, delegating authority, endorsing programmes, and encouraging support from donors. At the same time, it produces “State of Bosnia” reports, highlighting successes while warning of the need for continued international support. It also sets out the international community’s expectations of the Bosnian authorities, making political appeals to a variety of actors and setting out philosophical visions of Bosnia’s future, in language reminiscent of a UN General Assembly declaration, such as when it “urges the authorities of Bosnia and Herzegovina and its representatives to stop blaming each other”.¹⁰ On still another level, the PIC establishes a legislative and policy programme for the coming period, often instructing national authorities to comply in a peremptory tone.¹¹

What PIC documents have so far failed to address was how this impressive list of reforms is to be achieved. Every PIC since London has asserted that it is the authorities, institutions or people of Bosnia which are responsible for the peace process. While this is an understandable sentiment, it is also somewhat disingenuous. The peace implementation agenda requires a radical redistribution of wealth and political influence, carried out in defiance of the elites and interest groups – politicians, soldiers, intellectuals and criminal networks – which rose to prominence during the war, and which stand to gain from maintenance of the status quo. The authorities being addressed by the PIC – war-time nationalist regimes and communist institutions – are representative of those vested interests. There is no reason to expect them to embrace an agenda which is directed explicitly against their interests. Furthermore, in a decentralised state with weak institutions of governance at all levels, there is no institutional capacity for such an ambitious project. This lack of either willingness or ability of Bosnian authorities to carry out a reform agenda is of course the entire reason for the international presence in Bosnia. Wherever there is a lack of international strategy for how to build institutions and overcome the sources of political resistance, the PIC tends to obscure this by returning to the rhetoric of local responsibility.

⁹ *Ibid.*, Art. 4.

¹⁰ Communique, *Political Declaration from the Ministerial Meeting of the Steering Board of the Peace Implementation Council*, Sintra, 30 May 1997, para. 7.

¹¹ “The Council deplores the failure of the Bosnia and Herzegovina authorities to adopt the Law on the Council of Ministers. It demands that the Draft Law is adopted by 15 December 1997.” *Conclusions of the Bonn Peace Implementation Conference*, December 1997, para. 2(a). This very law was declared unconstitutional by the Bosnian Constitutional Court in late 1999.

In order to supervise the international mission more effectively, the PIC should not merely list international objectives, but should ensure that international organisations allocate their resources in accordance with the priorities it identifies. Each international objective, whether it involves the building of an institution, the adoption and implementation of a law or the dismantling of an illegal structure, should be approached as a project, with identified goals, strategies and resources (both political and material). This may require diverting resources away from less productive activities. If this is not done, then each new objective announced by the PIC simply accumulates with old ones, diluting international efforts. Where an international objective set down by the PIC is not realised, the failure should be examined in a very open manner, and an informed decision must be made as to whether the initiative should be continued with additional resources or a different strategy, or abandoned and its resources diverted elsewhere. This is more constructive than deploring the failure of the Bosnian authorities to take responsibility for a given initiative.

In addition, tensions have emerged between different elements of the peace process, with serious practical consequences for international programs. The rest of this chapter explores two of these tensions. The first is between the practical need to carry out large-scale, urgent reconstruction of a devastated country, and the political objective of challenging existing power structures. The second is between promoting democratic processes and institutions, and at the same time using international power to overrule them whenever they fail to support the international agenda. These contradictions are to some extent inherent in a post-conflict state-building mission, and can never be fully resolved. However, the failure to address them at a strategic level diminishes the effectiveness of international power, and helps to explain why so many international programmes have proved to be self-limiting.

D. The unintended consequences of reconstruction

In the first two years after the Dayton Agreement came into force, the greater part of international activity in Bosnia was focused on humanitarian and reconstruction activities. In relieving the humanitarian needs of the population, the reconstruction programme has been a remarkable success. At the same time, it has strengthened the war-time regimes and their capacity to oppose the state-building agenda. The rebuilding of bridges and roads, hospitals and schools, and even the distribution of humanitarian aid, reinforced the war-time regimes by giving them access to material resources and by building their credibility with the local population. Local leaders benefited materially from the aid programme through control of local companies contracted for reconstruction work, and through the supply of goods and rental premises to international agencies. They benefited politically, not just from being able to provide their constituency with international aid, but also from the ability to direct aid according to political criteria. By the time the international community became aware of the nature of the power structures it was dealing with, they had become well entrenched and highly resistant to external influence.

At the end of the conflict, more than a million people were internally displaced, many living destitute in makeshift collective centres and dependent on international food aid. The greater part of urban infrastructure was destroyed, and economic activity was at a standstill. To meet these humanitarian needs and to create a basis for economic recovery, physical reconstruction was carried out with remarkable speed. Jointly co-ordinated by the World Bank and the European Commission according to multi-year planning schedules, financed generously through annual donor conferences, and implemented by hundreds of international organisations and NGOs, the reconstruction program has been the most visible success of the

peace process. In the first three years, US\$2.8 billion of reconstruction aid was disbursed. By 1999, over a third of the damaged housing had been reconstructed, and most urban infrastructure had been restored to pre-war levels, from telephone lines to electric power generation, from 24-hour water services to the number of primary schools per pupil.¹²

To carry out this volume of reconstruction at such speed, international organisations worked together with whatever local authorities they found in place at the time. The responsible agencies were focused on efficient service delivery, not political impact. The World Bank entered Bosnia on the basis of its Operational Policy 8.5, a post-natural-disaster model which explicitly excludes political objectives. Prevented by its Charter from direct political engagement, it kept to its traditional role of external adviser assisting with the national decision-making process, in accordance with the principle of “ownership” outlined in its Comprehensive Development Framework.¹³ To administer its aid projects and oversee the application of funds, the Bank established Project Implementation Units in entity and cantonal government ministries. At lower levels, donors and implementing agencies negotiated directly with cantonal or municipal officials to draw up lists of priorities in housing and infrastructure. Humanitarian aid, from the World Food Programme, UNHCR or a myriad of international NGOs, was mostly distributed through official channels. Consistent with international development philosophy, this mode of operation was considered to offer a dual benefit, being the most efficient way of administering aid while at the same time strengthening the capacity of local governmental structures.

In Republika Srpska, international concern about the prominence of war-criminals in the entity leadership meant that very little reconstruction assistance was given in the first two years. In the Federation, however, reconstruction efforts had the unintended effect of strengthening and legitimating the nationalist power structures, and increasing their capacity to resist international initiatives. In minority return programmes, reconstruction of minority housing was resisted, return met with a bewildering array of legal and bureaucratic obstacles, and returnees were denied access to electricity or telephone grids newly repaired with international funds. The creating of multi-ethnic institutions, from local police to Federation-level regulatory agencies, was consistently opposed. Attempts to introduce financial transparency into public utilities, or reduce political influence in the appointment of public company management, met with no success at all.

The World Bank and the European Commission concluded in 1999 that “implementation of reconstruction programmes has been most effective in those sectors (e.g. in transport and energy) where priorities of donor assistance have been established jointly with the authorities.”¹⁴ In these two sectors, vital not only to the reconstruction programme but also to the nationalist war-time economies, more than US\$1 billion has been spent. By May 1999, 1,300 kilometres of roads were repaired, 22 bridges were reconstructed, the rail track was almost completely repaired, and electricity generation had reached 78 percent of pre-war capacity. At the level of structural reform, however, progress has been minimal. There is no effective road administration at Federation level taking responsibility for maintenance. As a result, roads which were not damaged during the war have begun to degrade, and those fixed with international funds already require further repairs.¹⁵ Rail traffic remains low, due “not to

¹² European Commission and World Bank, *1996-1998 Lessons and Accomplishments – Review of the Priority Reconstruction Program*, May 1999. At the end of 1998, the Bosnian GDP stood at only US\$4.1 billion.

¹³ World Bank, *Comprehensive Development Framework*: “the country is in the driver’s seat, both ‘owning’ and directing the development agenda”.

¹⁴ European Commission and World Bank, *1996-1998 Lessons and Accomplishments*, page 6

¹⁵ On 3 March 2000 the entities signed an agreement on a *BiH Road Infrastructure Public Corporation* to

technical deficiencies and low standards but to lack of willingness to co-operate.”¹⁶ In the energy sector, where Bosnia’s hydro-electric capacity offers potential for growth and export, the lack of progress at an institutional level is even more striking. Electric power exchange between the three segregated power companies remains limited, and there are no high-voltage links between the entities. Power stations along the Drina valley in Republika Srpska are still linked to and controlled from Belgrade. The ownership of major facilities such as the hydro-electric power stations in the Federation remains unresolved. The combination of rising production capacity and some of the highest consumer charges in Europe suggest strongly that revenue is being siphoned off for political purposes. There has been no progress at establishing effective regulation of the energy sector at state level due to resistance by the entities, although in the context of preparing for the third World Bank Power reconstruction project, which is taking place at this moment, this might yet be addressed.¹⁷

The dilemma of whether to work with the local power structures in order to carry out the concrete tasks of the peace process, or to seek to undermine them in favour of the political transformation of Bosnia, occurs at all levels of the peace process. Even if they are aware of the dangers, international organisations in Bosnia are caught in a bind. If they try to marginalise the existing power structures, they find themselves without effective local partners with whom they can work in carrying out their daily tasks. But if they take the pragmatic course and accept the existing power relations, their programmes have the unintended effect of strengthening the forces which are resisting the peace process. When the scale of the reconstruction programme is compared to the limited efforts made against illegal parallel structures, it is clear which goal has taken priority to date.

E. Elections and international authority

The other critical tension in the international agenda in Bosnia stems from the role of elections and democratic process in the state-building programme. Successive elections have left the international community in the paradoxical position of working together with democratically mandated parties whose interests are fundamentally at odds with the international agenda. In one of the sharpest ironies of the peace process, local power structures which have made no secret of their opposition to the state are now given constitutional authority to block its development. This veto power has been used not just on inter-ethnic questions, but on the whole range of measures on the international agenda, from creating democratic police forces, to establishing regulatory structures for a market economy, to tackling public corruption. As a result the international community has faced a choice between abandoning most of the substantive goals on its agenda or backing away from its commitment to constitutional and democratic process.

Elections have played a prominent role in international strategy in Bosnia, with four rounds in four years, and another two rounds scheduled for 2000. The Dayton Agreement required the first elections to be held with all possible speed, despite the many problems encountered in

institutionalise co-operation. However, the management and decision-making structures give each ethnic group a de facto veto. There is also a *BiH Railway Public Corporation* whose board members received in 1999 salary support from the international community, although the corporation then was neither legally registered, nor did it have an operational budget. Both the Road and the Railway Corporation are very different from the Transportation Corporation outlined in Annex 9 of the Dayton Agreement "to organise and operate transportation facilities such as roads, railways and ports, for their mutual benefit".

¹⁶ European Commission and World Bank, 1996-1998 Lessons and Accomplishments

¹⁷ OHR Economic Newsletter, March 2000

the process. The high profile of elections in international programming resulted from a combination of pragmatism and an excess of optimism. In the diplomatic rhetoric of 1996, there was a hope that a 'free and fair' vote would contribute to ethnic reconciliation, encouraging ordinary citizens to reject the war by excluding its protagonists from power. >From 1997 onwards, when it was clear that elections were not accomplishing any immediate transformation of the political environment, the tone changed, with international officials citing each peaceful vote as an achievement in itself and a step along the path to democracy. Elections came to be seen not so much in instrumental terms, according to how they might advance the peace process, but rather as a goal in their own right.

At a more practical level, international efforts began from the proposition that elections were the natural starting point for a state-building project. Elections were thought to be necessary in order to establish local authorities with whom international actors could legitimately co-operate. By the end of the conflict, pre-war constitutional authority had collapsed, and new institutional structures under the Washington and Dayton Agreements had to be established from scratch. Elections were seen as the essential first step in convening the joint institutions, an urgent priority when the international organisations had no intention of taking on direct administrative functions. Establishing constitutional organs, from the State Presidency to municipal councils, had to begin with the election of the office bearers.

In subsequent years, the priority given to elections has come under critical scrutiny. Elections do not of themselves accomplish institution building. After four rounds of elections held to date, important elements of the state and the Federation constitutional structures are yet to be established. Without a basic constitutional framework, where parliaments, executive organs and public officials exercise functions according to the rule of law, and the spending of public funds is controlled through transparent budgetary processes, the democratic meaning of an election is lost. When elections are held in such an environment, candidates are not seeking election to any specific public office, but to an extra-constitutional regime which operates without democratic control.

To take an extreme example, the city of Mostar has had more elections than any other part of the country. At the same time, its basic organisational structure is still the subject of bitter dispute between the Bosniac and Croat sides. There are nominally three Croat municipalities in West Mostar, but they are all housed in one building. On the other hand, the government of the Herzegovina-Neretva canton, nominally a multi-ethnic institution, has no building at all, and each of its ministries is divided into two ethnic halves with no working relationship between them. The elected multi-ethnic assembly of the city of Mostar at one time did not meet for almost a year. Under these circumstances, issues of power are not decided in either the elected assemblies or in the legitimate governments. SFOR's Operation Westar, which seized documents from Croat intelligence services in West Mostar (see the section on military power below), revealed that the HDZ regime in Mostar has links to foreign intelligence services and organised criminal networks, and that a significant proportion of its financial resources never passes through any official budgetary process.

Similar problems exist at all levels of government. The three members of the state Presidency are elected to an institution with very limited constitutional power and no real administrative structure. The three Presidents as individuals are nonetheless highly influential, being prominent members of the nationalist regimes. International officials negotiate with them on everything from refugee return to public corruption, issues over which they have no constitutional authority at all. Their personal power is outside the democratic process, exercised in a non-transparent fashion, and unaccountable to any parliament or court. For

example, each President pursues the separate foreign policy agenda of the nationalist party he represents, at times working overtly against the interests of the Bosnian state.¹⁸ The constitutional order has no mechanisms to control such abuses of public power.

At the other end of the spectrum, there are many democratically elected organs which have no real power. A key international strategy for building local democracy in Bosnia has been creating the opportunity for displaced minority communities to be represented on municipal councils in their place of origin, even where they are unable to return to their homes. After an exhaustive effort by OSCE and OHR, displaced persons now have a significant voting presence in a number of municipalities. However, a common effect of this has been to marginalise the municipal councils themselves. Wherever the municipal council is independent of the local power structure, local executive bodies are not responsive to it, and the council either ceases to function altogether or becomes deadlocked in procedural or symbolic matters (Drvar, Stolac, Modrica). Only rarely have Bosniac councillors in Republika Srpska been able to win any real benefits for their supporters. The same situation can be found in the Republika Srpska National Assembly, where the Bosniac deputies are nominally part of the governing majority, but are given no access to power.

Without the networks of institutional checks and balances which make up a functioning constitutional order, elections produce the form of democracy without much of the substance. In post-war Bosnia, the international community has unwittingly replicated the kind of democracy which prevailed in communist Yugoslavia, where there was a plethora of elected bodies, all of which were subordinate to a single party.¹⁹

One unfortunate effect of elections in Bosnia has been to provide the existing nationalist regimes with constitutional legitimacy, solidifying their power and making them much more difficult to challenge. Across the country, local warlords became mayors, military commanders moved into senior civilian posts, and ethnic divisions were solidified and given a constitutional basis. The first High Representative, Carl Bildt, comments:

“Milosevic had always said that elections had to be held quickly, arguing that this would mean Karadzic’s disappearance and replacement with more reasonable political forces in the Republika Srpska. A more tangible reasons for his preference for rapid elections was that they would lead to the legitimization of existing structures – in particular the Republika Srpska – and that they would thus acquire a permanence that they had not possessed hitherto”²⁰

Over time, the search for a resolution to this dilemma has brought about a dramatic shift in international policy. Once it accepted a longer time-scale of involvement in Bosnia, the international community also accepted a much closer engagement with the political process. In frustration at the lack of support in the state and entity parliaments for international reform initiatives, the international community has granted the High Representative very broad

¹⁸ Over the past years, there have been many such incidents, such as the comments made by the Croat Jelavic at Croatian President Tudjman’s funeral; visits by successive Serb members of the Presidency to Belgrade; and the actions of Izetbegovic in maintaining direct diplomatic links, including unofficial embassies, with Islamic states.

¹⁹ For a description of the complex multi-tiered structure of "delegations" and assembly chambers of pre-1989 Yugoslavia see Lenard Cohen, *The Socialist Pyramid – Elites and Power in Yugoslavia*, 1989. In chapter 4, Cohen describes a system which "extends from its base of delegations elected in approximately 21,000 neighbourhood, enterprise, and organisational units, through local (communal and inter-municipal) and regional (provincial and republic) assemblies to the apex of the system, the assembly of the SFRY".

²⁰ Bildt, Carl, *Peace Journey: The struggle for Peace in Bosnia* (1998), p. 254.

authority not merely to remove obstacles to the democratic process, but also to override the constitutional organs whenever they fail to support the international agenda. Through the powers of the High Representative, it has taken an increasingly assertive role over the parliaments, controlling their agendas, drafting their legislative programmes, and, if they still fail to co-operate, bypassing them altogether.²¹

The High Representative's decision on 13 January 2000 to impose a law creating a state border service, which had just been rejected by the state parliament, shows the dilemma which this raises. An OHR press release stated that:

“The High Representative is utterly dissatisfied with the inability and unwillingness of the Serb delegates to the BiH House of Representatives to represent the interests of the honest people of BiH. Bosnia and Herzegovina urgently needs a Border Service. It is key to its integration in Europe... [The High Representative] will not allow a few irresponsible State representatives from the RS to dash an entire country's hopes for a prosperous and open future. These officials claim to be protecting the so-called national interests of the RS and its citizens. But, as a matter of fact, they are actually harming the development of their Entity and the well-being of their citizens with this kind of obstructionism.”²²

The Serb delegates who had blocked the passage of the law in the parliament responded by pointing out that: “Deputies are not in the parliament to carry out someone else's orders, but to make decisions, otherwise there is no need for them to be there.”²³ However, the Serb delegates were not deciding anything on behalf of the state, but were representing the Republika Srpska government in Banja Luka. They did not mind carrying out someone else's orders when it came to the unconstitutional resolution of the Republika Srpska National Assembly in May 1999 when it instructed “the Republika Srpska deputies in the House of Representatives of Bosnia and Herzegovina to consider the positions and directions of the Republika Srpska National Assembly”. Constitutionality there are no “Republika Srpska deputies” in the Bosnian House of Representatives, only directly elected delegates.

The tensions in the international position are brought out starkly by this exchange. The international community has created a parliament which, according to the constitutional order, should be the highest democratic authority. However, because the parliament is ineffective as an institution, and because it is readily apparent that the vicious circle of power is being perpetuated through the electoral process, the international community has come to put the substantive goals on the state-building agenda ahead of democratic process.

ESI argues that it is both necessary and legitimate to use international authority to advance the development of the constitutional order. The weakness of Bosnian democracy is a result above all of the weak institutional environment, a problem which will not be solved simply by repeated elections. Early elections placed the nationalist regimes in a position where they could veto or obstruct the development of the institutions which, in a constitutional

²¹ The process for preparing the state budget in 1999 was illustrative. The Bosnian Council of Ministers prepared a draft budget and sent it to OHR, where it was analysed by the various departments to determine what ought to be changed, following consultations with other international institutions. The international financial institutions in their turn reviewed the budget. Then OHR met with the responsible ministers to discuss the changes. Only then did the law go to the entities for harmonisation, and finally back to the presidency and the Bosnian parliament for adoption.

²² OHR press release, 13 January 2000.

²³ Central Europe Online, 18 January 2000.

democracy, are used to control arbitrary power and public corruption. Progress in the state-building agenda is therefore a necessary precondition to meaningful democracy.

The resolution to the conflicts in international strategy must lie in establishing exactly which state-building goals have priority over the democratic process, and using international authority in a systematic and transparent fashion to achieve them, while leaving the elected parliaments free to function independently in all other matters. In other words, international strategy should identify which public institutions are a precondition to constitutional democracy, and concentrate its resources on making them function effectively. This will ultimately be less disruptive of the democratisation process than interventions which appear arbitrary in nature.

III. THE EVOLUTION OF THE INTERNATIONAL COMMUNITY

A. Who is the international community?

The “international community” is a key concept in Bosnia, suggesting the moral and legal foundation for foreign involvement in the peace process. In so far as it implies a single actor, however, it is of course misleading. The international community is a honeycomb of power centres, with multiple actors pursuing their individual goals with substantial autonomy. There are myriad international organisations, each with its own source of authority, whether from the Dayton Agreement, from established charters or mandates, or by delegation from the UN Security Council. Each is answerable to a different hierarchy or constituency, with programming and funding decisions taken in isolation and at a distance from Bosnia. The different member governments of the PIC have their own agendas, and are often themselves internally divided among different agencies. There are different chains of command within the military mission, going back to national capitals or to NATO in Brussels. There are numerous international NGOs, pursuing their separate activities or acting as implementing partners to international organisations. And there are the various intelligence services, operating in the shadow of the more visible world of diplomatic activity.

So far as there is any organising principle among this institutional diversity, it is horizontal rather than hierarchical. The institutional arrangements made at the Dayton peace conference, and later at the London conference, were *ad hoc*, departing for various reasons from the established pattern of peace missions under UN authority used before and since.²⁴ Discrete areas of the peace process were allocated to different institutional actors. UNHCR continued its war-time role of lead agency on humanitarian and refugee issues. The OSCE in its first major field mission took on elections, human rights monitoring and regional stabilisation. The UN Mission in Bosnia and Herzegovina (UNMIBH), much reduced in scope from the war-time UNPROFOR mission, undertook the police monitoring mission. The World Bank and the European Commission took the co-ordinating role in the reconstruction programme, and a range of other economic initiatives. USAID took the lead on numerous institution building and economic reform issues, including payment system reform, private sector reform and privatisation. To assist with co-ordination in theatre, the Dayton Agreement created an entirely new post, the High Representative, who is selected by the PIC and formally appointed by the UN Security Council. Initially, the mandate of the High Representative, contained in Annex 10 of the Dayton Agreement, appeared pointedly weak. The High Representative is authorised to co-ordinate civilian organisations in the interests of efficient implementation, but must “respect their autonomy within their spheres of operation”.²⁵ Military affairs were segregated from civilian implementation, and the High Representative was strictly instructed not to “interfere in the conduct of military operations or the IFOR chain of command”.²⁶ The military mandate was defined in fairly narrow terms. Although IFOR had the authority “to create secure conditions for the conduct of others of other tasks associated with the peace settlement”,²⁷ any operations in support of civilian objectives were solely at its discretion.²⁸

²⁴ For a discussion, see Bildt (1998), p.109.

²⁵ Annex 10, Article II, para. 1(c).

²⁶ Annex 10, Article II, para.9.

²⁷ Dayton Agreement, Annex 1A: Agreement on the Military Aspects of the Peace Settlement, Article VI, para.3,

²⁸ For the political background to the IFOR mandate, see Richard Holbrooke, *To End A War* (1998), pp.218-23.

In response to this institutional proliferation, a whole series of co-ordinating structures have sprung up at different times over the past four years. There are several bodies purporting to exercise an overview function. In addition to its own biannual meetings, the PIC created a Steering Board made up of the states most directly involved in the peace process, which meets at ambassador level in monthly meetings chaired by the High Representative. UNHCR continues to operate the Humanitarian Issues Working Group, which was a co-ordinating mechanism within the International Conference for Yugoslavia during the war. The European Union and the World Bank operate the forum of periodic donors' conferences. International organisations meet periodically at the level of 'Principals', which was later supplemented by preparatory meetings of an Inter-Agency Planning Group. In specific areas of the peace process, other structures have emerged over time. The inter-agency Human Rights Steering Board is a forum for declaring human rights priorities, and has established working groups on issues such as judicial reform, property rights and human rights institutions. The Economic Task Force is nominally responsible for everything from co-ordinating reconstruction projects to recommending economic conditionality to developing economic reform strategy, and is divided into sectoral task forces which share information on different areas of the reconstruction program. The Return and Reconstruction Task Force was created by OHR and UNHCR to co-ordinate donor and international agency strategies in refugee return matters. There have also been many *ad hoc* working groups on specific issues from time to time, such as the common license plates, municipal elections implementation and more recently the dismantling of the payments bureaux.

The need for better co-ordination is a constant theme in discussions of the international mission. However, few of the co-ordinating mechanisms have ever been able to accomplish any rationalisation of international efforts, or to focus limited resources according to international priorities. Some co-ordinating bodies spend most of their time dealing with diplomatic problems arising within the international community. As a general rule, the weaker the underlying strategy, the greater the problems over overlapping mandates which arise.

One reason for this is the strong institutional resistance to rationalising international resources. When international organisations have invested heavily in developing a presence in Bosnia, they are reluctant to discard programmes which have proved ineffective, or which duplicate the work of other agencies. This is particular the case for labour-intensive activities in the field. In 1996, many organisations moved quickly to establish networks of monitors and other field structures.²⁹ The European Commission Monitoring Mission (ECMM) continued its activities from during the war; OSCE created a human rights field monitoring mission; UNHCR developed an extensive field structure; UN Civil Affairs kept its human rights operations; the IPTF deployed an enormous presence of over 2,000 police monitors in 109 police stations; and OHR over time established a field presence of its own through the RRTF structure. Many of these structures perform overlapping functions, and could easily be rationalised. As international priorities have shifted from crisis management towards institution building, the value of extensive field monitoring capacity becomes less apparent. Some of the missions have successfully evolved into new roles. The OSCE human rights structure, for example, has taken on the task of institution building in local housing authorities, which is now a central pillar of international strategy. Others have proved less adaptable. Although the UN's task of reforming the police forces is a key international objective, its vast network of police monitors, maintained at a cost of over half a billion dollars between December 1995 and June 1999, is not an effective tool for institution

²⁹ Holbrooke comments that 'monitor' is 'a favorite Euro-word that could mean almost anything': *ibid.*, p.251.

building. Some years into its mandate, the UN conducted a series of detailed ‘Operational Reviews’ of the police in various parts of the country. These excellent studies arrive at the sobering conclusion that extensive efforts in the field over several years have not succeeded in eliminating direct political influence over the police forces, overcoming ethnically divided structures, or modernising police practices.³⁰ Yet because the field structure represents the backbone of the UN mission, these resources are not transferred to more productive uses.

A second reason for poor resource management is that the diffuse institutional structure of the international community encourages the proliferation of objectives. International programming decisions tend to be driven by problems encountered along the way. As a result, the number of issues in which the international community is involved has grown exponentially over the years. It therefore stands to reason that the overall international effort has become both more ambitious and less intensive over time. OHR itself is particularly prone to this problem, because its mandate is not limited to any particular sector. Too often it has tried to play the role of a shadow government, asserting an opinion on every issue in the public arena, instead of focusing on areas where it can hope to make a real impact. The international community would in all likelihood achieve greater results by identifying a more limited range of objectives.

B. The rise of OHR

Problems of interagency co-ordination are common to any international mission, and there is no reason to suppose that a formal hierarchy among the institutions, as was nominally created in Kosovo, would resolve all of the tensions. In Bosnia, international organisations and the PIC have increasingly turned to the High Representative to serve as a focal point for political interventions. The High Representative has become the principal voice of the international community in dealing with national authorities. New legal powers acquired by the High Representative have created the opportunity for the international community to develop new techniques for advancing the state-building project.

This has required a considerable evolution of OHR as an institution. In the first phase of the peace process, the function of the High Representative was limited to mediation among both international and local actors, similar to the role played by successive peace negotiators during the war. It proved difficult for a new office with no institutional base to play this role effectively. Carl Bildt, the first High Representative, wryly comments that in the early days of the mission, the personal cooks and assistants brought by US officers to Bosnia were more numerous than his entire staff.³¹ By the end of 1999, OHR had expanded to an organisation of over 700 staff, with an annual budget in excess of US\$30 million.³²

A turning point in the development of OHR was the campaign in 1997 to secure the independence of public broadcasting in Republika Srpska from the Pale faction of the Serb nationalist SDS. Until that time, the media in Bosnia, and particularly in Republika Srpska, was manipulated openly by the nationalist parties for political purposes, by what an OHR spokesman described at the time as “deliberate misinformation, inflammatory commentary, insulting language and highly biased reportage”. The chairman of the board of Serbian Radio and Television (SRT), the public broadcasting corporation in Republika Srpska, was Serb

³⁰ UNMiBH, *Operational Review of the Central Bosnia Canton Ministry of the Interior* (1999).

³¹ Bildt (1998), p.174.

³² Figures provided to ESI by OHR.

member of the Presidency Momcilo Krajsnik, a close associate of Radovan Karadzic, and all other board members were SDS appointees.

At a meeting in Sintra in May 1997, the Steering Board of the PIC authorised OHR to take strong action to prevent political manipulation of the media. It declared that “the High Representative has the right to curtail or suspend any media network or programme whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement.” This led to a remarkable series of co-ordinated interventions by OHR and SFOR, which enabled OHR for the first time in its mission to adopt an aggressive negotiating stance. A letter sent by the High Representative to Krajsnik on 25 August 1997 following continued defiance of international criticism sounded a new note: “all this must stop – permanently... You should be quite clear that I will have the resources I need.” On 1 October 1997, SFOR troops seized control of SRT’s transmitters in Pale and forcibly took the station off the air. OHR then required the resignation of the entire management board of SRT in Pale, as a condition for returning the transmission towers. By 20 October 1997, OHR had secured agreement from both Entities to a comprehensive media restructuring plan and legislative reform program that was designed to make it impossible for a return to direct political party control over public broadcasting. Particularly striking was the weakness of opposition to these actions. Attempts by SRT to incite a popular protest against SFOR were unsuccessful,³³ and the Republika Srpska Union of Journalists refused to participate in a strike by state media.

The success of this intervention led many in the international community to accept that direct challenges to the power of the nationalist parties were both feasible and appropriate. Encouraged by the results of the “transmitter war”, OHR engaged in a series of aggressive reinterpretations of its mandate, with the support of the PIC. Drawing on the High Representative’s final authority to interpret his own mandate,³⁴ and his authority to “facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”, an OHR legal opinion held that “media practices can affect, in a direct and significant way, the implementation of the GFAP [Dayton Agreement] and the constitution of BiH... Use of the media by the parties to the GFAP, which, in essence, promote non-compliance, is subject to the authority of the High Representative... His authority must be viewed in light of the spirit and intent of the GFAP, a lasting peace in Bosnia.”³⁵

This set the stage for the PIC meeting in Bonn in December 1997, which broadened the High Representative’s powers over a potentially unlimited range of subject matters. The PIC welcomed:

“the High Representative’s intention to use his final authority in theatre regarding interpretation of [Annex 10] in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary, on the following issues:

- a) timing, location and chairmanship of meetings of the common institutions;

³³ One SRT broadcast said: “As of tomorrow, SRT will be run by a bunch of Arabs, blacks, Mongolians, and other exemplary international experts.” Concerning SFOR, it called upon the Serbs to “cancel their hospitality” to “these thugs and usurpers”.

³⁴ “The High Representative is the final authority in theatre regarding interpretation of this Agreement on the Civilian Implementation of the Peace Mission”: Annex 10, Article V.

³⁵ Opinion of the Legal Advisor to the High Representative, 16 October 1997.

- b) interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned;
- c) ...actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms of its implementation.”³⁶

Although the PIC was careful to avoid the impression that it was conferring additional functions on the High Representative, the High Representative himself has always referred to this authority as the “Bonn powers”. They have come to mean two powers in particular: the power to impose laws; and the power to dismiss any public official from office.

The Bonn powers were conferred at a time when formal and procedural disputes in the state institutions were causing frequent deadlocks, delaying the passage of laws required for the international reform agenda. They were intended as a tool to force the common institutions to function, threatening the representatives with the sanction of an international imposition. Inspired by the successful struggle against the SDS leadership in Pale, there were also intended to provide a tool to hold public officials accountable for destabilising conduct.

C. Ruling by decree: the legislative power of the High Representative

While the media campaign was an important milestone in the development of the international community, its real lesson has often been misconstrued. The key element of the media campaign was the way in which a more basic source of international power – the coercive power of SFOR – was combined with a political strategy from OHR to achieve structural change in an important sector. Increasing the mandated authority of the High Representative, to the point where it is all but unlimited on paper, does not of itself allow the international community to challenge local power structures successfully. When the history of the Bonn powers is examined in detail, it becomes clear that they do not necessarily constitute a source of power in their own right, but if used in a tactical way provide an extremely useful tool for focusing international power in support of state-building objectives.

1. An overview of legislative actions

The limitations on the High Representative’s legislative powers which were implicit in the Bonn text have since been discarded. From 1998 onwards, the powers were used not just at state level, but also in the entities, Federation cantons and municipalities. They are no longer restricted to breaking procedural deadlocks, but have become a parallel legislative function. The High Representative has imposed laws which have never been presented to a parliament, or even discussed with the responsible government. He no longer accepts the possibility that his decisions may be replaced by different but lawful decisions of the Parliament, instead ordering his imposed texts to be adopted “without condition or amendment”. Whether or not they are subsequently ratified in the parliamentary procedure, his decisions are promulgated in the official gazettes as permanent laws.

³⁶ *Bosnia and Herzegovina 1998: Self-Sustaining Structures*, Bonn Peace Implementation Conference, 10 December 1997, Annex, Article XI, para.2.

**Subject matter of decisions imposed by the High Representative³⁷
16 December 1997 – 25 January 2000**

Substantive measures	Political measures	Symbolic measures
<ul style="list-style-type: none"> • Citizenship • Foreign investment • Vehicle license plates • Common currency • Privatisation • Telecommunications • Independent Media Commission • Property legislation (x 25) • Socially owned land • State administrative fees • Public broadcasting (x 3) • Freedom of press (criminal libel) • Restructuring the Federation Supreme Court and Prosecutor • Witness protection • Deportation • State Border Service 	<ul style="list-style-type: none"> • Mostar airport • Mostar courts (x 3) • Mostar prosecutor • Mostar municipal statutes • Mostar public seal • Soldiers' claims (privatisation vouchers) • Venues for Council of Ministers' meetings • Promulgation of RS laws without the President's signature • Reconnecting DP telephones • ID cards for DPs • IPTF selection procedures for police minority candidates • Import duties • Abolishing RS municipality Skelani 	<ul style="list-style-type: none"> • BiH flag • Flying the flag on official buildings • BiH coat of arms • BiH national anthem • Display of insignia in public offices

The Bonn powers have been used on approximately 50 occasions to impose laws or binding arbitrations on a range of subjects. Most of the laws were imposed at state level, and at that level constitute over a third of the statute book, a statistic which indicates the low output of the state parliament. The table above gives an overview of the subject matter of the High Representative's decisions (including both laws and binding arbitrations which did not impose legislation). The first category are substantive legislative reform, and include laws establishing the state itself (citizenship; state symbols), creating regulatory bodies (Privatisation Monitoring Commission; Telecommunications Regulatory Agency; Independent Media Commission); economic reform (foreign investment; privatisation; currency), and a range of human rights and rule of law issues (property laws; freedom of press; judicial reform).

Decisions in the second category are attempts to arbitrate on short-term political disputes which were delaying international programmes. They were mostly diplomatic initiatives designed to bypass contentious issues, rather than to advance international strategy in their own right. The series of decisions on Mostar were attempts to resolve complex disputes over administration of the divided city, but have not been successful. At times, a purely diplomatic approach to local disputes has distracted OHR from developing a coherent policy. The OHR decision to create seven municipal courts in Mostar, for example, was a highly impractical idea which was subsequently reversed by a further High Representative decision.

The five decisions on state symbols were designed to achieve a quick resolution to the problems of divisive nationalist imagery which were disrupting the work of the common institutions. The High Representative imposed designs of the flag, coat of arms, national anthem and currency, using only common or neutral imagery.

³⁷ The information in the table is compiled from various different sources, including OHR press releases (<http://www.ohr.int/press.htm>), and may not be comprehensive.

The willingness of the High Representative to impose laws has strengthened OHR's negotiating position in all legislative reform initiatives, and has helped OHR to persuade the entity parliaments to pass many other laws through their regular procedure. The impact of the Bonn powers therefore cannot be measured solely by the laws actually imposed.

2. The effectiveness of legislative power

The effectiveness of legislative initiatives by the High Representative has been varied. The Bonn powers have proved to be an essential tool for developing the constitutional order and advancing substantive goals on the international agenda. However, most laws have required new or strengthened institutions to implement them. Imposing a law is never sufficient of itself to establish an institution, and the High Representative's actions have only been as effective as the institution-building programmes which followed them.

For example, when a law was imposed creating a trial chamber in the Federation Supreme Court, as required by the Federation Constitution, the response was a letter from the Federation Minister of Justice asking for international funding for additional judges, larger premises and new detention facilities. This sent the issue back into the international community's lap.³⁸ The Telecommunications Law created a state-level telecommunications regulatory body which did not meet for nearly a year following the imposition, and has to date achieved little of substance. Decisions creating regulatory bodies under international control, as in privatisation and media, are potentially powerful instruments, but only if followed through effectively. The Privatisation Monitoring Commission, established in June 1998, was given extensive powers on paper to supervise the privatisation process, including the right to inspect the records of state-owned enterprises. However, there has been little international commitment to the initiative. As a committee of three foreign experts which did not meet until 1999, with a secretariat of only three professional staff, it has never developed the capacity to exercise its powers.³⁹ By contrast, the Independent Media Commission established in August 1998 was foreseen as an integral part of the media restructuring process, and with stronger international support has developed into an effective institution.

The use of the Bonn powers to decree short-term solutions to the political problems of the day has achieved very little. Although usually intended to remove an obstacle to an international program, these decisions have not contributed directly to the state-building agenda. The danger is that, having begun to arbitrate on political disputes, the High Representative comes under pressure from both local and international sources to continue to do so, and is drawn into regulating areas in which the international community has not developed a sound strategy.

For example, international frustration with the extremely slow progress in privatisation in the Federation led to pressure on the High Representative to become involved. One of the many causes of delay was a quarrel over the distribution of privatisation vouchers between different groups, in particular Bosnian Croat and Bosniac war veterans. When HDZ and SDA could not agree, OHR intervened in late 1998 with a decision which simply 'split the difference' between the competing claims, despite international misgivings about the merits of either claim.⁴⁰ Two months earlier, in September 1998, OHR had noted that a "realistic valuation of

³⁸ Human Rights Co-ordination Centre, Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 5, 16 January 2000, 4-5.

³⁹ OHR Economic Newsletter, December 1998

⁴⁰ Under the Federation privatisation process, the state is clearing debts owed to its own citizens by issuing

total Federation soldiers' claims would be between 4 and 5 billion KM", and that any higher sum would be "a politically motivated overestimation which would make soldiers the main beneficiary group in privatisation".⁴¹ However, by December 1998, as concern mounted over delays to privatisation caused mainly by obstruction from the HDZ, OHR issued its arbitration "in view of the urgency to begin... and the failure of the political leaders to reach a decision."⁴² By April 1999, after the HDZ had refused to accept the High Representative's arbitration, the authorities increased the total amount of soldiers' claims once again to KM 7.7 billion. This amounted to a major political victory for the HDZ, providing a windfall for their most powerful constituency at the expense of ordinary citizens, and showing the value of non-co-operation.

The Bonn powers have also been used to legislate for the implementation of substantive provisions of the Dayton Agreement, particularly concerning refugee return and property rights. The campaign on property laws perhaps illustrates best of all both the potential and the limits of international legislative authority. During and in the months after the war, all three ethnic groups passed legislation preventing minorities from returning to abandoned property, by reallocating the housing to members of the majority group.⁴³ This rendered meaningless one of the key commitments of the Dayton Peace Agreement, the right of displaced persons and refugees to return to their homes. From early 1996, OHR led an intensive international campaign to persuade the entity parliaments to repeal these laws, and create an administrative claims process for refugees and displaced persons to regain possession of their housing. Resistance from all three sides was intense, and negotiations dragged on for two years without much progress. The Federation finally adopted an agreed text in April 1998, and the Republika Srpska in December 1998, under threat of suspension of economic aid.

Initially, OHR did not consider it appropriate to use the Bonn powers in the property field, believing that only a genuine agreement with the responsible governments would lead to implementation. However, the price of agreement was a series of compromises to the texts of the laws which watered them down, making them in the end as much a tool for preventing return as facilitating it. The municipal bureaucratic structures responsible for implementation took a long time to be established, were invariably under-resourced for the task, and were often themselves the source of political obstruction.⁴⁴ Loopholes in the law were used as an excuse for inaction. A year and half after the Federation property law was adopted, of more than 80,000 return claims, only 5 percent have led to the repossession of property.⁴⁵

Over time, OHR adopted a more aggressive approach to property law reform. It imposed the first amendment to the Federation law in October 1998 (this was the first law imposed at entity level), to extend a deadline for claiming apartments. Since then, the laws have been amended by 25 different High Representative decisions, broadening the right to return, removing errors and loopholes, tightening administrative procedures, standardising rules

vouchers which can be used in the purchase of state assets. As the quantity of vouchers issued is considerably greater than the value of the assets being privatised, the more vouchers that are issued, the less their real value becomes. Privatisation vouchers are currently trading for less than 10 percent of their face value.

⁴¹ OHR Economic Newsletter, September 1998.

⁴² OHR Economic Newsletter, December 1998.

⁴³ See Cox, Marcus, *The right to return home: international intervention and ethnic cleansing in Bosnia and Herzegovina* (1988) 47 *International & Comparative Law Quarterly* 599.

⁴⁴ Under the highly decentralised Federation Constitution, the municipal authorities responsible for housing affairs are fully independent from the Federation government, and even from the Cantonal governments. In Republika Srpska the responsible authority is the Entity Ministry for Refugees and Displaced Persons.

⁴⁵ ESI, *Interim Evaluation of the Return and Reconstruction Task Force*, September 1999

between the two entities and introducing penalties for non-compliance. The repeated decisions show the difficulty of legislating away bureaucratic resistance – every time a loophole was closed, the point of obstruction simply moved further along the administrative process. The long series of amendments also reflects the learning curve of the inter-agency team which carried out the drafting, as further legal and practical problems were identified in the field and dealt with in legislation.

The right to return is now much stronger under the law, which strengthens the hand of the agencies working on return issues. Nonetheless, implementation remains extremely difficult to achieve. OSCE, UNHCR and OHR field officers work extensively with municipal authorities, training them in the law, reminding them of their obligations, opening channels of communication between them, and assisting them with the practical tasks of implementation. In recent months, OHR has become involved in the budgetary processes of the responsible authorities, trying to ensure that enough resources are allocated to housing issues. In some areas, particularly in Sarajevo Canton, close international supervision has increased the independence and professionalism of the housing services, and implementation is proceeding. In other areas, particularly in Croat-controlled Herzegovina and parts of the Republika Srpska, housing authorities are controlled by local politicians hostile to the return process, and implementation is at a standstill. The property law campaign illustrates that legislative reform may be an essential first step in giving effect to the Dayton Agreement, but that further sources of international power must be identified to secure implementation.

3. The process for exercising legislative power

The Bonn powers were originally envisaged as responsive in nature, triggered by deadlocks or boycotts of the state institutions. However, over time, it has become clear that they are most effective when used in a proactive way to advance the state-building agenda. Because the role of the High Representative has expanded more by necessity than by design, the question of his relationship to the national parliaments remains unresolved. What sphere of authority is left to the parliaments, and on what issues should the High Representative dictate the outcome? Should OHR develop its own legislative programme, addressing the issues it considers vital to peace-building efforts, or should it retain a supervisory function, intervening only when the parliaments fall below established democratic standards?

OHR has to date not developed any principles for determining which subjects are important enough to warrant imposition by the High Representative, and which should be left to the discretion of the national parliaments. Some issues on the international agenda are permitted to languish in unproductive negotiations for years,⁴⁶ while others are imposed without consultation with the government.⁴⁷ Sometimes laws are imposed not because there is a disagreement with the nationalist parties on the text, but because the matter is deemed too urgent to wait the year or so it requires to pass through the ordinary legislative procedure. Sometimes interim measures are imposed, while the parliament is called upon to adopt a permanent solution.⁴⁸ Even though the proposals are invariably in politically contentious

⁴⁶ For example, the law regulating the status of local NGOs, which has been an outstanding OHR initiative since 1996: Human Rights Co-ordination Centre, *Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 5*, 16 January 2000.

⁴⁷ For example, a number of the property laws.

⁴⁸ The High Representative suspended prison sentences for criminal libel, while waiting for the Entities to develop modern civil defamation laws (Joint OHR/OSCE Press Release, Petritsch and Barry Call for Democratic Reforms to Defamation Laws, Sarajevo, 18 January 2000) and suspended the rights of local authorities to reallocate socially owned land, while calling for a thorough review of land law (OHR Press

areas, there is not always a strategy presented for overcoming political resistance to the implementation of the law.

There are no established procedures for consulting with the responsible authorities in advance of imposing a law. In the scenario which the PIC had in mind at Bonn, the powers would be used only where an agreement had already been reached on the text, but the proposed law was delayed by procedural problems. A number of the laws imposed, such as citizenship and foreign investment, fall into this category. However, if that is not the case, the principle is not so clear. Usually, OHR consults with the responsible government, and tries to take into account its objections as far as possible. If an agreement is reached, then there should ideally be no need for an imposition. If the objection of the government is thought to be 'mere obstruction', the law will be imposed. But what is the situation where the government legitimately takes a different view to OHR on the substance of the text?

Because the rules are uncertain, international officials working on legislative policy development never know whether to prepare an 'ideal' text, or one with a better prospect of passage through the parliament. This can inhibit international policy development. One current example, the electoral law, is illustrative of the problem. Electoral law reform entered onto the international agenda in 1998 as a way of breaking the stranglehold of the nationalist parties over the electoral system. OHR and OSCE decided to go through an elaborate consultation process for preparing the draft law, including committees of local experts, public information campaigns, opinion polls and extended negotiations with the political parties. Hoping to achieve a solution which would be acceptable to the state parliament, OHR and OSCE accepted many compromises along the way, with the result that few international observers now expect the proposed law to make any real difference to the political landscape. In the end, the compromise text was not acceptable either to the nationalist parties (HDZ and SDA) or to the moderate multi-ethnic SDP. In January 2000 the state parliament voted not to consider the law at all. The High Representative now faces the dilemma of whether to impose a law which satisfies nobody, or to begin the drafting and negotiations afresh.

Another difficult issue has been finding the expertise within the international community to prepare complex legislative material. In some areas, OHR has the substantive expertise to develop legislative policy, but as its agenda has expanded, it is no longer able to prepare all of the legislative proposals itself. The laws that were imposed in the later months of Carlos Westendorp's tenure were of mixed quality. The Council of Europe and the international financial institutions have been involved in some initiatives, such as citizenship and economic legislation. However, there is no systematic process for identifying and making use of international expertise.

There are a number of ways in which the High Representative's legislative role could be made both more effective, and less disruptive of the development of Bosnian democracy. Decisions of the High Representative should not be reactive to events in the political sphere, but should be considered actions aimed at advancing the state-building agenda. Laws which the High Representative decides to impose, particularly laws which establish public institutions, should not contain political compromises which substantially weaken the law, but should be the best available solution to the problem. However, in politically contentious areas, unless the international community develops a strategy for achieving implementation, there is little value in imposing the law. OHR bears the responsibility to develop the legislative program, but not necessarily to draft every law. OHR needs to become expert at

finding and making use of international expertise. To minimise the negative effect on the development of the democratic process, OHR should develop a clear legislative agenda which encompasses the most important international goals. It should be fully transparent about how the legislation will be prepared, identifying the appropriate consultative track in each case, and informing the Bosnian public about both substance and process. However, it should also make it quite clear that adoption of the legislative agenda is a necessary condition for Bosnian democracy to function effectively, and proceed with the adoption of the laws according to a short timetable. By developing a finite legislative agenda, OHR will also be making it clear which areas are to be left to the parliaments to regulate. Having done so, it should discipline itself not to interfere with the internal dynamics of the parliaments in other matters, except where necessary to safeguard the peace process.

D. Appointments, dismissals and exclusions

International influence over the selection of personnel in public bodies is an important element of institution building. One of the most insidious ways in which public institutions are kept subordinate to the nationalist parties is the *nomenklatura* system, which was examined in the first paper in this series. Where all personnel decisions, including appointments, promotions and the allocation of privileges, are controlled by a party hierarchy, there is little chance of institutions functioning independently. The nationalist parties, particularly the HDZ, have conducted periodic purges of officials who have co-operated too readily with the international community, whether in the police or in the Federation customs administration. This form of political control becomes internalised by bureaucrats, and rarely needs to be exercised in such an overt manner. Public officials in all branches of government, including the judiciary, will at certain times obey party instructions above the law, and even where no explicit instructions have been issued, tend to avoid taking any action that might displease higher authorities. Only where the party structures themselves are beginning to fracture, as in some Bosniac cantons in the Federation, does this control begin to weaken.

Institutions within the *nomenklatura* system have little prospect of playing their constitutional function of dispersing and controlling public power. It is therefore not surprising to find that institutions where the international community has had a hand in selecting the office bearers have generally performed better than those where the local staff are appointed by the nationalist parties. For example, one of the most effective local institutions created by the international community, the Federation Ombudsmen,⁴⁹ owes its success in large part to the care taken by OSCE in selecting three quality candidates, and the freedom given to them in choosing their own staff. In the Independent Media Commission, OHR was able to select respected but independent members of the local community capable of exercising regulatory duties impartially.

Another effective tool are structural approaches to personnel issues which help to break down the *nomenklatura* system. Judicial service laws are a central plank of the OHR strategy on judicial reform. Legislation currently before both Entity parliaments aims to establish the professional and personal qualifications required for judicial and prosecutorial posts, and independent selection panels to apply the standards consistently.⁵⁰ If the selection bodies are able to function effectively, they could serve both to prevent political appointments to the key legal institutions, and to protect the current incumbents from improper threats of dismissal.

⁴⁹ The Federation Ombudsmen, a multi-ethnic body, was created under the Washington Agreement, and is an organ under the Federation Constitution. The three Ombudsmen were selected by the OSCE, and a significant portion of the Ombudsmen's budget is met by international funding.

⁵⁰ OHR, *Comprehensive Judicial Reform Strategy for Bosnia and Herzegovina*, July 1999, page 25.

Similar processes could be built into public service laws with more general application, particularly at the state level where a permanent civil service has yet to be established.

By contrast, using international authority in a negative way, by dismissing or excluding individuals from public office, is a less convincing approach to the problem. Experience shows that it is unlikely to be effective either in excluding a politically connected individual from power, or in making the institution function more effectively. It also carries the risk of weakening the rule of law, rather than strengthening it. In the legislative field, international authority is being used to change the law. In dismissals, international authority is used to bypass the law itself in support of political objectives, which is a much more dangerous tool.

The power of the High Representative to dismiss public officials who act in violation of the peace agreement or “the terms for its implementation” has been used on approximately 40 occasions. A number of other international organisations also have authority to dismiss or exclude people from public office. Through its Provisional Election Commission (PEC) and the Elections Appeals Sub-Commission (EASC), the OSCE has established rules and procedures for banning individuals and political parties from standing for election because of breach of electoral rules or other conduct, and has exercised these powers extensively. Over the past six months, many of the High Representative’s decisions on personnel matters have been taken jointly with the OSCE Head of Mission. IPTF conducted a screening of the war records of all police officers, and through its certification process can dismiss individuals from police posts. SFOR exercises a power of veto over appointments to the officer corps of the three armies.

1. The impact of dismissals

Approximately 40 public officials have been dismissed by the High Representative under the Bonn powers. The highest ranking official dismissed by the High Representative under the Bonn powers was Nikola Poplasen, President of Republika Srpska, who was dismissed in March 1999 for refusing to accept the parliamentary majority of the Dodik government following the September 1998 election.⁵¹ The most dramatic use of the dismissal power was on 29 November 1999, when the High Representative dismissed 22 officials on a single day. The package of dismissals seems to have been an attempt to shake up the nationalist power structures and increase momentum in the peace process. The individuals were accused of consistently failing “to take ownership of the laws of their own nation by refusing to obey the letter or the spirit of law, regulation and court rulings.”⁵² There has been surprisingly little reaction to most of the High Representative’s dismissals. While objections were made in individual cases, only among the HDZ authorities has there been any open dispute as to the High Representative’s power to make these decisions. There has often been a positive response from members of the public, indicating the decline in popular loyalty towards the nationalist leadership.

However, looking back over the history of the dismissals, it is difficult to identify any lasting benefits to the peace process. The first dismissals in the spring of 1998 were of three HDZ officials – Pero Raguz, Mayor of Stolac, Drago Tokmacije, Deputy Mayor of Drvar and Ivan Jurcevic, Drvar Police Chief. In all three cases, there was evidence implicating the men in organised violence against minority returnees. Although the political case for the dismissals was extremely strong, neither location has seen any improvement as a result. In Stolac, an

⁵¹ OHR Press Release, *President Poplasen Dismissed*, 5 March 1999

⁵² Joint Press Release, *Statement by the High Representative and the OSCE Head of Mission on November 29 Decisions*, 29 November 1999.

organised campaign of destruction of minority housing continued through 1998, and only a concerted SFOR campaign in early 1999, following thorough investigations into the links between organised crime and local politicians in the area, brought about any improvement in the security situation. In November 1999, the High Representative dismissed a second mayor of Stolac, Pero Pazin, after the municipal administration had failed to process a single return claim under the property laws. In Drvar, Drago Tokmacije has continued to be the most important local power broker. Since April 1998 he has been sacked on two further occasions – in February 1999 from holding any HDZ party posts, and in November 1999 from the Cantonal Privatisation Agency. He is still a close associate of the senior HDZ leadership.

These cases, and many others like them, illustrate the limitations of dismissal as a political tool against the nationalist parties. First, it does not necessarily exclude destructive individuals from power. Within the nationalist parties, political influence is not derived from official posts. In a career to political power, individuals may move frequently between different posts in the party, the administration or the management boards of state-owned companies. Upon being dismissed by the High Representative, they may suffer no personal loss of power or prestige. HDZ officials dismissed by the High Representative or struck from electoral lists by the EASC have often been promoted by their party, which explains the obvious indifference of many HDZ mayors to the threat of dismissal. High-ranking party personnel may continue to be a destructive influence on the peace process, even if they hold no formal position.

Second, the dismissals may not result in any improvement to the work of the institution. Following a dismissal, the same party structure chooses the successor, who will be subject to the same party pressures, and therefore cannot be expected to behave differently. When the Bosniac hard-liner Dzevad Mlaco was suspended as Mayor of Bugojno, he was replaced by a successor who appeared to be more moderate. However, in time it became clear that the successor remained under Mlaco's influence, and the issue on which Mlaco was suspended – refusal to allow the Croat community access to cultural property in the centre of the town – has not been resolved. Dismissing Mlaco a second time in November 1999, as party official and delegate to the State House of Peoples, was also unlikely to address this problem. Where the institution concerned is pursuing an objective which is not supported by the local power structures, the dismissals may be even less effective. In November 1999, the High Representative dismissed two Croat Heads of Municipal Housing Departments in West Mostar for failing to implement the property laws. The HDZ has turned this to its advantage by the simple expedient of failing to appoint replacements to the posts, leaving international officials with no-one to negotiate with.

Where dismissals have had some effect, it has been against lower ranking officials, who were successfully excluded from public life. Being less powerful individuals, their removal is unlikely of itself to make a major impact on the functioning of an institution. It has, however, provided some negotiating leverage against other officials, and in such cases international organisations have reported a boost in co-operation following dismissals. This effect is strongest in Bosniac areas, where politicians prefer not to be seen as anti-Dayton. It has some effect in Republika Srpska, where officials who are dismissed may be unable to find further employment, but has little measurable impact in HDZ-controlled areas.

The dismissal of Republika Srpska president Nikola Poplasen has been effective in excluding the Radical Party from power. By preventing the dissolution of the National Assembly, it has protected the government of Milorad Dodik, which over the past two years has been the primary political objective of the international community in Republika Srpska. However,

this has been achieved at the cost of considerable constitutional confusion. There has been no president (or even acting president) of Republika Srpska for more than a year, and in June 1999 the High Representative had to issue a further decisions ruling that laws passed by the National Assembly could be promulgated without the President's signature.⁵³ The Dodik government has been able to maintain a tenuous hold on power through strong international support, but has constantly relied on its precarious position as an excuse for failing to fulfil its promises to implement key provisions of the Dayton Agreement. The Republika Srpska constitutional court, which in a functioning constitutional order would play a key role in resolving such problems, has been completely marginalised. In 1997, in a very different political context, the international community backed former president Plavsic against the government of the day, ruling that she was entitled to dissolve the SDS-controlled National Assembly. There are clear dangers in overriding the constitutional system in this manner.

2. Dismissals and the rule of law

The High Representative has never formalised any procedure for dismissing officials. There are no established methods of investigating misconduct, no accusations are put to the individuals, and no formal warnings are given. Dependent on stories related from the field, it is not clear whether OHR or OSCE have access to sufficient information to make a well-founded decision. The explanations given for the dismissal of the 22 officials in November 1999 were very general, ranging from refusal to implement the Dayton Agreement or local laws, to accusations of undermining ethnic reconciliation.⁵⁴ These are subjective criteria, which could not be applied consistently throughout Bosnia.

It is also very difficult to determine for certain which individual within a party structure is the source of political obstruction. In the November list, a number of Serb and Croat municipal housing officials were dismissed, even though the officials in Republika Srpska were under the direct authority of the Minister of Refugees and Displaced Persons, and in Herzegovina under the effective control of the HDZ. International officials frequently address the highest party officials in trying to find political solutions to minority return problems, but when attributing blame for the lack of progress, it is generally the 'foot soldiers' who are dismissed.

In October 1998, High Representative Carlos Westendorp dismissed Dragan Cavic, deputy leader of the SDS, from his seat in the Republika Srpska National Assembly for making statements concerning the possibility of NATO bombing of Yugoslavia that were thought, somewhat tenuously, to be an incitement to violence against SFOR. Cavic appealed to the Human Rights Chamber on grounds of a violation of his freedom of speech, but the Chamber found that it had no jurisdiction to review decisions of the High Representative.⁵⁵ The High Representative later reinstated Cavic, after he had assisted in his role as vice-president of the SDS with the implementation of the Srebrenica municipal election results. An even more disturbing use of international power was the removal of Serb Mayor of Croat-controlled Drvar, Mile Marceta, by the High Representative and the OSCE Head of Mission through an arbitration on the implementation of municipal election results. Although he had been instrumental in the largest minority return movement in the country, Marceta was removed as Mayor because he was unable to attend to his official duties in Drvar, having been beaten

⁵³ OHR, *Decision clarifying the procedure to promulgate laws adopted by the National Assembly of the RS*, 25 June 1999

⁵⁴ Joint Press Release, "Statement by the High Representative and the OSCE Head of Mission on November 29 Decisions", 29 November 1999.

⁵⁵ Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/98/1266, Decision on Admissibility.

nearly to death by a Croat mob in 1998 while attending to his duties in the municipal building. Following the assault, Marceta was celebrated as a hero of return at the OHR-sponsored Banja Luka Return Conference in 1998, and personally congratulated on his efforts by US President Bill Clinton and British Prime Minister Tony Blair. Nobody has yet been held accountable for the attack on him, despite substantial video-taped material of the incident.

Concerns as to the legitimacy of dismissals have led OHR to explore ways of formalising the process for removing obstructive officials. In 1996 a proposal to establish a Federation Implementation Council, with authority to act against those who obstructed the Washington Agreement, was submitted by the Federation government to the parliament, but never adopted. In 1998, OHR considered creating a special court to assess breaches of the Dayton Agreement. This idea was ultimately rejected, both because the Dayton Agreement does not give rise to individual criminal responsibility, and for fear of undermining the regular judicial system. Since then, OHR has asserted that dismissals are merely a question of 'political responsibility', and do not require due process. This is not really a satisfactory explanation. Individuals sacked by the High Representative are forbidden from "holding any appointed executive office at any level in the future, and from running (in elections) for local, municipal, Cantonal, Entity or State office. Although it has never been spelt out, this ban appears to last indefinitely. This is a drastic sanction unknown in Western legal systems, and to apply it without any legal process at all falls well short of international human rights standards. Following the package of 22 dismissals, President Izetbegovic was quoted in the local press as saying, "remember the communist times: they would arrest a Chetnik or an Ustasha and with them they would throw in some Muslim, not because he was guilty but for the sake of peace in the house... In Sarajevo they remove a man, label him as dishonest, do not present any proof of this and then they talk to us about human rights... They want us to take their word for it."⁵⁶ If the dismissals are sending a message to political elites that the rule of law may be suspended in pursuit of political objectives, then they are counterproductive, even if they are popular with the wider public.

There is certainly a need for systems to be developed to hold officials responsible for refusal to perform public duties, for incitement to ethnic violence, or for any other criminal conduct. There may be a need for further law reform to establish higher standards for public life. Institution-building efforts to establish review boards over public administration would be one alternative. The programs already underway against public corruption also offer opportunities. On 20 July 1999, the High Representative suspended Bosniac Mayor of Sanski Most, Mehmed Alagic, from his post pending the results of criminal proceedings against him for abuse of office.⁵⁷ As judicial reform initiatives make further progress, methods of addressing official misconduct within the Bosnian legal system should become more feasible.

As to the objective of tackling the nationalist power structures, ESI argues that dismissing individuals is too superficial an approach. The large numbers of dismissals of HDZ politicians has done nothing to dismantle the Herzeg-Bosna para-state. This can only be done through programmes directed at its structural features, in particular its extra-budgetary financial flows and its security apparatus. This requires use of the more basic forms of international power examined in the next chapter.

⁵⁶ *Dnevni Avaz*, 2 December 1999.

⁵⁷ OHR Press Release, "Mayor Alagic suspended", 20 July 1999.

IV. SOURCES OF INTERNATIONAL POWER

The previous chapter suggests that legal authority conferred by the international community on its officials in Bosnia, particularly the High Representative, is a useful international tool, but limited as a source of power in its own right. Law is of course a key element of state building, but laws imposed by external actors do not of themselves bring about a new constitutional order. Law reform is most effective when used as part of a strategy which mobilises other forms of influence in support of institution building and implementation. This chapter examines what are the basic forms of international power, and how they can best be mobilised.

A. Mobilising military power

The international military presence is the most visible sign of international power in Bosnia. The multinational peace enforcement operation under a NATO chain of command (IFOR and its successor SFOR) has been an overwhelming force, vastly superior to the three local armies. The military bases scattered around the territory, the heavy convoys of military hardware that cross the country, the tanks parked at bridges and border crossings, and the checkpoints established in trouble spots are a dramatic representation of the most basic source of international power. There is no doubt that, without the capacity to prevent the parties' armed forces from threatening each other with violence, few other international programs in Bosnia would be viable.

The ease with which the military accomplished its core task of separating physically the three armies in 1996, and the much slower progress of 'civilian implementation' (being every other goal on the state-building agenda) has led some observers to call for IFOR to act as an enforcement arm of the civilian mission, particularly OHR. There is a common misconception among some civilian agencies and analysts that military inaction is the key to explain the slow progress in the peace process, and that the civilian mission is doomed to failure unless it has the capacity to issue commands backed by force. Some commentators have suggested that it is only an excessively cautious approach to force protection which has prevented the military from escorting refugees to their homes, executing evictions, taking down flags of Herzeg-Bosna or preventing officials dismissed by the High Representative from returning to their offices.

The question as to whether the military presence can assist with broader state-building objectives is not so straightforward. The link between military force and civilian objectives is not self-evident, and there is every reason for caution in the use of such a heavy-handed instrument. This paper suggests that there has been an evolution in SFOR attitudes to the use of military power since 1997, and that there are certain tasks in the peace process that only the military can hope to accomplish. It is largely up to the civilian organisations, however, to articulate the role which the military can play in civilian objectives.

1. Separating the armed forces

At the time of Dayton, national capitals, and most particularly the US Pentagon, were reluctant to define an aggressive mandate for the Implementation Force (IFOR). Memories of international peacekeepers taken hostage in Bosnia were still fresh, and NATO feared

stepping over what had become known as the ‘Mogadishu line’, a reference to military misadventures in the Somalia mission. This led to a refusal on the part of the military to accept any obligation to participate in civilian objectives, particularly providing security to returning refugees. Holbrooke notes that this caution also prevented IPTF from being given powers of arrest or other executive police functions, for fear that the military would be forced to assume police functions if IPTF met with resistance.⁵⁸ In the end, IFOR was given the authority to perform wider functions in support of the civilian agencies, but not the obligation. In the early phase of the peace process, IFOR consistently declined to exercise that authority.

The central strategy of the peace enforcement mission was separating the three armies, a task which IFOR carried out decisively by using overwhelming force in a very focused manner. Annex 1A created a weapons exclusion zone of 2 kilometres on either side of the Inter-Entity Boundary Line (the ‘Zone of Separation’). IFOR deployed rapidly in force along that line, driving a wedge between the armies. Heavy weapons were destroyed or moved into cantonment sites, and IFOR conducted aggressive inspections to ensure that cantonment rules were respected. The three armies were demobilised down to peacetime levels according to short deadlines. IFOR asserted the right to control their movement, from time to time confining them to barracks. Annex 1A of the Dayton Agreement provides:

“IFOR has a right... to compel the removal, withdrawal, or relocation of specific Forces and weapons from... any location in Bosnia and Herzegovina whenever the IFOR determines such Forces, weapons or activities to constituted a threat or potential threat to either the IFOR or its mission, or to any other Party. Forces failing to [comply]... shall be subject to military action by the IFOR.”⁵⁹

Because IFOR had the potential to exercise overwhelming force, it never needed to do so, and the military objectives were achieved more easily than anyone had anticipated.

Despite its early successes, IFOR took a very narrow view of its mandate during the first two years. One of the most critical tests of the international community’s resolve arose during the transfer of territory in the Sarajevo suburbs between the two entities in the early months of 1996. Despite the pleas of the civilian agencies, IFOR refused to deploy on the streets in the affected areas or to impose a curfew. In the absence of an international response, Serb extremists successfully spread panic amongst the population, and more than 60,000 Serbs left Sarajevo in a matter of days. IFOR also refused to arrest indicted war criminals, on a number of occasions allowing Radovan Karadzic to pass through its checkpoints. It refused to assist civilian agencies in the refugee return process, fearing that it would be drawn into dealing with communal violence. IFOR was reluctant to enter any situation where it might be forced to confront a mob of civilians, believing it had no capacity to respond effectively. It was also reluctant to mount any operation which might create an expectation that it would offer security to ethnic minorities, for fear of being drawn into guarding them house by house.

In fact, the fundamental military tactic of physically separating the three ethnic groups led IFOR to be suspicious of the minority return process. Returns by Bosniacs to abandoned villages in the Zone of Separation were seen as a security threat and an unnecessary provocation, and IFOR insisted that a procedure be created to limit those returns. It resisted attempts by UNHCR to organise assessment visits of displaced persons to view their homes across the Inter-Entity Boundary Line, and on one occasion, Russian troops under US

⁵⁸ Holbrooke (1998), *To end a War*, p.221.

⁵⁹ Agreement on the Military Aspects of the Peace Settlement, Art.IV, para.6.

command even attempted to persuade the residents of a Bosniac village which fell on the wrong side of the line to relocate across the border.

2. The evolution of SFOR

Over the past two years, however, SFOR has shown much more initiative in assisting the peace process. The process of evolution began with SFOR seeing the need to respond to the unlawful use of violence and to limit the climate of lawlessness which prevailed in many areas of Bosnia. In summer 1997 SFOR arrested the first indicated war criminals in Prijedor. It joined with IPTF in an aggressive campaign to dismantle illegal checkpoints and promote freedom of movement. It acted decisively to prevent Serb paramilitaries from intervening in the SDS factional struggle between Biljana Plavsic and Karadzic loyalists. For the first time, it supported an OHR strategy by seizing television transmitters in Republika Srpska (as described above). Since then, SFOR has arrested 18 individuals indicted by ICTY for war crimes, and transferred them to detention in the Hague.⁶⁰ The arrests appear to have increased public respect for SFOR. They have also had a marked and immediate effect on repressing extremist behaviour, particularly in Republika Srpska, helping to reduce the climate of impunity in trouble spots.

In the refugee return field there was a similar shift. In July 1997, a Croat mob expelled some 800 Bosniacs who had returned to their homes in villages around Jajce. British SFOR troops immediately deployed a strong presence in the area, calming the situation and, following OHR-led negotiations, allowing the refugees to return to their homes within a matter of days. The decisive military response turned this incident into a victory for the return movement, with positive effects throughout Central Bosnia. As a result of these incidents, there has been a process of learning as to the capacity of the military to assist with political problems, and a remarkable change of attitude on the part of SFOR.

From the Jajce incident and others which followed, a number of lessons can be drawn as to the potential of military power in supporting the return movement. First, large-scale violence against minorities is rarely, if ever, a product of spontaneous ethnic hostility, but is generally organised by local political figures. Gathering quality intelligence, in particular on local power structures, can therefore help to identify and suppress patterns of violence. Second, effective security for minority return does not require individual families to be guarded house by house. A visible presence of foreign troops in the area with a combination of static posts and roving patrols ('area security') has an immediate and dramatic effect on deterring violence. The more visible and overt the military involvement in the initial phase of return movements, with troops conducting foot patrols and interacting with the local population rather than remaining in armoured vehicles, the more effective is the deterrent. In most areas of the country, once the minority community is established, military involvement is no longer required. The Jajce experience provided the basis for what eventually became a much closer civilian-military co-operation in the return movement, through the Return and Reconstruction Task Force. By 1998, SFOR officers were even chairing local RRTF meetings in some parts of Central Bosnia. Although SFOR is still careful not to offer any security guarantee to returnees, it is now regularly informed by the civilian agencies when potentially controversial return movements are taking place, and is thus better able to predict and prevent organised violence. The arrival in Bosnia in 1998 of the MSU (a special SFOR contingent made up

60 Human Rights Co-ordination Centre, "Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 7" (March 2000).

largely of Italian *carabinieri*, who combine military and police training and are equipped for operations such as crowd control) has brought further flexibility to SFOR.

3. The shadow world of security and intelligence services

There is another factor which helps to explain the ease with which IFOR was able to deal with the three armies in 1996. With the danger of armed conflict brought to an end by the international presence, the three nationalist regimes no longer needed to rely on their largely conscript armies to retain control of their territory. Instead, following the tradition of Tito's Yugoslavia, they relied on various types of intelligence services, which were well funded with undeclared revenues from neighbouring states, from smuggling and organised crime, or siphoned off from public utilities.

In a striking omission, no component of the international mission in Bosnia took responsibility for dealing with intelligence services, paramilitary organisations or special police. The UN IPTF never had the capacity to do so. It was refused information even as to the number of policemen in service in Republika Srpska until 1998, as this constituted, in the words of Karadzic's Minister of the Interior, Kijac, a "state secret". This kind of secrecy was common in all three areas. In the Federation, the IPTF struggled to identify the different kinds of police organisations which existed in parallel to the regular forces being certified by IPTF and trained in human rights. In many places around the Federation, the Bosniac intelligence service AID or the Croat SIS or HIS operated openly from clearly identified premises, sometimes collocated with the regular police, causing regular political crises and occasional intervention from the UN or OHR. In Bosniac Travnik, until late 1998 the switchboard for all calls to the multi-ethnic police station was controlled by a special AID unit situated on the top floor of the police building.

Under Annex 1A of the Dayton Agreement, military forces are defined as "all personnel and organizations with military capability... including armed civilian groups, national guards, army reserves, military police, and the Ministry of Internal Affairs Special Police."⁶¹ One can only speculate why IFOR did not from the outset assert its authority over the full range of coercive structures in these categories, and why occasional attempts by civilian organisations to raise the issue were discouraged.

The political costs of this oversight were substantial. As the Head of the OSCE Bosnia mission noted, "it is no exaggeration to suggest that the emerging relationship between extremist politicians, the remnants of the old security services, and organised crime in this country represents the single greatest obstacle to democratic reform, economic investment and membership in Euro-Atlantic institutions".⁶² There were indications that these services were implicated in organised violence against minorities. They were also used by the nationalist parties for harassment of political opponents, whatever their ethnicity, even during internationally supervised election campaigns. The factional split in the SDS in 1997 helped to bring some of these issues to light, with President Plavsic publicly accusing her opponents in Pale of using the intelligence and special police structures for political activities and to raise revenue through smuggling. Similarly, the split in the HDZ which led to the creation of the new Croat party NHI saw a number of leading politicians level charges against the HDZ of using security services linked to the Croat army (HVO) to intimidate opponents. On the

⁶¹ Art.II(1).

⁶² Robert Barry, Speech at Sarajevo University, 20 October 1999

Bosniac side, the open and prominent role played by AID gave the Croats a legitimate reason for resisting full integration of the Federation police.

In 1997, SFOR asserted its authority for the first time over special police forces in Republika Srpska in order to prevent a coup being carried out against former President Blijana Plavsic. Acting in support of an aggressive IPTF weapons inspection scheme, SFOR discovered illegal weaponry, databases and surveillance equipment in the Banka Luka police station. SFOR occupied this and other police stations in Western Republika Srpska, eventually handing them over to police loyal to Plavsic.

No further operations of this kind were undertaken openly until October 1999, when SFOR carried out a carefully prepared raid on Croat intelligence services in West Mostar. "Operation Westar" involved 1,500 troops, and was by far the boldest move against intelligence structures to date, suggesting that a change in policy may have taken place. After seizing thousands of documents and computer files, SFOR is reported to have obtained information on the operations of Croatian and Bosnian Croat intelligence services, including the surveillance of international officials and local staff of international organisations. Particularly disturbing was the evidence that the intelligence services were engaged in criminal activity, including child pornography, for the purpose of raising revenue.

Operations such as this are the only means of gathering information about the links between extremist political groups, organised crime and intelligence services. International civilian officials may suspect links between, for example, the intelligence services and veterans' associations, or may hear stories to the effect that public companies are front operations for illegal activities, but they have little capacity to investigate or take action. In such cases, the use of international intelligence and military power may offer the only solution to deal with a serious threat to long-term security and stability in the region.

4. Professionalising the armed forces

Over time, the military has come to realise that the danger posed by the three armies in Bosnia is not simply a risk of return to open conflict. The armies can also be a destabilising political influence. At the end of the conflict, the three armies were an integral part of the nationalist party regimes, exercising political power in their own right, as well as representing the most powerful interest group. In the former Yugoslavia, the Yugoslav National Army (JNA) was a centre of power and privilege, and there was no constitutional tradition of excluding the military from political affairs. In Bosnia, therefore, the task of building constitutional safeguards against improper military influence has been a difficult challenge.

To address this problem, SFOR has commenced an institution-building program within the higher ranks of the armies. In 1999, SFOR established the Office of the Inspector General of the entity armed forces "to assist the citizens of Bosnia and Herzegovina to have confidence in the personal integrity, constitutional loyalty and military competence of the General Officer Corps." As the Commander of SFOR (COMSFOR) Meigs explained in October 1999, "officers who are members of HDZ BiH are meddling too much in politics; we have started investigations against some generals for whom politics and their economic interests come before their duties in the military."⁶³ This had been a particular problem in the campaign leading up to the general elections in 1998, when the OSCE Election Appeals Sub-

⁶³ Nacional, 13 October 1999.

Commission struck several HDZ candidates off the electoral lists in protest against the Bosnian Croat army interfering in the election campaign.

The office of the Inspector General provides a means of institutionalising professional standards and review procedures. The standards of behaviour and the mandate of the Inspector General are set out in the ‘Instructions to the Parties’, issued by SFOR under Annex 1A.⁶⁴ The Instructions begin, “COMSFOR has the power, responsibility and authority, under the military annexes to the GFAP [Dayton Agreement], to ensure that entity armed forces military personnel are professional, politically neutral, and supportive of the peace process.” As a sanction for breach of the standards, “any EAF [entity armed forces] officer who engages in activities that endanger the peace process may be suspended, removed, or prevented from assuming any military command or office.” The key concept that recurs in the instructions is “professionalism”: the Inspector General is given the authority “to monitor and investigate as necessary issues of professionalism and ethical behaviour... Anti-Dayton activities and obstructionism are not acceptable and constitute grounds for removal.”

The Inspector General consists of eight army officers, two from the US Army and two from each of the three local armies. It is mandated to conduct fair and impartial investigations to ensure that members of the officer corps comply with the regulations. Officers are required to declare their membership of political parties and other organisations. The power of SFOR ensures that the Inspectorate General is taken seriously by the entity armed forces. The SFOR commander has a right of veto over appointments, and may suspend officers. If the Ministries of Defence ignore SFOR’s instructions, drastic measures are available. SFOR can seize military equipment, and in February 1999 it cut the barrels off HVO tanks.

Superficially, this resembles the screening procedures used by IPTF with the local police, or the dismissal powers of the High Representative. However, there are important differences which make this a more effective programme. First, the number of individuals concerned is small, with just under 90 general officers in the three armies, as compared to the vast numbers of local police which IPTF attempted to screen. This focus on the ‘commanding heights’ of the institution is more likely to be effective. Second, by establishing agreed standards and procedures in advance, SFOR has institutionalised the process, so that each time an officer is censured the effect is to reinforce the rules, rather than bypass them.

5. Maximising military power

Over the course of the evolution of IFOR-SFOR, a number of important lessons about the effective use of military power have been learned. One is that once the military situation is stabilised, the quantity of troops is less important than the quality of personnel – whether they have the training, experience and equipment to deal with the specific problems of Bosnia. The reduction of IFOR’s 60,000 troops down to the current SFOR levels of some 20,000 has increased the effectiveness of the military, because it has coincided with greater flexibility in deployment. There are still structural elements in the SFOR mission, such as the strict division of territory according to the different national contingents, which on occasion tie the hands of its commanders in dealing with specific problems. Increased authority to SFOR commanders in deploying resources where they are most needed would be a useful reform.

⁶⁴ The first six chapters of the Instructions were written upon IFOR deployment. Additional chapters were later added, and the first six chapters rewritten. Chapter 14 of these Instructions establishes the Inspectorate General.

A second crucial lesson is that SFOR is rarely resisted when it acts with determination. Claims by the nationalist leaders that they are able to mobilise the population against the international presence has time after time proved to be a bluff. In 1998, three provocative events took place within a short period of time: the Brcko arbitration which declined to award the territory to Republika Srpska; the dismissal of Republika Srpska President Poplasen (on the same day as the Brcko award); and the NATO military action against the Federal Republic of Yugoslavia. Despite attempts by Serb nationalist leaders to incite popular protest, there were no serious incidents, and SFOR troops easily retained control of the situation. Similarly, a dispute as to the location of Bosnia's border with Croatia at Martin Brod, which had been treated for several years as a potential flash-point and subject to long and unproductive negotiations, was settled within a few days by decisive SFOR and IPTF action. The arrests of war criminals have met with little public reaction, and in fact by decreasing the climate of impunity in which nationalist leaders operate, they have tended to repress extremist behaviour. There is no reason to believe that arresting the remaining indictees, including Karadzic, would result in any significant public response.

Third, in pursuing civilian objectives, military power only achieves lasting results when it is built into a concerted international strategy. There are few civilian tasks which the military can accomplish on its own. At the time of the 'transmitter war' in 1997, SFOR pointed out as much in a memorandum to OHR.

“In the final analysis, SFOR can only provide a stopgap and a breathing space, recognising that the realisation of a truly democratic, open and pluralist media can only be arrived at by the intervention of the OHR, through an agreed Media Restructuring Plan.”

Seizing the transmission towers without a broader reform strategy would not have weakened nationalist party control over public broadcasting. However, the use of military power at a critical moment enabled OHR to negotiate from a position of strength, achieving one of the key breakthroughs in the peace process. Once it was demonstrated that OHR could call upon military support at need, there was a lasting boost to OHR's authority. Generally, the responsibility falls on the civilian agencies to articulate the contribution which the military can make to realising particular political objectives. If they are able to develop credible strategy, SFOR has already demonstrated that it is willing to participate. Improving institutional mechanisms for strategy development and co-operation between the military and the civilian agencies is therefore a priority.

Finally, there are certain tasks in the peace process which only the military can hope to accomplish. The authority of the civilian agencies, even OHR with its power to impose laws, is limited by the willingness of the local power structures to comply with the law. When dealing with local actors who are prepared to use force in support of political objectives, or criminal networks with links to security services, there is little that civilian agencies can do in response. SFOR can help to reduce the climate of impunity by preventing violence against minorities, and arresting war criminals. It can disrupt illegal activities such as smuggling and organised crime rings, not least by sharing intelligence with the civilian agencies working on these problems. Most importantly of all, it can strike at one of the pillars of the nationalist party regimes by asserting its authority over the intelligence services. The Westar Operation is an important precedent, with the potential to expose and weaken one of the key structural features of the Herzeg-Bosna para-state. It will require a concerted campaign of military and civilian initiatives to bring all of the intelligence structures under democratic control.

B. Financial power beyond conditionality

1. Elusive financial power

Bosnia is more dependent on foreign assistance than any other country in Europe. The tremendous inflow of international capital to support reconstruction, and the sums spent by international organisations and foreign individuals as employers and consumers, provide the lifeline which keeps the Bosnian economy afloat. With domestic savings so low that local banks derive most of their income from transfer fees, almost all investment comes from international donors. Consumption, which in 1998 amounted to 99 percent of Bosnia's gross domestic product,⁶⁵ is fuelled by an unsustainable balance of trade deficit of some US\$2.2 billion.⁶⁶ Many private companies in the service sector are dependent on the presence of large numbers of foreigners as consumers.⁶⁷ It was estimated in late 1999 that public enterprises still accounted for two-thirds of registered employees.⁶⁸ A significant part of recent employment growth has also taken place in public administration,⁶⁹ which depends on revenue from customs and sales taxes. As these are linked to the unnaturally high levels of imports and consumption which result from the foreign presence, the entire public administrative structure is built on fiscal quicksand. While most families depend on some form of public benefit for a significant portion of their income, the present level of government spending is sustained only through foreign credits.⁷⁰

Yet the international community has found it difficult to use its weight in the Bosnian economy as a source of influence over public policy. In fact, in areas of the country which have received the largest amounts of international aid, such as Mostar, resistance to political and economic reform has often been the most pronounced. Why international spending on such a scale has offered so little political leverage is one of the most vexing questions of the peace process.

There are a number of factors which make the application of international financial power in Bosnia a complex problem. To begin with, most international funds were never intended to advance political goals. The first priority of the international donor community in Bosnia was humanitarian, and it is a well established principle that humanitarian aid is not subject to political conditions. Essentially the same philosophy was applied to the reconstruction program, where the need to 'kick start' the Bosnian economy was considered paramount. Foreign assistance to revive the war-torn economy was thought of as a precondition to the peace process, rather than a tool for advancing a political agenda. As the Florence Peace Implementation Council announced in 1996: "The rapid disbursement of funds pledged so far is a top priority."⁷¹

⁶⁵ USAID, *BiH Economic Update*, 15 October 1999, quoting from World Bank, *Enterprise and Bank Privatisation Adjustment Credit*, June 1999.

⁶⁶ USAID, *BiH Economic Update*, 15 October 1999, p. 18. Estimates of the trade deficit by the EBRD and the World Bank are lower at around US\$1.6 billion.

⁶⁷ See *Financial Times Bosnia Survey*, "Food production grounds for success – the high level of expensive imports throws up opportunities", 14 December 1999.

⁶⁸ USAID, *BiH Economic Update*, 15 October 1999, p. 11.

⁶⁹ At the same time employment growth in 1999 was "negative or flat in most sectors where the Federation ought to enjoy a comparative advantage". USAID, *BiH Economic Update*, 15 October 1999.

⁷⁰ World Bank & European Commission, *Lessons and Accomplishments*, p. 33.

⁷¹ Florence Peace Implementation Council, June 1996, para. 43.

As a result, donors came under considerable political pressure to shorten their usual funding cycles, and came to see the spending of money as an achievement in itself. A report of the European Union Administration in Mostar (EUAM) in 1998 is revealing:

“The total budget of the EU for Mostar was 144 million ECU of which 90 percent was spent on reconstruction ... In the two and a half year period decisions were made on projects, money was committed and money was spent. Bearing in mind the size of the budget and the shortage of time this was alone a remarkable achievement.”⁷²

When the EUAM did attempt to apply conditionality, as in the case of joint management of the hydro-electric plants on the Neretva river by Bosniacs and Croats, the Bosniacs successfully obtained funding for the Salakovac plant from the World Bank without any political conditions attached. Such experience quickly led the EU to give up on conditionality:

"At one stage, it had been anticipated that funding for projects in Mostar would be a valuable incentive for political progress. This was however wrong thinking. Money would never buy the hard-liners, to whom political objectives and national identity, culture, language and so on were infinitely more important than any amount of money.”⁷³

In fact, the opposite conclusion is equally tenable. Contradictions in international policy enabled the nationalist leadership both to receive international funding and to achieve their political objective, the continued division of the city. The international community, on the other hand, failed in its own objective to create "a single, self-sustaining and multi-ethnic administration".⁷⁴ Even the rent paid for offices used by international organisations directly benefited the separatist institutions of the divided city.

2. Financial power and international strategy

International financial power is a resource to be harnessed in support of international objectives. Financial leverage cannot be brought to bear on abstract goals like ‘establishing a free market economy’ or ‘eliminating public corruption’. It is useful only where a strategy for advancing these goals is clearly articulated. However, there has been a distinct lack of specificity in many areas of international strategy, exacerbated by the institutional separation between the development of policy and the spending of money. The institutions responsible for directing policy issues, particularly OHR, have for most of the post-war period had very little influence on the way international funds are spent. The main funding agencies – the World Bank, the European Commission, USAID – were initially very reluctant to accept direction in their work. Over time, as they encountered increasing political obstacles to their programmes, they have become more inclined to turn to OHR for support. Too often, however, OHR has failed to provide clear leadership on key policy questions.

Education is just one area where, as a result of the weakness in international strategy, major international investment has failed to address any of the profound political and structural

⁷² European Union Administration of Mostar, July 1994 – December 1996, *Political Report*, January 1998, p.10

⁷³ *Ibid.*, p. 12

⁷⁴ 1994 Memorandum of Understanding on the European Union Administration of Mostar.

problems of the sector. During the war, 60 percent of all school buildings in Bosnia were damaged or requisitioned for military use. A high proportion of qualified teachers left the profession and often the country, and public funding of education all but ceased for three years. In response, the donor community spent US\$144 million on education between 1996 and 1998. Some 840 primary school buildings have been replaced or rehabilitated, and funds committed for the reconstruction of 80 secondary schools and for the rehabilitation of the major universities. As a result, there are now more primary schools per capita than before the war.

However, because reconstruction proceeded in the absence of any strategy for addressing political problems, its contribution to improving the quality of education services has been limited. The education system is divided into three separate ethnic components, two of them using textbooks and curricula from neighbouring states. Various studies have documented the use of teaching materials designed to perpetuate ethnic divisions. Attempts to encourage multi-ethnic schools or curricula have been a failure, with local politicians determined to preserve the status quo as a way of blocking ethnic reintegration.

Most international investments in school buildings have been made without conditions, with donors preferring to avoid political questions. According to the World Bank:

“The focus on reconstruction and the unresolved uncertainty about government roles created under the Dayton-Paris Peace Agreement have hampered to some extent restoration of an efficient and sustainable education system... Reconstruction in many areas cannot proceed effectively without progress in addressing key policy issues in the sector.”⁷⁵

An Education Task Force, chaired by UNESCO, was for most of its history not operational, and never addressed organisational or policy questions. When accelerating rates of return raised the issue of schooling for minority children, the Return and Reconstruction Task Force (RRTF) and the OSCE human rights department began to engage with education issues in the field. However, the lack of any overall strategy led to field officers from the different organisations trying to improvise solutions on a case-by-case basis, without any real prospect of success.

In September 1999, an OHR press release quoted instructions from the Principal Deputy High Representative that, "as an interim measure, all schools must offer parents a choice of curriculum under which their child is to be educated."⁷⁶ Meanwhile, the OHR Human Rights Department sent instructions to human rights field officers on 1 September 1999 asserting: “We cannot encourage the opening of segregated schools. To do so would undermine the whole process of return and re-integration.” Needless to say, neither position was heeded by local authorities. In the absence of a convincing strategy, international donors have spent US\$144 million on rebuilding an ethnically segregated education system. Because of bitter political disputes over curricula, many schools reconstructed for minority communities remain

⁷⁵ European Commission and World Bank, *Lessons & Accomplishments*, Annex 9, p. 6.

⁷⁶ OHR press release, 16 September 1999.

unused.⁷⁷ Only in February 2000 did the international community agree on a joint strategy in the education sector.⁷⁸

Similar stories could be told for many other areas of the reconstruction program. A World Bank and European Commission report described the situation in May 1999: the reconstructed rail system is barely used because of political and regulatory problems; health care financing “is not sustainable”; in the banking sector, “the urgent and complex task of reforming the payments system has only begun recently”; in social services, the reform of “governance, financing and the mix of services to be provided has been largely neglected with the focus on reconstruction”; in agriculture, “little progress has been made to date addressing deep-seated institutional and structural constraints facing agriculture and forestry”.⁷⁹ Despite substantial international contributions to the entity budgets, the World Bank also noted that there is “no comprehensive framework to ensure and promote transparency and accountability in the public sector or to provide legislative bodies with the necessary information to exercise control over the executive”.⁸⁰ The lesson emerges very starkly: when international strategy is weak, international spending is likely to have little impact other than to solidify an unsatisfactory status quo.

3. General and local conditionality

International financial power has usually been understood as economic conditionality, and there has been much talk ever since Dayton of the need to use international aid as “leverage”. However, exactly what this means, and how it should be put into practice, has been left extremely vague, with the result there have been few credible attempts to use conditionality. As the first High Representative, Carl Bildt, explained: “It was easy to say in general terms that only those who fully and completely complied with the terms of the peace agreement should receive assistance. This principle was to be repeated very frequently and with little forethought in international meetings in which Bosnia was discussed. But it rapidly became clear that reality was a great deal more complex.”⁸¹ On closer examination, conditionality is only one type of international financial power, and is effective in only a limited range of circumstances. Many of the goals on the state-building agenda are better served by other forms of financial influence.

In the international development field, which is the usual context for conditionality, conditions on international credits are formalised in agreements between a financial institution and a national government (called letters of intent for the International Monetary Fund or letters of development policy for the World Bank). These set out the purpose for which the international credit is extended, and may include various types of conditions. “Preconditions” are criteria which must be satisfied before any funds are advanced, which are usually limited to steps which the government is in a position to take immediately. Where loans are advanced in instalments, each new tranche may be made conditional on “trigger actions”, “performance

⁷⁷ A typical example is the large elementary school in Divicani (Jajce municipality), refurbished with US funding to accommodate 1,500 children. Long after completion it was only used by some 40 Croat children because the HDZ authorities only allowed the use of the Croat(ian) curriculum. Some 300 Bosniac children with parents in Divicani go to school in Zenica and Travnik.

⁷⁸ An OHR Press release, 16 February 2000, referred to the “Swiss model as a basis for the future education system in BiH – but the Swiss model is based on parallel school curricula with a high degree of coordination and exchange as well as some common core elements”.

⁷⁹ European Commission and World Bank, *Lessons and accomplishments*, May 1999.

⁸⁰ European Commission and World Bank, *Lessons and Accomplishments*, May 1999, p. 31.

⁸¹ Carl Bildt, (1998), p. 243.

criteria” or “benchmarks”, designed to achieve sustained pressure over a longer period of policy reform. A high degree of specificity is required concerning both the obligations of the beneficiary and the consequences of non-compliance. Sometimes additional “policy undertakings”, which are not contractually linked to any specific payment, are included as “pro forma” conditions which rely less on leverage by donors, and more on the agreement of national governments.

In the Bosnian context, only the international financial institutions have attempted to use conditionality in such a strict, formal manner. More often has been general political conditionality, as when the PIC calls on the parties to implement the Dayton Agreement or face a suspension of aid. There has also been much talk about local conditionality, where threats of cancellation of aid projects to a particular municipality are made in connection with minority return or other local political objectives. Neither of these two has worked well.

In PIC documents, conditionality is restricted to ‘pro forma’ conditionality, with no specific triggers or rewards. The Bonn PIC in December 1997, for example, reminded “the authorities in Bosnia and Herzegovina that economic assistance by the international community remains strictly conditional upon compliance with the Peace Agreement and subsequent obligations. The Council reconfirms its determination to apply conditionality to international reconstruction assistance both by excluding non-compliant municipalities from reconstruction as well as by applying positive measures.” There were no specific conditions, no identified rewards, and no mechanisms for monitoring compliance or diverting funds. This is therefore not an example of conditionality at all, but has nonetheless led some observers to conclude that conditionality is ineffective in Bosnia.

A more illustrative example of general political conditionality was the blanket denial of international aid to the government of Republika Srpska in 1996 and 1997 because of the political prominence of indicted war criminals. This policy contributed to factional splits within the SDS regime, providing a political platform for opposition to emerge. However, the eventual electoral success of the opposition also required much more direct international involvement in the political process. Once the more moderate government of Milorad Dodik was elected and aid had begun to flow, it was no longer possible to use such broad threats to hold the new administration to its promises, as it was feared that weakening the Dodik government would only return the SDS to power. Budgetary support to the government of Republika Srpska in 1998 and 1999 was given to help it through a budgetary crisis, and no significant political conditions were attached.

The second sense in which conditionality has been used is in the field of refugee return. The basic idea was simple: municipalities closed to the return of minorities were to be denied funding, while municipalities open to return would be rewarded. However, what appears to be a sound idea has proved both difficult to implement in practice and problematic in principle.

Until 1998, there was no consensus among the international community as to whether reconstruction aid should be targeted to support minority return. Despite the provisions of the Dayton Agreement, there was widespread scepticism as to whether minority return had any real prospect of success. UNHCR, the lead agency under the Dayton Agreement for refugee return, has a protection mandate which obliges it to make the safety of individuals its primary consideration, and was never comfortable deviating from that principle to advance the essentially political objective of ethnic reintegration. The ‘Priority Areas’ for international investment which UNHCR developed in 1996 and 1997 were selected according to the

distribution of displaced persons and the absorption capacity of particular urban centres, and not ethnic criteria. Some donors disregarded the political dimension of housing reconstruction altogether, and simply distributed building materials to the public, or repaired houses at the direction of municipal authorities. Some of this money ended up reconstructing minority houses for the wrong beneficiaries.

During this phase, because there was neither consistency of policy nor effective co-operation between the donors, a market place in international aid developed, which local authorities became very skilled at exploiting. A municipality facing the loss of a project could usually secure the funds from another source. Those donors who did attempt to follow a policy of conditionality met with serious practical problems. First, the bureaucratic processes through which aid commitments are made are not well suited for applying conditionality. Funding decisions are made at too great a distance from Bosnia for sensitive political judgments. Funds are often pledged a year or more in advance of the commencement of a project, and are not easily diverted in response to changing political conditions. Aid administrators are reluctant to suspend or cancel projects for fear of losing their budgetary allocation. This creates an institutional reluctance to carry through with threats of withdrawal of aid or cancellation of projects.

A second obstacle was the difficulty of developing meaningful assessment criteria for distinguishing between different localities. This problem has plagued the various schemes designed to promote minority return, from the blacklisting of municipalities in 1996 to the UNHCR Open Cities project. Because resistance to minority return has been the norm rather than the exception, it has never been easy to select 'open' municipalities, and the international community has often fallen into the trap of rewarding promises, rather than conduct. Municipalities have been given a favourable assessment in return for rhetorical support for minority return, or the preparation of regional return plans, or the creation of municipal return offices employing members of the returning minority, none of which necessarily leads to returns. In June 1998, the PIC requested the High Representative to establish a more formal municipal evaluation scheme to determine compliance and co-operation across the fields of refugee return, implementation of election results, police integration and prosecution of war criminals. Donors were called upon to take these evaluations into account when allocating funding. However, formal municipal assessments proved time-consuming and unreliable, and the initiative was soon abandoned.

>From the summer of 1998, when the Return and Reconstruction Task Force (RRTF) established by OHR and UNHCR became the main forum for setting refugee return policy, minority return was made a central pillar of international strategy. However, it also emerged that conditionality was the wrong tool for advancing the kind of return programmes which the RRTF was advocating. International funds were in fact being spent for the benefit of the returnees themselves, and suspending or cancelling projects would be counterproductive. In municipalities such as Jajce, Stolac and Drvar, although local leaders had organised violent opposition to minority return, successful return movements had nonetheless resulted in minority communities living in precarious circumstances, dependent on international support. RRTF recommended to donors that they 'follow the flow' of returns, directing their funding so as to provide the basic urban services and infrastructure needed to make the return movement sustainable.

This is in fact a different kind of international financial power, where international funds are used to achieve an outcome directly, rather than by way of leverage over local authorities. There is still a need to develop better institutional mechanisms to apply this kind of

international power. RRTF requests to donors to make available flexible and quick-disbursing funds to support spontaneous return movements have met with a disappointing response. Local conditionality has continued to be a useful bargaining chip in brokering the first returns to hard-line municipalities, such as Zvornik, Prijedor and Srebrenica in Republika Srpska which were in urgent need of local infrastructure projects. However, such cases remain the exception. Once the return movements begin, local conditionality plays only a minor role in RRTF strategy, and targeting resources to help returnees directly becomes the key challenge.

4. Beyond conditionality: financial power and institution building

>From 1998, several World Bank Structural Adjustment Loans and the first IMF Stand-By Agreement were provided to the state, for the purpose of lending on to the two entities at a fixed percentage. These financing agreements for the first time contained specific conditions related to the macro-economic policy framework. The IMF conditions focused on establishing the currency board arrangement, limiting the public sector deficit, preventing unauthorised borrowing by public authorities from the domestic banking system, and preventing the governments from accruing new domestic arrears through public sector wages and social security. The first non-emergency World Bank credit focused on public finance reform, including the legislative framework for budget and debt management, harmonisation and reform of entity tax systems, and the beginnings of a reorganisation of the three pension schemes. Since then, there have been World Bank structural adjustment credits related to bank and enterprise privatisation and further public finance reform. On some occasion, the impact of credit conditionality was immediate. When the Federation budget for 2000 was found to be "not fully consistent with the recommendations of the International Monetary Fund", the IMF Management withdrew its recommendation to complete the disbursement of funding as part of the Stand-by Agreement, and the Federation parliament immediately passed all the required legislation.⁸²

Given the mandates of the financial institutions, conditions included in these credits could not address overtly political subjects. There was also pressure on the World Bank to disburse its credits rapidly. However, the use of conditionality did contribute to a number of essential state-building goals. IMF pressure led to the liquidation of the war-time Bosniac-controlled National Bank, and the development of the new state-level Central Bank. World Bank pressure helped to dismantle special trade agreements with Croatia and Yugoslavia and to harmonise customs and excise, which were important steps towards developing a single Bosnian economic space. In each of these examples, conditionality was applied in support of a clearly defined objective and supported by a general institution building strategy. At its most effective, economic conditionality is used by the international financial institutions as a tool to overcome initial political resistance to an international reform. This then creates the political space for further international programs, particularly institution-building initiatives.

A case study of one success story, the Bosnian Central Bank and the introduction of the Bosnian currency, shows how conditionality can be an essential part of an overall institution-building campaign. At the same time, to keep an institution building process going, other forms of international financial power are also needed. Direct international funding of domestic institutions is a key source of power which merits further exploration.

⁸² OHR, Economic Newsletters, February & March 2000.

At the end of the conflict, there were four currencies in circulation in Bosnia – the Yugoslav Dinar, the Croatian Kuna and a Bosnian Dinar issued by the Bosniac-controlled National Bank, each of which was confined to one of the three separate economic spaces, and the German Mark, which was acceptable throughout the country. The separate currency zones were a very tangible illustration of the division of Bosnian territory into spheres of influence linked to its more powerful neighbours.

The Dayton Agreement established a legal basis for Bosnian monetary union and the creation of a common Central Bank. The state constitution provides that, for the first six years of its operation, the authority of the Central Bank is limited to that of a currency board, under close international supervision. As a currency board, the Central Bank has no authority over monetary policy, and is obliged to pursue monetary stability as its first priority. Against the background of collapsing currencies and record hyperinflation which engulfed the region during and after the dissolution of Yugoslavia, monetary stability was seen as the essential foundation for economic normalisation. It is also a matter of general public concern, given the bitter experiences of the past 10 years.

However, control over currency matters was also a key element of the independence platforms of the nationalist elites, and all three sides were bitterly opposed to yielding monetary sovereignty to an independent Central Bank. The Bosnian Croat HDZ and the Serb SDS objected to the central institution as part and parcel of their opposition to the Bosnian state. They delayed the introduction of the new currency with a range of negotiating techniques, characteristically focusing on the symbolic aspects of the currency design to distract attention from the real issues. The SDS representatives refused to accept any public figures, monuments or other symbols as representative of all three peoples. Serb Member of the Presidency Krajisnik wasted months of negotiating time by insisting, for instance, that the Serbian Orthodox monasteries from Kosovo, arch nationalist symbols, be included on the bank notes, and that the currency be called a ‘coupon’.

A sustained international campaign was required to overcome these problems. First, the IMF appointed as Governor an experienced foreigner with the technical and managerial expertise to build the institution. With the assistance of the IMF, OHR prepared the law establishing the Central Bank, which was negotiated and eventually adopted as part of the ‘Quick Start Package’.⁸³ The law provided a sound and modern legal basis for the institution. The institution is designed so that its budget is met from revenue from its operations, making it independent of any government budgetary process. The IMF provided the first DM 25 million in reserve capital. International management and supervision have protected the new institution from political interference, despite the hostility of the nationalist parties. Local staff are trained well and given opportunities to develop contacts with other central banking authorities in the region, helping to foster both independence and professionalism. According to Peter Nicholl, the Governor, the Central Bank has succeeded in developing an institutional identity which insulates it from ethnic politics. Of a total staff of 170 at the Bank, there are now only three foreigners.

⁸³ The Quick Start Package was a collection of laws prepared by OHR for presentation to the state institutions as soon as they were convened in 1996. In over a thousand pages of text, it dealt with basic elements of the new state such as the enabling instruments of the joint institutions, citizenship, the state budget and a range of other economic matters. After a long political battle, the Quick Start Package was partially adopted by the state institutions in 1997, after threats of cancelling the donors’ conference, and the rest was imposed by the High Representative in 1998. See Bildt (1998), pp.251-2.

The development of the Central Bank was supported by two other important international initiatives: the dismantling of the unconstitutional parallel structure, and the introduction of the new currency. The SDA politicians paid lip service to the need for a single Central Bank, but fought hard against losing control over the National Bank they had established during the conflict. The IMF insisted on the liquidation of the National Bank as a precondition for the May 1998 Stand-By Agreement. This was reinforced by further cross-conditionality, as the IMF Agreement was in turn a precondition for other donor support, particularly World Bank credits. This was a textbook example of conditionality, with the obligations of the authorities and the consequences of non-compliance clearly specified. Even so, the pressure had to be sustained over a substantial period of time. In May 1998, the state presidency agreed to appoint a foreign liquidator of the SDA-controlled National Bank, but by October 1998, an OHR report described the liquidation process as “proceeding slowly and with great difficulty”.⁸⁴ The Federation government and the Bosniac payments bureau continued to use the assets of the National Bank, in contravention of the law. Pressure on the Federation Government was increased when the issue was included in the first review process of the IMF Stand-By Agreement. OHR added its weight with instructions to the Federation Prime Minister to follow the orders of the liquidator. Finally, in early 1999, the IMF and OHR were able to announce the closure of the National Bank.

The second limb of international strategy concerned the introduction of the new currency itself. Once the authority of the Central Bank governor, backed up by the powers of the High Representative, resolved disputes over design, the new currency was printed in Western Europe with international funding, and introduced into circulation in July 1998. However, widespread resistance continued even after the new bills were distributed. Public authorities in Croat and Serb areas refused to collect revenue in KM, and the status of the new money as legal tender was at first widely ignored. At this point, the financial weight of the international community as the largest consumer and employer in the country proved important. With the encouragement of OHR, international agencies began to pay their employees and their suppliers in KM. This proved the most efficient method of sending the new currency into circulation, and made it uneconomic for traders to refuse it. Once in circulation, the stability of the KM, which is tied in value to the German Mark, compared favourably to the high rates of inflation suffered by the Kuna and the Yugoslav Dinar. In October 1998, the Republika Srpska government decided to use the black-market KM-Dinar conversion rate for tax collection instead of the official rate, in an effort to preserve the real value of government revenue. This led to a public dispute with Belgrade, and a temporary cut in payments operations between FRY and Republika Srpska. The resulting confusion further undermined confidence in the Dinar.

A year after its introduction, it was clear that public confidence in the KM had begun to drive out the weaker foreign currencies. By June 1999, the balance sheet of the Central Bank had grown to KM 340 million, and its use in RS government payments and revenue collection approached 70 percent. By September 1999, only 15 percent of all transactions in Croat areas used the kuna, as opposed to 35 percent in KM and 50 percent in DM.

Looking back at the strategy as a whole, there were a number of ways in which international financial power was used to good effect. First, traditional economic conditionality was used to put in place the legislation required to establish the Central Bank and introduce a new currency. It was also deployed effectively to achieve the liquidation of the illegal parallel structure, the Bosniac-controlled National Bank. Second, international financial support for

⁸⁴ OHR Economic Newsletter, October 1998.

the Central Bank was critical to its early survival, helping to ensure that it was not co-opted into the party-state structure. When initial funding support for a new institution is combined with an institutional design that allows for financial independence, such as through license fees, it does not require any long-term international commitment. Third, international money was used to pay for the printing and distribution of the new currency. By taking a key step in the process out of local hands, further possibilities for political obstruction were minimised. Fourth, the international community's weight in the local economy provided a means to overcome official resistance to the new currency.

Once the currency was in general use, the Central Bank was in a position to perform a valuable public service. The best protection for any new, independent institution is gaining public confidence. Because the Central Bank guarantees a stable currency, which is in the interests of all citizens, there is every prospect that it will survive beyond the period of international supervision. This would not have been possible had the initial design of the institution been a diplomatic compromise negotiated between the nationalist parties, or had the local staff approached their task as representatives of three antagonistic parties.

5. Maximising financial power

The experience in building the Central Bank suggests that, while there is a role for traditional economic conditionality, the international community should be exploring other ways to use financial power in support of the state-building agenda. One area which deserves further attention is the role of direct international funding of local institutions. Institutions which are dependent on government budgetary processes which are not transparent and subject to direct nationalist party influence are unlikely to be able to prevent abuse of political or economic power.

Donors are often reluctant to take on budgetary support of new institutions, fearing that it may involve long-term commitment. However, a number of the new institutions in Bosnia have been created in such a way as to become ultimately self-financing. In addition to the example of the Central Bank, the Independent Media Commission will be able eventually to fund its work through media and telecommunications license fees. Any other regulatory agency that works through licensing should be in a position to do the same. The Federation Television will be funded through a special charge on users collected by the electricity companies. For bodies which cannot be self-financing, such as courts, the adoption of budgetary laws which guarantee minimum funding may be appropriate.

If attention is paid to securing the long-term financial sustainability of a new institution, then there is a strong case for short-term international funding to assist with start-up costs. International organisations also need the capacity to pay for the expert advice needed for interventions into complex economic areas. If the international community needs to engage foreign experts from the private sector to carry out the restructuring of key industries, then one option might be to reimburse the expenses from the proceeds of privatisation in the future. Institution-building efforts, such as the work of CAFAO with customs collection bodies or the work of OHR with the financial police, which have the effect of increasing public revenues or eliminating the improper use of public funds will ultimately be far more cost-effective than continued budgetary support to the entity governments in a weak budgetary environment.

There is also potential for international financial power to contribute to state building through the relationship of international donors and creditors to particular levels of government in the Bosnian constitutional order. For the time being, although World Bank and IMF credits are paid to the state, the state is obliged to lend them on to the two entities according to fixed percentages. The state is a mere conduit, with no actual responsibility. International funding could be used to build the state through its constitutional responsibility for foreign trade policy and foreign affairs. While the entities retain the right to disburse funds in their areas of responsibility, there is nothing to stop the state playing a role in deciding on priorities for the use of international finance, or attaching conditions when it lends the funds on to the entities to ensure they comply with the state constitution and Bosnia's international obligations. Conditions attached to financial flows are a common feature of many states with federal systems.

For example, the state constitution provides that the entities must not limit the Bosnian common market by restricting freedom of movement of persons, goods, services and capital.⁸⁵ This key constitutional provision is a reference to the regulatory tool used to create a common economic space in the European Union. If oversight mechanisms were created at state level, answerable to the Council of Ministers, to ensure that all beneficiaries of international funds were acting consistently with the Bosnian common market, then the state would acquire its first meaningful regulatory function, and the capacity to bring Bosnia closer to Europe.

Often international funding has gone to institutions with little prospect of ever becoming self-sustaining or to projects of little strategic value. It is hard to understand why the international community agreed to pay for the administration of Mostar airport for more than 18 months, given the complete absence of political progress in the Mostar City administration. In the judicial reform field, one internal review noted in 1999 that international assistance was "provided piecemeal, without reference to a comprehensive reform plan" and that "by continuing to support the status quo, the international community will leave Bosnia and Herzegovina, having spent hundred of millions of dollars on judicial reform, without effecting real change." To date, no institutional mechanism exists to match international policy priorities with sufficient resources. To match end with means is, however, the very essence of strategy.

C. Gatekeeper to Europe

Ever since the Dayton Agreement, there have been references to 'Europeanisation' as a method of resolving Bosnia's internal problems within a regional context. The hope is that the desire of all Bosnians for acceptance as citizens of Europe and a share of the prosperity which that entails - what one commentator describes as "the region's single common aspiration"⁸⁶ - can be used to balance the centrifugal forces of ethnic separatism. This proposition is intuitively appealing, but has proved difficult to operationalise.

Underneath of rhetoric of the need for a closer relationship between Bosnia and European, the path for Bosnia to develop closer relations with European institutions, and in particular the European Union itself, has never been spelt out. In Madrid in December 1998, the PIC gave an ambiguous message:

⁸⁵ Constitution of Bosnia and Herzegovina, Article I, para. 4.

⁸⁶ Steil and Woodward,

"The Council urges BiH to make every effort to meet the entry criteria as the first step towards closer association with all of the European institutions. It pledges its assistance in helping BiH to do so. But it gives notice that the standards are high and will not be relaxed to secure admission. It is up to BiH to meet those standards. In the view of the Council there is no reason why, with sufficient effort, this should not be possible given sufficient political will. The pace of integration of BiH into European structures will be governed by its performance in implementing its Dayton obligations."⁸⁷.

This is an example of 'passive ownership', as discussed in Chapter I, which does not offer any real political influence. The nature of association with European institutions and the standards to be met are left open, while the incentives for the Bosnian elites are merely assumed. Full Bosnian membership of the European Union is so distant a prospect that few Bosnians would expect to see it in their lifetime. The value of European integration to the peace process therefore turns on whether 'closer association' can be operationalised into a more active process.

This paper argues that the real contribution which European institutions can make to the peace process is in helping to turn the Bosnian state into a reality. The essential precondition for Bosnia to participate in any European process is the capacity to represent itself externally in European fora, to undertake commitments, and to ensure that they are implemented throughout its territory. A point often missed in the current discussions of the 'regionalisation' of Europe is that the European Union continues to depend upon the regulatory capacity of its constituent states to accomplish harmonisation. States within Europe have agreed to limit their sovereignty to the extent of maintaining common standards in a whole range of areas, but institutionally, the European Union still depends largely on the machinery of the state to guarantee those standards.

Seen from this perspective, the problem of Bosnian integration with Europe is obvious. Bosnia is recognised as a state with full international legal personality, but its 'real constitution' is that of a loose confederation of three quasi-sovereign entities. For the time being, Bosnia cannot negotiate effectively with European institutions, it cannot credibly enter into international agreements, and it cannot guarantee implementation of international obligations. Most pertinent to the European Union, there is no Bosnian common market, and no level of government within Bosnia is capable of implementing the constitutional requirement of free movement of persons, goods, services and capital. Until progress is made on building a minimum of regulatory capacity at state level, no progress towards association with Europe is possible. So long as the state of Bosnia and Herzegovina remains, in the words of those in the international community who closely work with it a "tri-headed monster virtually incapable of performing the basic functions in government", there is no European future for Bosnia's citizens.

The process of Europeanisation therefore converges with the peace implementation agenda of international organisations working in Bosnia. If the Bosnian public and at least some parts of its political elite do in fact have a sincere desire to bring Bosnia closer to Europe, then this offers a source of power to build a viable state. However, as with military and financial power, the process will not drive itself, and needs to be operationalised through focused strategy, effective co-ordination and the right instruments. If this is managed correctly, the Dayton constitution need not remain a peace treaty trapped by the balance of power in 1995,

⁸⁷ Madrid Peace Implementation Conference, December 1998, Annex, Art.VI, para.2

but can be a dynamic process moving towards the creation of a modern state with a medium-term future in Europe.

This chapter provides only a brief introduction to this area. It begins by analysing the most immediate use of the gatekeeper role, the power to physically exclude Bosnian citizens from Europe, which was used to great effect in achieving a common license plate. It then looks at the integration of Bosnia into the wider net of international associations, such as international sports associations. It examines briefly the question of Bosnian accession to the Council of Europe, and then turns to the most important dimension of the gatekeeper role, the development of relations between Bosnia and the European Union.

1. Access and exclusion: the example of the common licence plates

One of the more dramatic successes of the peace process was the introduction of the common vehicle license plates, which had an immediate and lasting effect in promoting freedom of movement. Until 1998, the use of three ethnically differentiated licence plates represented a serious obstacle to freedom of movement, making it difficult for any person to travel within the country without risk of harassment. This strongly discouraged contacts between the ethnic groups, and made internal trade extremely difficult. Through a sustained campaign, UNMiBH, OHR and SFOR successfully overcame political resistance to the introduction of a common system. Within a few months, more than a million new license plates were issued by the police throughout the country, leading to a tremendous boost in inter-entity traffic and ultimately to a sustained breakthrough in spontaneous minority return.

The goal of a common license plate was first mentioned by the PIC in London in December 1996,⁸⁸ and at Bonn in December 1997, the PIC instructed the national authorities to sign a Memorandum of Understanding (MoU) prepared by OHR on the subject. The MoU provided that: “After 31 July 1998, all vehicles in Bosnia and Herzegovina will be required to bear the new licence plates. After 30 April 1998, only vehicles carrying the new licence plate may cross international borders.” On this subject, a unique form of leverage was available. By agreement with the European Union, and through strong diplomatic pressure on Croatia, the international community was in a position to enforce this rule whether or not the Bosnian authorities agreed to it. The MoU was signed by state and entity authorities in January 1998.

There was of course considerable resistance even after the MoU was signed, and a sustained and well co-ordinated campaign mounted by a joint OHR, IPTF and SFOR Task Force was needed to secure implementation. The MoU contained detailed annexes setting out the many steps in implementation. Although the document never received parliamentary approval, it was considered to supersede entity and cantonal legislation. The UN provided technical advice for arranging the commercial production of the license plates and preparing the registration documents, and OHR instructed the entity Ministries of Interior to sign contracts with two selected manufacturers when the state Ministry of Civil Affairs proved incapable of managing the procurement process. OHR decided upon a compromise on the design of the license plates, which has six numbers and one letter from those common to the Latin and Cyrillic alphabets. OHR and the UN supervised the production, ensuring that the plates were uniform in quality and appearance and that license plate numbers were randomly distributed around the country. The project was also made financially self-sustaining through a standardised

⁸⁸ Peace Implementation Conference: Making Peace Work, London, December 1996

vehicle registration fee set by OHR. The international organisations involved maintained strong political pressure throughout the process, refusing to accept any grounds for delay.

By April 1998, distribution of licence plates and registration documents had begun. Initial resistance from local authorities was overcome in a number of ways. SFOR required all military and the IPTF all police vehicles to carry the new licence plates. Media events were staged showing the new license plates being distributed to government officials. Most importantly of all, the deadline for crossing the state border was used to generate intense pressure on the local authorities from the general public and from trucking companies. So intense was this pressure that by July, with the summer vacation approaching, police stations in hard-line areas of Herzegovina and Republika Srpska were picketed by crowds demanding the new plates. In Republika Srpska, the new license plates proved immensely popular, contrary to the rhetoric of the nationalist political leadership.

The license plates campaign also opened the door to further common documents. By adding new annexes to the MoU, the common vehicle registration system was expanded to include common driving licences. High Representative Westendorp informed the responsible authorities:

"For the same reasons that the common vehicle registration document was introduced, it is time to introduce the issue of a common driving licence for BiH. When my Office asked civilians at random in BiH we were shown three different driving licences, all of which referred to states that no longer exist... The common driving licence of Bosnia and Herzegovina shall, at a minimum, fulfil European Union Standards on technical and visible appearance and furthermore shall abide by the 1968 Vienna Convention on Road Traffic...."

Moves are underway to expand the system to include personal identification documents and a genuinely common passport,⁸⁹ leading ultimately to a single information-sharing system for common documents which complies with European standards. The institution-building efforts which support this process are helping to establish the framework for co-operation between local authorities and police across the country, not least by providing a common software environment and database. The power to act as gatekeeper to Europe, and the genuine public interest in internal travel within Bosnia, can in this way be used as a lever to overcome political obstruction to the constitutionally guaranteed freedom of movement.

2. Joining international associations: sports and postal services

International pursuits in an era of globalisation are increasingly conducted by networks of international associations across every human endeavour, from culture to science and trade. Some have the status of international organisations, others are joint regulatory mechanisms, or professional or voluntary associations. A common structural feature is that sub-national actors are represented in these bodies by a single national actor. This can be a powerful tool for building a Bosnian identity and a core of regulatory structures at state level.

The example of Bosnian membership of sports federations is a useful illustration. At the end of the conflict, sports in Bosnia were almost entirely ethnically segregated. However, each of the divided sports associations had an interest in returning to the international arena. As a

⁸⁹ For the time being, there are three different passports in use.

precondition to participating in international competition, the major international sports federations – the international football (UEFA/FIFA) and basketball (FIBA) federations and the International Olympic Committee (IOC) - require each state to be represented by a single association. This has been used as an incentive to build national sports bodies. OHR rejected an argument by Republika Srpska authorities that sport is an entity-level competence, and that therefore the associations should be established by the entities. OHR took the position that sports federations are not public bodies at all, but non-governmental associations which should be “left out of control of whatever governmental body, be it at the State, Entity or other level”.⁹⁰ The sole constitutional requirement was that their charters not be discriminatory.

The support of the international sports federations, in line with international practice, ensured that this position was accepted. There were some serious economic incentives involved. In Herzegovina, for instance, politically connected entrepreneurs and leading representatives of the HDZ power structure have invested heavily in constructing huge football stadiums (for example, in Siroki Brijeg and Posusje) or in buying foreign players for local basketball clubs (Livno). Losing the right to participate in and host international sporting events would prevent a return on these investments. As a result, hard-line HDZ Governor of West Herzegovina Canton, Jozo Maric, has lobbied for the establishment of a Bosnian football association, a position distinctly at odds with the usual HDZ line on common institutions. In the Republika Srpska, opposition to joint sports federations remains, but appears to be gradually softening. This year will mark the first time that football clubs from Republika Srpska will participate in the Bosnian play-offs for the European club championship next year.

Perhaps most importantly, young Bosnian Serb and Bosnian Croat players are beginning to play for BiH national teams.⁹¹ The symbolic importance of sport in the reconciliation process should not be underestimated. When Bosniacs, Croats and Serbs are playing for common teams and receiving support in all parts of the country, Bosnia will have taken a major step forward.

There are many other possibilities for this kind of international influence. The Madrid PIC called on the High Representative, where necessary, “to ask international bodies, such as the UIC, ITU, UPU, UCPTE and others not to recognise the credentials of the representatives of Bosnia and Herzegovina in those organisations”.⁹² However, for membership of international associations to be an effective lever, the process must be well managed. Membership of the Universal Postal Union (UPU), based in Bern, should have been used to ensure that a State Postal Law be passed and a state-level postal union be created. Since June 1998, when the first regular mail service between Sarajevo and Banja Luka commenced, OHR has worked together with the UPU and the three responsible ministers with their post directors on drafts of a State Postal Law. However, in the absence of a clear objective or a strategy for maximising international influence, the process has been inconclusive. UPU hosted regular, sometimes monthly, meetings in Bern from October 1998 and throughout 1999. In July 1999, a meeting of the Commission on Public Corporations decided to establish a working group “to consider the advisability of creating a Postal Corporation under Annex 9”. By early 2000, however, the working group had done nothing more than decide to carry out “a feasibility

⁹⁰ OHR letter to Haris Siladjic, Chairman of the Council of Ministers, DATE

⁹¹ A Bosnian Serb named Nenad Miskovic playing for Partizan Belgrade, and Blaz Sliskovic, a leading Bosnian Croat footballer from Herzegovina have both recently accepted invitations to play for the BiH national team.

⁹² Annex to the Madrid Declaration of the Peace Implementation Council, 1998, p. 19

study of options for a BiH-wide postal corporation to incorporate all postal services". This is a fairly typical example of an international initiative which has lost its way. If there was any incentive structure involved at all, it was the desire of the entity ministers to continue the discussions indefinitely in comfortable surroundings in Switzerland.

3. The Council of Europe debate

The Council of Europe is one international association which at the moment figures prominently in international debates on Bosnia. The Council of Europe, being the association of states party to the European Convention on Human Rights, is often considered the first step towards European integration. For a variety of reasons, ESI considers that the political leverage which can be obtained from the accession process has been overstated. The debate about accession nonetheless offers a good occasion to make some clear statements to the Bosnian public and political elites about European values.

The Council of Europe now has 41 members, and membership is open to any European state willing and able to "accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms".⁹³ In May 1999, in consultation with international organisations in Bosnia, the Council set out some 40 conditions which must be satisfied before Bosnia is permitted to accede. The conditions cover a representative sample of international programmes in Bosnia, including establishment of the state civil service, funding of the judiciary, police restructuring, refugee return, media regulation and customs collection. Some conditions, such as "full functioning of the common institutions", "full co-operation with the ICTY" and "review of the education system to eradicate all aspects of ethnic segregation", are put in strict terms. Others, on the judicial system, refugee return and economic reform, simply require Bosnia to demonstrate progress, adopt a plan or amend a law.⁹⁴

In recent years, the Council of Europe has not applied its membership criteria particularly strictly. Albania and Ukraine were admitted in 1995, Croatia and Russia in 1996 and Georgia in 1999, at times when the rule of law was notably weak in those states. Some member states and international officials in Bosnia have argued that there is a benefit to the peace process in admitting Bosnia as soon as possible. The open-ended nature of most of the conditions suggest that the Council is keeping its options open for early admission. If the Council decides to set a low entry threshold, then the political leverage it can offer to the peace process will obviously be limited. The Strasbourg Court may take ten years before it hears any cases from Bosnia,⁹⁵ and in the meantime the Council of Europe's Council of Ministers has only limited capacity to put any pressure on Bosnia.

If on the other hand the Council decides to be strict on Bosnian admission, as the High Representative has recommended, the incentive may still not be strong enough to make any real difference. Membership of the Council of Europe does not offer any concrete benefits, except in so far as it is the first step towards the European Union. States which are genuine

⁹³ Statute of the Council of Europe, Arts. 3-4.

⁹⁴ Council of Europe Political Affairs Committee, "Bosnia and Herzegovina's application for membership of the Council of Europe", 26 May 1999.

⁹⁵ The Convention will only apply in Bosnia from the date of signature, which must be within a year of the Council agreeing to Bosnian accession. The Strasbourg Court will only hear cases based on human rights incidents occurring after that date. The cases must first exhaust all remedies within the Bosnian system, and will then wait 4 to 7 years before a hearing with the Court. In any event, the European Convention already applies directly in Bosnian law under the state constitution, and the Human Rights Chamber under Annex 6 of the Dayton Agreement plays a role analogous to Strasbourg.

candidates for admission to the European Union will go some way to avoid censure within the Council of Europe, with an eye on the larger goal. For Bosnia, however, the benefit is at first largely symbolic. Current state politicians would no doubt like to be credited with achieving accession, and conversely, no Bosnian politician would wish to be blamed for preventing it. However, if the conditions of accession involve real political cost, then the incentive is cancelled out.

A more effective use of the accession process may therefore be to stress a few important matters of great symbolic importance, particularly issues involving the treatment of ethnic minorities. For example, the Human Rights Chamber in 1999 ordered the Republika Srpska authorities to give permission for the reconstruction of religious buildings, including the famous Ferhadija Mosque in Banja Luka, which were razed during the war.⁹⁶ Although this case provided the justification for the sacking of the mayor of Banja Luka, Djordje Umicevic, in November 1999, OHR has never pushed the issue at a high level. Rather than trying to extract some progress on issues like media regulation and customs administration, the Council of Europe could simplify its message, and stress to the public and political elites in Bosnia that repression of minorities is utterly unacceptable in the European order and that opposition to the rebuilding of religious buildings destroyed as part of an ethnic cleansing campaign entails an automatic isolation from the European mainstream.

4. European association and the state building agenda

The body created by the European Union in 1998 to oversee the process of preparing Bosnia for association with Europe is the Consultative Task Force (CTF). The terms of reference of the CTF are to " help BiH establish a fully functioning state and develop means of meeting some of the technical prerequisites to closer co-operation with the Union, in particular with the aim of assisting Bosnia and Herzegovina prepare for possible contractual relations with the EU in the future."⁹⁷ The CTF was to function as a "practical, working body at expert level, bringing together EU experts to work with the Bosnian authorities at State and Entity level on a range of technical issues". Since 1998 it has met regularly in plenary sessions and working groups on a wide variety of issues, including foreign direct investment, industrial policy development, internal market, accounting, public administration and judicial reform. Following every meeting, it has issued recommendations to Bosnian authorities on a range of issues, including the preparation of a law on the conclusion of treaties, improved budgetary support to the State Foreign Investment Promotion Agency and the Constitutional Court, and administrative reform in the state bureaucracy.

However, progress has been slow. Again and again the CTF has been frustrated in its work by the refusal of the entity authorities to enter into meaningful discussion either on creating state-level regulatory bodies, or on the harmonisation of laws and institutions required to establish a Bosnian common market. Without progress on these two issues, there is little that the CTF can do to establish the prerequisites for closer co-operation with the EU. For example, a trade agreement between the EU and Bosnia which entered into force on 1 January 2000 allows a significant portion of Bosnia's exports to the EU to be free of customs and quotas. However, for Bosnian goods to enter the EU Bosnia needs to adopt European standards on product labelling.⁹⁸ The CTF has called for the establishment of a state-level Institute for Standardization, Metrology and Patents, accredited by the International

⁹⁶ Islamic Community v. Republika Srpska, CH/96/29.

⁹⁷ EU General Affairs Council in Luxembourg, 8 June 1998

⁹⁸ OHR, Economic Newsletter, February 2000

Standardisation Organization. Veterinary and sanitary standards for agricultural exports should comply with European standards, contained in state laws with a state regulatory body. It has also called for competition and consumer legislation, to be enforced by a single Competition Council competent to ensure its application throughout Bosnia.

As foreign trade policy is a state responsibility under the constitution, there is no question that the state has the authority to regulate all of these issues, and create the necessary institutions to do so. However, according to the Republika Srpska representatives in the CTF, the entities retain the sole right to perform such basic state functions. These are fundamental issues of constitutional politics which are unlikely to be resolved solely within the framework of the CTF. Where the CTF can make an important contribution is in articulating the precise costs to the Republika Srpska of insisting on its quasi-sovereignty, in terms of the lost benefits of association with Europe.

Up until now, however, the international community has not taken a consistent position concerning the relationship between the state and the entities. As mentioned in Chapter 1, the major economic actors were principally concerned with efficient implementation of their programmes, and preferred to work in co-operation with the entities. The Economic Policy Task Force, a body chaired jointly by the World Bank and the IMF, announced to other international organisations in October 1998:

"it appears not likely (nor necessary, given Dayton) that the entities would agree to shift any of their functions to the state. This would open the potential for duplication, raising questions as to the efficiency of these additional expenditures at the state level, when the Dayton constitution gives much of the responsibilities for economic matters to the entities. This could lead to conflict with the entities, which would greatly complicate agreement on and economic implementation of economic reforms."

This short-term assessment is at odds with the objective of preparing Bosnia for a future contractual relationship with the European Union. In political terms, the emphasis on the entities in international economic policy has undermined the prospect of developing a common market, a constitutional requirement and an essential goal of overall international policy. In fact, the pragmatic considerations which have forced the international community to work at entity level (or at ethnic group level) have led to multiplication of layers of administration and regulatory bodies, from the two banking supervisory agencies to the three supreme auditing offices, the twelve privatisation agencies and at least thirteen statistical institutes. These dispersed bureaucratic structures carry an immediate cost in terms of a grossly inefficient public sector and an even greater cost through the resistance they generate to economic reform. The creation of multiple regulatory institutions in the privatisation field, most of them hopelessly under-resourced, has been counterproductive. The persistence of ethnically divided public utilities has given Bosnia some of the highest rates for electricity, international telephone calls or rail freight in Europe.⁹⁹

Wherever the need for an effective state mechanism has been recognised, the constitutional justifications have readily been found. OHR has taken the position that "institutions of Bosnia and Herzegovina have such competence as is necessary to preserve its sovereignty,

⁹⁹ Electricity rates for industrial users often exceed rates in the OECD countries; costs of international communications is excessive, "transport costs for freight (railway and road) are not less than in Western European countries". USAID, BiH Economic Update, October 1999.

territorial integrity, political independence and international personality".¹⁰⁰ As the OHR noted in connection with state competence to regulate the electromagnetic spectrum for telecommunications and broadcasting:

"the international obligations of the state form a framework within which the state's regulatory arrangements must fit... ITU regulations establish basic parameters which circumscribe the domestic allocation of frequencies for broadcasting and other telecommunication purposes. The international obligations associated with such agreements and regulations are those of the state, and it is the responsibility of the state to ensure that its domestic regulatory system fulfils and is in conformity with those obligations."¹⁰¹

On this basis, the High Representative created the Independent Media Commission in June 1998 to act as a state regulator, with authority over the allocation of frequencies and media licensing, which has been one of the more successful institution-building efforts at state level. OHR's constitutional rationale could be extended to a whole range of areas, especially concerning the issues of most immediate concern to the work of the European Union – Bosnia and Herzegovina Consultative Task Force.

The distribution of economic regulatory competence between the state and entities is one of the most crucial issues of the Bosnian political economy, going to the heart of the viability of the Bosnian state. An important benefit of the process of closer association with the EU could be the development of a common international approach to this question. If it is possible to align the priorities of OHR in its institution-building programmes, the European Commission through the CTF, and the international financial institutions in setting the conditions of their structural adjustment credits, then for the first time there can be serious efforts to establish the core of state competence and a genuine common market, which would allow Bosnia to take part in meaningful negotiations on contractual relations with the European Union.

V. CONCLUSION

The first priority in a post-conflict situation should be to examine the overall enabling environment that governs the behaviour of broad sectors in the political economy. The second priority is to identify and learn from the shortcomings of international efforts. As a recent World Bank analysis noted, in the field of rebuilding institutions of governance and civil society following violent conflict, no international donor has an obvious comparative advantage.¹⁰² The ESI analysis of international power in Bosnia suggests that the international community has many forms of power at its disposal to overcome resistance to and to build support for the peace process. However, power is a resource which needs to be mobilised. The international community must become much more conscious of the sources and nature of its power, and much more systematic in its use.

As a first step, the international community must develop a clearer picture of what it is trying to achieve in Bosnia. To accomplish its mission, the international community must leave

¹⁰⁰ OHR Legal Opinion 1999/3, On the Competence of Bosnia and Herzegovina To Regulate the Use of the Electromagnetic Spectrum For Telecommunication and Broadcasting, para. 7

¹⁰¹ OHR Legal Opinion 1993/3, para.15.

¹⁰² Operations Evaluation Department, *The World Bank's experience with post-conflict reconstruction*, June 1998, p. 30

Bosnia a legacy of functional institutions in the political and economic spheres. This we have called the state-building agenda. The focus should be on institutions which promote responsible governance and prevent abuse of public power. These are the institutions which will ultimately reduce the nationalist regimes to ordinary political parties within a constitutional order. It is accountable and transparent institutions, controlled by and controlling democratically elected politicians, and not simply a series of elections, which will create meaningful democracy and empower Bosnian citizens. The path to Bosnian 'ownership' of the peace process is therefore through institution building.

This involves the international community in many complex choices as to the future of Bosnia. Like any constitutional order, the Dayton peace agreement is a dynamic system which is constantly evolving. The international community must be conscious of steering the process of development. In the third paper in this series, and in its future work on Bosnia, ESI will offer its proposals for the state-building agenda.

Once the state-building goals are identified, international power and resources should be used systematically to promote them. Developing a clearer international agenda is not just a question of adopting new objectives. It is also involves abandoning old ones. Better focus requires fewer objectives and much clearer definition.

The High Representative is the institutional key for focusing international resources on a coherent set of objectives. The dispersed institutional structure makes it difficult for the international community in Bosnia to develop and follow a common score. The High Representative must take the lead in articulating common goals, and ensuring that resources are deployed accordingly. This does not mean that OHR needs to take on more authority or a greater share of the work than it does at present. The essence of OHR's co-ordinating role is not to instruct others, but to identify and mobilise international resources and to articulate the implications of a state-building agenda to other international institutions.

Institutions need a sound legal basis, and the High Representative's legislative powers are one of the most important tools available to the international community. The High Representative should use these powers in a proactive and systematic way, by developing a definite legislative agenda. OHR should be entirely transparent about its legislative agenda, consulting as appropriate, but not tolerating unnecessary delays. In defining his legislative role, the High Representative would also help define the role of the national parliaments. International organisations should broaden their circle of consultation beyond the leaders of the nationalist regimes, where appropriate appealing over their heads to the legal profession, to interest groups and to the general public.

Making law, however, is never enough. The international community must also develop strategies for mobilising its basic sources of power in support of the state-building agenda. On a few key issues, international military power is the appropriate tool. More often, economic power or the process of European integration can be used to provide leverage or create incentives. Economic conditionality has a role to play, but only where obligations and consequences are clearly articulated. Often other forms of international financial power will be more appropriate, and the potential of budgetary support and targeted funding to support institution building has not been sufficiently explored.

Each issue on the international agenda should be planned and executed as a campaign, where the resources, both political and material, are identified and deployed in a strategic way. The international community functions most effectively when organised around projects, rather

than vague and often abstract objectives. Utilising international power effectively is ultimately about managing limited resources - human, financial and political.

The managerial dimension is often neglected in the drafting of strategies. International organisations often fail in their tasks for very obvious reasons. If an institution does not gather and share information systematically; if it is staffed through short-term secondments; if it never articulates its objectives; if it fails to study its own programmes and learn from its successes and failures; if it refuses to divert resources away from unproductive activities - then with all best intentions, it is likely to end up defending the status quo. The same is true for mechanisms of interagency co-ordination. This makes the study of successful ventures – in particular unexpected success stories – so vital. State building is a radically new dimension to the international order, and inevitable there is a certain amount of trial and error involved. But trial and error is only acceptable if we learn from our experiences.

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