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An Impossible Pasodoble: The EU and Bosnia Today

Abstract: *The EC/EU is involved in Bosnia for almost twenty years now and for the last several tries to take the leading role in stabilising this country. This article studies the instruments the EU developed regarding influencing Bosnia, estimates the extent to which the EU acting is a coordinated effort and explains the origins of such actions. It presents the major obstacles to Bosnia's independent existence and joining the EU and confronts the actions of the EU with those obstacles examining their effectiveness.*

The Bosnian was the first EU mission run outside of the borders of its member states. Initiated in early 2003, European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) was supposed to verify the ability of the Union's external policy to fulfil several tasks: to stabilise a neighbouring region thus ensuring security of the EU states, but also to make EU states act together in an area they never had before to such extent. It was also a test for the smoothness of EU's decision-making processes regarding involvement abroad. Most of all – for the people of the Western Balkans – EUPM supported by numerous other EU programmes and missions initiated before and since was supposed to lead the most advanced states of the region – including Bosnia – to the EU membership. Was the optimism of stabilising Bosnia not premature? Did the EU undertake operation it is capable of completing?

The European Union is involved in the Balkan peace process ever since the coincided break-down of (old) Yugoslavia and setting up of the Union itself – both in very early 1990s. Today we celebrate twenty years of the EC/EU's efforts in the Balkans and because of the medium-long interval this anniversary marks (*'medium'* in terms of both building the EU and

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the peace in the Balkans) it is a better time than any to evaluate its endeavour in the region. At the first glance, the EU is doing well having taken Slovenia in and closing down the negotiations with Croatia – most probably the second state of the Western Balkans to join the EU. But this looks the easy bit compared to the more troubled states of the Balkan region: for instance despite the continuous engagement in Bosnia, the European Commission's report on the progress towards peace and EU membership is not optimistic.¹ This article presents the state of art of the EU involvement in Bosnia as well as the reasons for the little effects its stabilisation efforts achieve.

1. EU operations in Bosnia

The EU runs three major missions in Bosnia: the already mentioned EUPM as a police mission, EUFOR Althea – a military mission and EU Special Representative in charge of civilian aspects of the peace process. On the top of these there are pre-accession programmes made available for the Bosnian authorities, European Commission Representation office in Sarajevo, coordinating Commission's programmes and EU-Bosnian dialogue, and several other ways in which the EU and its states subsidise the transformation of Bosnia. Next to the EU grants, Bosnia receives aid from a number of international organisations like for instance the World Bank and governments of non-EU states (for instance Japan is very active in Bosnia).

EUPM was established in March 2003 in order to assist in the transformation of Bosnian police forces, train police personnel and help the Bosnians to counter-fight organised crime. It was – and still is – a non-executive mission, that is its personnel has no authority to enforce law but to assist, train and advise to the local police. As the first mission of the UE abroad, it had its ups and downs regarding planning and performance: while the mission did well in the training of the police in the first stage, it was handcuffed when the Bosnian parliament failed to adopt a packet of laws relevant to the police reform and the job of the EUPM slowed down enormously between 2006 and 2007.² It is generally considered bad planning to entrust the effectiveness of an entire mission to the assumption that a body we have no

¹ European Commission, *Bosnia and Herzegovina 2009 Progress Report*, Commission Staff Working Document of 14.10.2009, SEC(2009)1338.

² M. Merlingen, *The EU Police Mission in Bosnia and Herzegovina (EUPM)* in: *European Security and Defence Policy: The first 10 years (1999–2009)*, eds. G. Grevi, D. Helly, D. Keohane, Paris 2009.

control over will behave the way it is convenient to us, especially if there is no tradition of such behaviour. In Bosnia it did not and it is hard not to blame the EU planners who could have foreseen this practice of the Bosnian parliament as the political life of the country is very closely monitored by the chief supervisor of the peace process: the EU Special Representative (EUSR).

The second EU mission in Bosnia is EUFOR Althea which started to operate in December 2004 as a military mission. Similarly to the EUPM, it had its unquestionable accomplishments, the fact that it does manage to keep peace in the country being the major one. Nevertheless, if truth be witnessed, the mission cannot be judged solely on the basis of its keeping the peace since an open conflict in Bosnia ended together with the conclusion of the Dayton Peace Accords (DPA) in December 1995 and the major task of making shooting stop had been accomplished before the Althea took off the ground six years later. What the Althea could be evaluated upon is its other job, essential to the civilian EU administration: the support for the EU Special Representative and this is not done effectively due to the weak tuning of EUFOR Althea's and the EUSR's competencies.³

The function of the EUSR was given to the then High Representative of the United Nations (UNHR) in Bosnia, Paddy Ashdown, in 2002. Ever since then, there is a personal union between those two functions, which makes the EUSR be what the UNHR is: the highest authority in overseeing the peace process in Bosnia and Herzegovina with a long experience and very strong competencies. So called '*Bonn powers*' allow the UNHR/EUSR to amend, change, impose and suspend laws in Bosnia as well as deprive of functions those officials who do not comply with law or slow down peace process. In theory, the UNHR/EUSR is supposed to address the needs of the state and – most of all – its people and to ensure the compliance with the peace treaty and recommendations of the Peace Implementation Council – the body that oversees the entire peace process in Bosnia and Herzegovina. EUSR is also entrusted coordinating foreign involvement in Bosnia but this can be done only to a limited extent as there is no formal power over international organisations or programmes of NGOs' or governments' of third states.⁴ Despite these limitations the overall notes for the UNHR/EUSR are very high – the function is well composed into the needs of a post-conflict state and the persons nominated so far managed to both find ways in difficult deci-

³ Ibidem.

⁴ The best description of the tasks of a UNHR/EUSR and possibilities for their performance gave Paddy Ashdown, the UNHR/EUSR in: P. Ashdown, *A Fortunate Life: The Autobiography of Paddy Ashdown*, London 2009.

sion-making processes of organisations involved in Bosnia and to earn the trust of Bosnians.⁵

While the EUSR remains the strongest point in the entire EU plan for Bosnia, the EU missions suffer from the lack of coordination between them. The EUSR, although in charge of overseeing the entire peace process, has no right to manage any of the EU missions or programmes nor has it the power to influence decisions of the heads of the missions otherwise than by way of consultation. EUSR can but advise. The missions often duplicate tasks – like in the case of EUFOR Althea’s creating their own police mission, parallel to the EUPM and with overlapping competencies. On the more general level, the pattern of the Bosnian operation and division (or its lack) of tasks between particular missions within the operation is blindly copied from the UN operations that were established there just after the termination of the military conflict. The EUPM took over from International Police Task Force (IPTF), EUFOR Althea – from SFOR, the EUSR is the extension of the High Representative of the United Nations. Even the idea of the EUFOR Althea’s police force was taken over from SFOR. By playing a UN copycat, the EU has never challenged the UN ways with an alternative approach and duplicates the entire pattern, including mistakes in the UN mission planning, in which the lack of coordination between different components was the cardinal sin. It should also be taken into account that the UN mission was established in circumstances of de facto war and with a plenitude of international actors taking part while the EU intends to act as one (hence all the effort of making its CFSP) and sustainable peace is a fact in Bosnia for several years now.

2. The EU costs of the Bosnian operation

The mistakes in planning EU missions will not hamper the peace process but they can raise the cost of the involvement in Bosnia considerably and it can stretch the process in time. So far the EU spent in Bosnia at least 2889,6 mln euro, taking into account only the EC/EU budget between 1991 and 2009.⁶ The table below presents the allocation of funds in particular years.

⁵ G. Grevi, *Pioneering Foreign Policy: The EU Special Representatives*, “ISS Chaillot Paper” No. 106/2007.

⁶ This amount is calculated on the basis of data from the web page of the Delegation of the European Commission to BiH and the EU main web page: http://www.delbih.ec.europa.eu/?akc_ija=clanak&CID=22&jezik=2&LID=32 and http://ec.europa.eu/enlargement/potential-candidates/bosnia_and_herzegovina/financial-assistance/index_en.htm (last visited 25.05.2010).

Table 1. Yearly financial assistance of the EC/EU to BiH

Year	Allocation in mln
1991–1994	495,47
1995	216,38
1996	442,42
1997	360,86
1998	295,25
1999	233,96
2000	105,26
2001	135,73
2002	74,23
2003	78,50
2004	107,87
2005	53,77
2006	63,90
2007	62,10
2008	74,80
2009	89,10
TOTAL	2889,6

Source: <http://www.delbih.ec.europa.eu/?akcija=clanak&CID=22&jezik=2&LID=32> and http://ec.europa.eu/enlargement/potential-candidates/bosnia_and_herzegovina/financial-assistance/index_en.htm (last visited 25.05.2010).

Both the amounts and the subjects of the EC/EU funds differed over time: between 1991 and 1995 the allocations went most of all for the humanitarian assistance and a fraction of it was directed through assistance programmes like PHARE, OBNOVA and CARDS – programmes that allow restructuring and modernisation. This way of allocating money seems justified in the light of the military conflict taking place in Bosnia.⁷ Over the twelve years between 1995 and 2007 the EU had various channels distributing its assistance: PHARE, OBNOVA and CARDS, the EU continued humanitarian assistance,

⁷ In December 1995 Dayton Peace Accords were concluded that ended the Bosnian war. The agreement was further officially signed in Paris in January 1996. Hence the double name of the document: Dayton/Paris peace agreement or Dayton Peace Accords.

specific actions (these ended in 2000), ‘*Democracy and Human Rights*’ budget line in combination with ‘*Anti-personnel Mine Programme*’ as well as it contributed to the Bosnian balance of payment. In this period the proportion between the allocations for humanitarian assistance and PHARE, OBNOVA and CARDS reversed in comparison to the time of 1991–1994: it was more and more the assistance programmes related to the pre-accession period that played a bigger role while humanitarian assistance was decreasing in order to end in 2001. With time, it was through PHARE, OBNOVA and CARDS together that the majority of the entire EU spending in BiH used to go.

Since 2007 BiH has been receiving financial assistance from the EU under the Instrument for Pre-accession Assistance (IPA). The IPA financed several areas of state activity: public administration, justice and home affairs, civil society, economic development, and the process of adjustment of the Bosnian law to the *acquis communautaire*. The EU became also the major trade partner for BiH – the European Commission delegation to BiH reports that the EU represents 63% of Bosnia’s total imports and 73% of total export.⁸

From the changing structure of the EU ‘*investments*’ in Bosnia, one sees a clear plan: in the time of the conflict there was most of all humanitarian assistance granted. The more into peaceful times, the less temporary aid and the more assistance programmes for development and reconstruction with strings attached. Strings as in political conditionality where the EU intends to transform Bosnia into a state and economy compatible with the systems of its own member states. The final acknowledgement of European direction of the Bosnian transformation is the initiation of the IPA agreement and finances thank to which Bosnia switched onto the fast tract of the EU accession. Fast, but not immediate.

3. Bosnian EU calendar

The European Union made it clear straight from the start that the states of the Western Balkans are sought potential members. The history of EC’s dialogue with Bosnian authorities dates back to before the eruption of the Bosnian war in 1992 when European diplomats and official EC missions tried to prevent the bloody events.⁹ Back then the European politicians had an ambition to regulate the situation in the Western Balkans on their own, with no

⁸ <http://www.delbih.ec.europa.eu/?akcija=clanak&CID=22&jezik=2&LID=32> (last visited 25.05.2010).

⁹ A remarkably detailed and interesting account of the efforts of the international diplomats is given by journalists Laura Silber and Allan Little in: L. Silber, A. Little, *The Death of Yugoslavia*, London-New York-Toronto-Auckland 1995.

help from the USA. The first EC failure (not solely the EC should be blamed for that, however) was the break-up of Yugoslavia while the effort was concentrated on keeping it one state. The major reason for lack of effectiveness of the European diplomacy then was the lack of ability of the EC states to speak with one voice: for instance Germany prematurely recognised Croatia in spite of the policy of the EC and many of the rest of the EC states. The second reason was the lack of concept of how to control the situation. It was only when the USA took over the initiative in making peace in the Balkans that progress was done.¹⁰ The Dayton Peace Accords (DPA), sometimes called the Dayton/Paris peace agreement, were concluded by the American negotiators, with the EC representation just watching. Again, the European contribution to shaping contemporary Bosnia was close to nil.

The DPA was concluded in 1995 and two years later the EU adopted its Regional Approach in which it established political and economic conditionality for the development of bilateral relations. In 1999, two years after the Regional Approach, the Stabilisation and Association Process (SAP) was proposed for five states of the Western Balkans, including Bosnia. In June 2000 the European Council had confirmed that the SAP countries were '*potential candidates*' and in November the same year the SAP was initiated. In 2003 the European Commission had run a feasibility study on the Bosnia's capacity to implement SAP and the June 2003 European Council confirmed that SAP was the EU policy towards the Western Balkans which translated into a strong promise of the EU membership for the states that were part of the SAP. In 2004 the EU had established its military mission Althea and in November 2005 it opened negotiations on Stabilisation and Association Agreement. Late 2007 and early 2008 witnessed EU-Bosnian dialogue on the liberalisation of visa regime, concluded in June 2008 with setting up of European Commission's roadmap with benchmarks to be completed before the liberalisation can enter into force. In February 2008 BiH signed the IPA Framework Agreement and in June the same year – its Stabilisation and Association Agreement.

The above plan seems to be comprehensive: the target is clear and it is the EU membership for Bosnia and the steps are regular and justified. On the top of there being a clear plan there is money available too and several EU missions deployed, including the EUSR to supervise the peace process.

Why then do things go wrong?

¹⁰ About the American way of making peace in Bosnia as well as how the negotiations at Dayton were run read in: P. Szasz *The Dayton Accord: The Balkan Peace Agreement*, "Cornell International Law Journal" Vol. 30/1997, p. 759–768 and in: P. Szasz, *The Quest for a Bosnian Constitution: Legal Aspects of Constitutional Proposals relating to Bosnia*, "Fordham International Law Journal" Vol. 19/1995, p. 363–407.

4. EU evaluation of the progress in Bosnia

The European Commission's '*Bosnia and Herzegovina 2009 Progress Report*' demonstrates what exactly is not up to the EU satisfaction. In the opening part, the Report states: '*constitutional elements established by the Dayton/Paris peace agreement have continued to be challenged by key political leaders in both Entities, and EU-related reforms have seen limited progress. There has been little consensus on the main reform priorities, and there have been attempts to reverse previously agreed reforms. A shared vision on the direction of the country remains necessary for the smooth operation of institutions, for creating more functional and efficient State structures, and for speaking with one voice on EU and international matters*'.¹¹ These remarks refer mostly to two issues that seem to determine the slow progress in state reconstruction and approximating the EU:

- A. The first one is the lack of consent regarding the unification with the EU on the part of the political elites of BiH.
- B. The second one indicates the lack of functionality of the decision-making and state-governing structures.

Since there is no alternative to joining the EU being implied, the game of the Bosnian leaders seems to be mostly about disagreeing with each other on as many occasions as possible rather than building a viable option for the future of a united state. This notion is strongly confirmed by observation of Bosnian political life in past 13 years. The EU membership deems yet another forum for demonstrating the hostility among the authorities towards one another. In this way, the second '*structural*' problem is closely related to the first one and it is of a constitutional nature. The current Bosnian constitution was designed at Dayton while constructing the entire peace plan. It divides Bosnia into two Entities: Republika Srpska and Federation of Bosnia and Herzegovina jointly administered by Croats and Muslims (Bosnians). On the top of these two Entities there is a state level of management with weak competencies, no property rights and based on the tripartite division of every power between the major ethnic groups. In effect, each of the three major groups can sabotage state decisions either by declaring it a danger to its interests (as for instance in the case of decisions of the state government) or by voting '*no*' in the state parliament, using (or abusing) the '*entity voting*' mechanism which demands every group to agree on a new piece of legislation. This solution guarantees every group the right to block decision-making process.

The structure of power in Bosnia is designed in such a way that it promotes conflict rather than compromise and leaves vast competencies and re-

¹¹ European Commission, *Bosnia and Herzegovina 2009 Progress Report*, op.cit., p. 4–5.

sources on the part of ethnic leadership. This is the major problem with governing the contemporary Bosnian state. The EC 2009 report sums up this problem in the following way: '*nationalist rhetoric from all political leaders challenging the DPA and by implication the constitutional order remained commonplace*'¹² and '*overall, there has been little progress in addressing the key European partnership priority of more functional and sustainable state structures (...)*'¹³ while '*the work of Parliamentary Assembly of Bosnia and Herzegovina continued to be adversely affected by the unstable political climate and insufficient administrative resources*'.¹⁴ One way of remedying constant political disagreements, and hence the lack of progress in restoration of the state, would be to introduce a system of government that would not reward the particularism as much as the current one does. This can be achieved by the alternation of constitution which is not easy in Bosnia mainly because of the tripartite division of power which requires consent of all three groups in order to change anything and especially the constitution. Furthermore, the EC report observes that '*no agreement on a comprehensive reform of the Constitution has been reached*'¹⁵ meaning there is no consensus as to what the current constitutional regulations should be replaced with.

All the other disadvantageous remarks on the progress in fact are a derivative of the two major shortcomings mentioned above. The European Commission is further dissatisfied with delays on ratifying the IPA 2007 and 2008 agreements, cannot progress the dialogue on visa liberalisation owing to the fact that the Bosnian authorities have not met all the benchmarks set in the roadmap, is in trouble cooperating with the government as there was no Director for European Integration for the most of the reporting period (2008/2009), criticise the government for not updating the 1991 population census, point out that the Entities either adopt law with no consultancy with the other Entity and state authorities or are reluctant to implement state law. These are just a few examples of the overall not too high note for Bosnia. The EC Report covers areas of: democracy and the rule of law, human rights and protection of minorities, regional issues and international obligations, economic criteria (market economy, the capacity to cope with competitive pressure and market forces within the EU), internal market (free movement of goods, movement of persons, services, and right of establishment, free movement of capital, custom and taxation, competition, public procurement, intellectual property law, social policies, employment and public health policy,

¹² Ibidem, p. 7.

¹³ Ibidem, p. 9.

¹⁴ Ibidem.

¹⁵ Ibidem, p. 8.

education and research, WTO issues), sectoral policies (industry and SMEs, agriculture and fisheries, environment, transport, energy, information society, media, financial control, statistics), justice, freedom and security (visa, border management, asylum and migration, money laundering, drugs, police, fighting organised crime and terrorism, protection of personal data). In all these areas, there has been some progress done but it is short of expectations.

Reading the 2009 Commission's Report, it is hard to resist a sensation that Bosnia struggles with precisely the same problems ever since its new political system was established at Dayton and Paris.¹⁶ A large body of literature deriving from constitutional studies and power-sharing suggests that a political system based on ethnic division of society would usually result in further engrossing the gap between the groups while trying to keep up the state together – tendencies that are hard to combine. Bosnian political elites have always been impossible to coerce to commit to peace process and the progress on stabilising the state has been going uphill. There has been progress made on state-building and introducing EU standards but surprisingly ample part of the Commission's evaluation of 2009 sounds like late 1990s and early 2000s.

Despite the little progress and discouraging speed of changes in Bosnia, despite the lack of constitutional reform without which it seems impossible to get a more positive approach of the political elites of the country, the EU goes forward with the plan of Bosnia's joining the EU in the future. Probably there are more than one ways of explaining the reasons for such an attitude but it seems justified to interpret the EU's behaviour as its incapability to develop any alternative idea of how to deal with Bosnia and other similarly difficult cases in the Western Balkans. The EU has not advanced any viable option for surrounding states apart from offering them its membership in which case it can apply political conditionality in order to force favourable changes under the cover of criteria of convergence. Out of the possible options and besides the package of future membership, the EU has its European Neighbourhood Policy (ENP) and ENP's newest branch – Eastern Partnership. Neither of these last two includes an offer of EU membership and neither of them truly influences political, economic or social situation in a partner country. Therefore neither of them is an option in case the EU intends to take up responsibility for the progress of a peace process. Neither of them existed at the time the EU took active role in stabilising Bosnia. These three: future membership, ENP or Eastern Partnership are about the entire arsenal the EU developed in the sphere of its influence in the immediate neighbour-

¹⁶ The assessment of the situation in Bosnia 1992–2004 and an elaborate research of the literature mentioned in this paragraph can be further explored in: A. Dziewulska *Peace-building in Bosnia and Herzegovina: Putting theory into practice*, Ph.D. dissertation, Florence 2004.

hood and none of them looks well matched with the needs of Bosnia. In order to address these needs, in Bosnia the EU uses a mixture of two:

- A. Elements of its policy of enlargement (the major consequence of which is the will to force Bosnian authorities to converge its law and political, economic and social reality to the EU standards), and
- B. The continuation of the UN policy of post-conflict state-building, to which the UE is new and not all that well equipped.

The mechanism of enlargement and what it entails can be well studied since at least 2004 when the EU was challenged with the biggest yet extension by the states of Central and Eastern Europe and Malta. The model seems to be the same for Western Balkans nowadays: the same steps to be taken, similar agreements to be concluded, same criteria to be met. There can be only one road to the EU. The second element of the EU involvement is the continuation of the UN doings in Bosnia as a post-conflict state, which entails taking over all the UN-led positions. This has already been pointed out as a rather poor performance for two major reasons: Bosnia is no longer the same post-conflict state as it was when the UN missions were established and needs a better designed international institutions, and the EU missions are badly coordinated between each other.

5. Crucial issues to be addressed in Bosnia

The UN missions were initiated during or straight after the early 1990s conflict and the major task they had was to keep cease-fire between fighting parties and try to build peace by creating authorities on the basis of the DPA and by reconstructing economy and advance progress on reconciliation. Today's Bosnia is a relatively peaceful state although there is not much in a way of bridging the emotional gap between the previously fighting groups. The early UN missions were achieving its goals but their tasks should have long before been transformed. The continuation of the original tasks combined with some unfortunate provisions of the peace accords resulted in these consequences:

- slow progress on reconciliation between the groups,
- weak government,
- ineffective decision-making processes,
- strong ties between politics and mafia organisations,
- slow progress on rebuilding infrastructure of production,
- crucial but '*politicised*' issues relating to cross-ethnic cooperation with little progress done (most notably the CPC areas – as mentioned below).

While the society is still divided along the ethnic belonging, reconciliation between groups and working towards speedy reconstruction of the state is not a priority for the political and ethnic leaders. The political elites use their power to gather even more influence in which ethnic rhetoric is useful.¹⁷ Rather than to empower the society and create better living conditions, their priority is often developing their own welfare.

The Commission on Public Corporations (CPC), established at Dayton to bridge the dialogue on structural issues between Serbs, Croats and Bosnians, is to a large extent jobless. Within the CPC, the parties were supposed to come to an agreement on Bosnian road transport, railways, gas and electric infrastructures as well as broadcasting. But this has happened to a limited extent because these areas are too highly politicised. For instance, the European Commission's 2009 Report states that the Public Broadcasting Corporation has not been registered yet and '*the public broadcasting reform is seriously delayed*'.¹⁸ In practice this means there are very few state-wide TV programmes or radio stations in a country where contact between ethnic groups is crucial for their peaceful future. Similar lack of events concerns energy and gas sectors. Regarding internal energy market, the EC reports that '*the state level transmission company's [...] operability is at high risk due to missing political compromise of the two Entities*'.¹⁹ The lack of political will was also the reason for little progress in gas sector: '*Republika Srpska and the Federation of Bosnia and Herzegovina have their own legislation since 2007, but neither a countrywide legal framework nor a national regulator has yet been developed due to the lack of agreement between the Entities*'.²⁰ The discussion about the countrywide legislation and operator goes on for at least ten years now.²¹

The slow progress on reconciliation between groups, the weak government, decision-making process easy to block, close ties between politics and organised crime – they are all the result of the Dayton decisions.²² From the perspective of at least fifteen years, one sees the Bosnian peace process a lit-

¹⁷ For an elaborate explanation of the role of the nationalistic rhetoric for political leaders in conflict development and what a deadlock the resolution of a conflict becomes in terms of de-ethnicisation of politics in post-conflict stage see: S.J. Kaufman, *An International Theory of Inter-Ethnic War*, "Review of International Studies" Vol. 22, p. 149–171.

¹⁸ European Commission, "Bosnia and Herzegovina 2009 Progress Report", op.cit., p. 53.

¹⁹ Ibidem, p. 50.

²⁰ Ibidem.

²¹ For a detailed description of the process of formation of the CPC infrastructure see: A. Dziewulska, op.cit.

²² For the precise description of the ties between politicians and organised crime and the mechanism in which those ties raised see: P. Andreas, *Blue Helmets and Black Markets: The business of survival in the siege of Sarajevo*, Ithaca-London 2008.

tle more clearly than immediately after the Dayton negotiations in 1995 and at least three major reasons for the current problems in Bosnia can be pointed out:

- Two transformations were conducted simultaneously: one from war to peace, and the other one from socialism to capitalism.
- The political system is based on ethnic divisions and promotes further distinctions stimulated by political leaders in ethnic rhetoric.
- Civilian-military cooperation left a competence gap, that is areas covered by neither, leading to a 'security gap'.

Although the United Nations created legal frameworks for international intervention and act in various capacities in troubled zones ever since 1946, there is still no comprehensive model of reacting to an internal or international conflict, and especially in its last stage: post-conflict peace-building. In 1992, when the collapse of Yugoslavia entered into its most bloody phase, the international community was incapable of stopping the killing. At the time when the US administration sponsored the ceasefire in Bosnia, the international community did not have much experience in modelling a post-conflict mission and was entitled to make some mistakes. And it did – most of the mistakes, however, were uncovered only after the deployment of the post-conflict peace-building mission.²³ There is a wide consensus what such a mission should include, but in practice a lot depends on what is possible to negotiate with the fighting parties. As a result, an arrangement that would be best for the state and the society in conflict is often traded for a quick end to the fighting. Some solutions are just not feasible in the context of particular political and military powers. Society is often not the main point; instead, the solution adopted is one that is possible to finalise negotiations on.

6. Economic transformation

It is worth keeping in mind that in the case of Bosnia and Herzegovina there was no previous model of a state to relate to when building a state, as Bosnia before 1992 was a part of Yugoslavia. In political terms, the pre-war Bosnia was a republic within a larger state, and therefore its system was not

²³ For detailed reading on the substantial scope of peace-building operations see: E. Bertram, *Reinventing Governments: The Promise of United Nations Peace Building*, "Journal of Conflict Resolution" Vol. 39/1995, p. 387–418; F.O. Hampson, *Can Peacebuilding Work?*, "Cornell International Law Journal" Vol. 30/1997, p. 701–716; H. Miall, O. Ramsbotham, T. Woodhouse, *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts*, Cambridge-Malden 1999.

prepared to carry the burden of independence. In economic terms, Bosnia was a part of an economic system and not a system in itself. Moreover, the Bosnian economic system was based on a socialist model that would in no way fit the modern international economic circuit. Barratt Brown argues that the collapse of Yugoslavia was aftermath of unfair distribution of goods forced by centrally planned economy.²⁴ Therefore, the transformation from war to peace – something the international forces could perhaps deal with – was accompanied by another necessary transformation: from socialism to a liberal, market-oriented democracy.

The problem with Bosnia was that the entire post-conflict peace-building was designed with no mention of the necessity of performing the second transformation along with the first one. Economic transformation is a big deal because, if left unattended, it leads to misappropriations on a large scale. These, on the other hand, produce effects that turn structural and long lasting if not stopped by effective law. Such misappropriations took place in Bosnia since the Bosnian political elite has never been particularly interested in cooperation between the ethnic groups and building a common state. All formally in compliance with the peace accords, these abuses hamper the peace process.

One of the most alarming issues relating to the process of economic transformation is the way the state property was divided between the Entities: *Republika Srpska* and the Federation of Bosnia and Herzegovina. ‘*State owned*’ in Bosnia means in fact ‘*Entity owned*’ – as written down in the Dayton Accords, the state level of government in Bosnia does not have any property at all. There are at least two crucial points regarding this fact. First, it is difficult to run a state having no property at your disposal. It means that the state government has limited powers in gaining financial resources to pay its bills.²⁵

Second, all the property belonging to the Entities means that it remains in the hands of the political leadership, who are the most antagonised of all the groups in Bosnia and who have strong interests in using it for keeping *status quo* in inter-Entity relations that is in maintaining strong distinctions. Giving property to the leadership of the fighting parties is like leaving a pile of gold unattended in the middle of a street in a disreputable neighbourhood. The leaders of the Entity gain a vast potential to get closer with the illegal, mafia-style structures as property and the possibility of using it always es-

²⁴ A comprehensive analysis of this problem you can find in: M. Barratt Brown, *War in the Balkans: Economic Causes and Solutions Re-examined*, “The Spokesman” No. 65/1999, p. 52–60.

²⁵ According to the constitution of Bosnia and Herzegovina, the Entities are obliged to deliver finances to the state treasure.

establish links between politics and mafia. In Bosnia these links seem to have grown to be rather firm.²⁶ The assessment of (the lack of) progress in CPC areas as quoted before can serve as a perfect illustration of the attitude of politicians towards cooperation with other ethnic groups as well as of how low priority the well being of the citizens is.

The ultimate result of the property being left in the hands of the Entities is the widening of the gap between the ethnic groups of Bosnia. With the use of the property, the political elites find it easy make the distinctions between the ethnic groups more visible which leads to the hardening of the wartime division rather than to the reconciliation of the society.

7. Political system

The second obstacle to a fluent transformation from war to peace is the political system of Bosnia and Herzegovina. It is always hard to negotiate peace and a new order with no consent from all the parties. There was no consensus about the solutions for a new Bosnian state at Dayton and the interests of all the groups were so different that it was undoubtedly hard to find a solution that would satisfy some if not all the parties. The international community (and mainly the US administration and its negotiators) had its own interest too, and in effect the final model of power-sharing adopted for Bosnia may be a masterpiece of compromise but is not a masterpiece political system. The system provides for a tripled head of state – one of the members of this ‘*troika*’ Serb, one Croat, and one Bosnian – with the position of the chief head of state rotating between them. The same rule applies to all the ministerial posts, and even the state parliament is based on ethnic division. Each of the members of the tripartite head of state can block the decision-making process, and so can every ethnic group in the parliament. The process itself is inefficient, and despite some attempts to change this situation, there is still a long way to go before fluency of decision-making in the state is achieved.

Because it was so hard to come to any decision within the state parliament, the Peace Implementation Council – the highest political body of the peace process in Bosnia – decided to equip the High Representative of the United Nations with the right to impose law (the so-called ‘*Bonn powers*’). This is one of two attempts to foster the decision-making process as it is instead of replacing it with a better one. The High Representative (HR) could have and the EU Special Representative (EUSR) can now decide about what

²⁶ M. Glenny, *McMafia. Crime Without Frontiers*, London 2008.

he considers necessary if the parliament does not seem to be capable of establishing rules. Giving the HR/EUSR equal powers with the parliament is in fact admitting that the political system of Bosnia is not self-sustaining and that the state institutions cannot carry the burden of managing of this state. Therefore, the international financial institutions involved in the reconstruction of Bosnia tried to stimulate the parties to cooperate by introducing a requirement that law be implemented before finances for reconstruction could be granted. This was not the first time political conditionality – the second way of fostering the political decision-making in Bosnia – was applied. This tool is often used by international institutions in post-war zones. In return for financial aid, state institutions are obliged to establish some legal solutions. Even though Bosnia needed the finances badly, political conditionality did not work well there. Trying to patch this unpredicted phenomenon, the international institutions changed the rules of the game: instead of passing law, the international financial institutions were satisfied with the state parliament initiating the process of legislation. Therefore, in order to get the money, it was enough merely to propose a bill in any chamber of the parliament, without an obligation of its passing in the end.²⁷ This new solution was to the satisfaction of most of those involved as it allowed to shift money while not forcing the Bosnian politicians to comply with anything they would not like to commit themselves to. Once a law-making process is initiated, it can take almost eternity to pass a bill: the legislative process in Bosnia is designed (by the international negotiators who made the constitution) in such a way that a bill can circulate in the parliament for about 550 days with no guarantee of success. And even this rough estimate takes into account only one reconciliatory procedure between the two chambers of parliament while the number of these procedures is unset.²⁸

From the study of decision-making processed in Bosnia we can conclude that the constitution establishes relations of power that do not comply with those a regular democratic state has. While the ‘*conflict*’ or debate over rights and resources in a ‘*regular*’ democratic state is the strongest between the powers of different level (i.e. the state level and the lower levels), in Bosnia practically the hardest line of confrontation is between two powers of the same level – that is between the Entities. There is almost no conflict over rights or resources between the state level of government and the lower ones (i.e. Entities). The state level is no partner in dialogue as it is composed of

²⁷ Oral communication with an officer of the Office of the High Representative in Bosnia and a Secretary to the Commission on Public Corporations, Sarajevo, June 2002.

²⁸ An in-depth analysis of the mechanisms of law-making in the Bosnian parliament you can find in: A. Dziwulska, *op.cit.*

ethnic representatives who are chosen mainly on the basis of their ethnic belonging and report to their ethnic authorities. The state does not have independent, non-ethnic political elites or forces. It is really the Entity level that is equipped to rule the state and as there are two of these Entities, we witness a situation in which we can almost say that we have two states in one Bosnia.

Furthermore, the state level initially did not receive any army, police forces, border guards or even the right to collect taxes.²⁹ The Entities were in charge of maintaining order, and they were doing it with the same forces they had used to fight the war. The state had an obligation to run foreign policy and to pay the foreign debt, but in fact was not prepared to perform its duties. Thus, the international forces established for Bosnia a political system with which even an undivided society would have grave difficulty to run a state, not to mention a post-war society with a tradition of violence and a number of associated problems.

8. Security gap

In a very early stage of the peace operation, during and shortly after the Dayton Peace Accords had been signed, tasks were distributed between the international forces. One part of the peace agreement was implemented by the army and another part was supervised by an international civilian administration. Unfortunately there was poor coordination between those two which resulted in damages that Bosnia suffers from to this day. The lack of coordination comes mainly from the lack of experience of international organisations in administering jointly a post-war state and from a narrow interpretation of obligations by the military component of the peace mission. The '*Mogadishu line*' that divides tasks between the army and civilian administration implemented in Bosnia was set too close to the exclusively military areas and did not stretch onto the shaky ground of protecting the civilian part of the operation.³⁰ As a result, the civilian tasks did not get the necessary military support, and a large part of them could not have been en-

²⁹ A visible effort was put into diverting this situation but it is hard to reverse what is a constitutive power.

³⁰ In 1992, during the UN operation in Somalia, a general commander of the international forces was not capable of dealing with the situation, which called for a complex solution while the forces were prepared only for military tasks and could not manage the situation efficiently. It was then that a '*Mogadishu line*' was established – a virtual line that divides the tasks in a peace operation between the military and civilian forces, and states what it is the army should do.

forced. The grey area that evolved between the civilian authority and military power allowed the local, war-time forces to get stronger.³¹

The most dangerous result of the security gap was that nobody was in fact capable of enforcing the law and ensuring conformance: the civilian administration was not equipped for this task and the international army did not want to get involved in anything but monitoring the ceasefire and disarmament. The local police had no interest in maintaining the new order, as it consisted of the disarmed forces and was chosen by the politicians to guarantee their own interests. The new solution worked counter to the peace accords, although completely within their resolution.

Conclusions: how to resolve the Bosnian problem?

The EU is stuck in Bosnia as would be any other external administrator given the limitations – the DPA in this case. Whether the perspective of an enlargement of the EU by Bosnia is a tool in building peace – a supposedly good reason for the political leaders to get a grip and start a dialogue on progressing real reforms – or an EU aim in itself, it is hard to say. In fact, the EU gives an impression as if it itself had a problem with defining its goals. For the time being, the progress in Bosnia is not astonishing and in the 2009 Report quoted above, the European Commission marks as unsatisfactory both the Bosnian political establishment, as the effectiveness of its own operations. The situation in Bosnia, created in the aftermath of the conflict – as a result of it and of the Dayton conclusions – is so complicated in its structure, that the reasons for and benefits from non-compliance with international requirements is much more rewarding for Bosnian decision-makers than following the EU-branded path.

Thus the EU proved to be ineffective in several ways:

- its strategy is inconsistent and
- its missions are inadequate for the requirement and badly coordinated.

The combination of UN post-conflict peace-building pattern initiated straight after the end of the fighting combined with elements of EU policy of enlargement are a poor combination. The 2004 enlargement was probably the first big challenge for the EU convergence criteria and its politics of con-

³¹ A good example of how damaging for the civilian administration the lack of coordination of the military forces can be is given in Rory Stewart's autobiographical accounts of working in Iraq in which he describes day-to-day co-operation with the military and the effects of their actions on the local society's worsening attitude towards international civilian administration. Evidently, security gap is not a priority for peace operation designers to cover. See further: R. Stewart, *Occupational Hazard: My Time Governing in Iraq*, London 2006.

ditionality. Not only was that enlargement the first so big, but also made the EU extend by states in relatively early stages of democratic transformation, states bordering with the post-USSR area and states of economy weaker than the EU average. The pattern the EU developed for the new perspective member states was applied for all post-East-Bloc candidates when the biggest load of economic reforms had already been applied and gave positive results. There was no simultaneous democratic transformation, economic transformation and EU (EC then) political conditionality (although the political and economic changes were being run so that they were compatible with the EC standards). The EC/EU had not taken responsibility for the entire transformation and there was a wide consensus among all the political elites of all the candidate states on joining the EC/EU (with some minor exceptions that in no serious way affected the general feeling). The breakdown of the East Bloc happened peacefully. In such favourable circumstances the enlargement procedure took about fourteen years. Today, fifteen years after the conclusion of the DPA and ten years after the initiation of the Stabilisation and Association Process, Bosnia is still far away from starting membership negotiations.

The EU keeps several missions in Bosnia and pays millions of euro yearly and there is no major change in sight that would allow the EU to withdraw and leave the future of Bosnia to Bosnians. It tries hard to demonstrate its operability but in fact it shows the lack of single chain of command within the EU institutions as it does not work in Bosnia as one force – its missions and operations are largely independent, they respond to different institutions, are financed from different mechanisms and to a differing extent depend on the consensus between member states. Most of all, there is no supervisor of the EU missions yet despite a well crafted institution of an EU Special Representative which – for the reason of the complicity of the decision-making processes in the EU – is not used as the final instance to navigate the EU in Bosnia, although it is naturally destined for this function as the final authority to interpret and implement peace agreement and as a body empowered to impose law. A fuller use of the EUSR should be top priority for the EU as the Bosnian experience evaluates such institution very positively and it also influences the entire spectrum of activities the EU is involved in outside of its borders. The Bosnian case helps to gather feedback to be used in missions elsewhere.

On the other side, the EU – while still strongly present in Bosnia – should make all possible to make the politicians on Bosnia change the constitution. EU's political conditionality works to a limited extent since constitutional order in Bosnia promotes disagreement between politicians rather than co-operation. While it is the fundament of the EU policy of enlargement, it proved to be too weak to overcome the lack of spirit of cooperation between ethnic

leadership time and time again. The change of the constitution should make the decision-making process in Bosnia work well, undermine the ethnic divisions, deprive politicians reasons for nationalistic rhetoric and hence also refusal to cooperate with other groups. The alternation of the Bosnian constitution should also make the local politicians more committed to building agreements and speed up the process of reconstruction of the state. It should also allow the EU to withdraw or limit the competencies of the EU Special Representative and while putting Bosnia on a faster track to joining the EU, it would allow to gradually withdraw part of its military and civilian administration.

It is too late to patch the mistakes made in the early stages of the Bosnian peace operation – like bridging the security gap and the effects it left – but it is still possible to restructure the decision-making process in the country. If the EU wants to pull back and really considers Bosnia a candidate state, the change of the constitution should be its priority. It is going to be a hard task but quite possibly, the new constitutional order does not require to reverse the entire current political setup (i.e. dismantle the physical, mental, legal and well maintained border between the Entities). It certainly needs to weaken the relevance of ethnicity in state governing, however. Without addressing this core issue, the EU is stuck on the slow lane for a long time.