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From Dayton to Europe

DAVID CHANDLER

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

There is a consensus about Dayton – that is repeated so often it is virtually a mantra of international officials – that the 1995 peace agreement was a treaty 'designed to end a war, not to build a state'.¹ Commentators regularly argue that Dayton was negotiated by the nationalist parties, whose leaders caused the war in the first place, and that it therefore secured the power of these ethnically-based political parties.² Essentially, therefore the political process since Dayton has been seen as 'the continuation of war by other means', in an inversion of Clausewitz's doctrine.³ The domestic political process in BiH is seen as illegitimate and fundamentally flawed. It is alleged that the numerous annexes and small print of the Dayton agreement have tied the hands of the international community and created a complex set of political institutions which stymie the building of a strong centralized state and continue to enable ethnically-based political parties to dominate the policy-making process. Dayton and, by implication, the Bosnian voters and their representatives, in this reading, bear the responsibility for the weakness and lack of legitimacy of central state institutions and the failure of the state-building aspirations of BiH's international benefactors.

This essay seeks to establish that this consensus is based on a myth and that the Dayton agreement has, in fact, facilitated external regulation, rather than restricting it. The framework created at Dayton was an extremely flexible one, which has enabled international actors, unaccountable to the people of BiH, to shape and reshape the agenda of post-war transition. Dayton's flexibility has been the key factor enabling external powers to permanently postpone any transition to

Bosnian 'ownership'. The only transition which has taken place has been from the ad hoc policy-ownership of self-selected members of the Peace Implementation Council (PIC) to direct regulatory control under the aegis of the European Union (EU). This transition has been brought about through informal and unaccountable mechanisms of external regulation, and has been imposed 'from above' without any debate or genuine involvement of the people or elected representatives of BiH. In sum, the flexibility of external mechanisms of regulation has been a central factor in 'sucking-out' the capacity of BiH's political institutions and undermining the legitimacy of the Bosnian state.⁴

The following section briefly considers the disputed origins of the Dayton agreement, after which the post-Dayton developments are briefly analysed in two stages. The first period is 1995–99, during which time the powers of the PIC High Representative were extended, but with little clear policy direction or end point for the ad hoc international administration. The second period, 2000–2005, saw a gradual transformation of external regulative mechanisms under the leadership of the EU, which laid a comprehensive framework for European 'ownership' of the post-Dayton process. Throughout both these periods, Bosnian input or ownership of the policy-making process has been little more than rhetorical. Dayton has provided the framework in which the external process of managing the post-Dayton peace has been transformed beyond recognition, while the population of BiH and their elected representatives have been marginalized from the political process and the elected bodies bypassed by the creation of new ad hoc mechanisms of direct and indirect EU interference.

Origins

Post-Dayton BiH is fundamentally distinct from the formal protectorates of Kosovo and East Timor, which involved the direct oversight of the United Nations under UN Security Council resolutions 1244 and 1272.⁵ BiH is an independent sovereign state and member of the United Nations. As William Bain correctly notes, Dayton did not establish a formal protectorate relationship; instead Dayton is 'legitimated by the principle of consent'.⁶ Rather than an external imposition, Dayton formally appears to be a treaty made by the local powers – BiH and its neighbours, Croatia and the rump former Federal Republic of Yugoslavia (FRY). It was not by UN Security Council resolution but by the coercive fiction of 'local consent' that international actors were invited to oversee Dayton and to install the temporary post-conflict administrative mechanism of the Office of High Representative (OHR). This was an office only 'consistent with relevant United Nations Security Council resolutions', not formally run by or directly accountable to the UN.⁷

The parties who consented to the agreement and had formal 'ownership' of it were coerced into signing it and had little say over the content of the 'agreement'. Dayton was in essence a US-managed process and the agreement was initialled on 21 November 1995 at the Dayton air force base in Ohio.⁸ The European powers resented being sidelined by the US and lobbied Washington for UN involvement in overseeing the implementation of the peace agreement. The US

refused, and the Europeans responded with the idea of establishing a Peace Implementation Council. This could, first, help to provide some sense of international legitimacy in the absence of UN involvement and, secondly, and more importantly from the European perspective, ensure that Washington included the Europeans and others in the policy-process.

The PIC was a legal figment, designed to cohere the international management of the Dayton process, but *without* the restrictive ties of international law.⁹ Dame Pauline Neville Jones, former Political Director of the UK Foreign and Commonwealth Office and leader of the British delegation to the Dayton peace conference, was instrumental in the establishment of the PIC. As she later described it: 'Everybody knew that this was a phoney. Everyone also knew that we had to find something.'¹⁰ On 8–9 December the first PIC conference was held at Lancaster House in London; prior to this, 'all the agencies had been drilled' and 'everyone knew their lines', and a detailed transitional programme for BiH was established.¹¹ On 14 December the Dayton peace agreement was formally signed in Paris.

The Dayton process was based on the arbitrary and ad hoc use of international power to establish a unique regime of post-conflict external regulation, one without previous historical precedent. The lack of international legal accountability explains the ad hoc and flexible nature of the powers of the High Representative. Prior to the negotiations in Dayton, Ohio, the US envisaged control of both military and civilian implementation of post-war BiH and planned a very powerful role for the High Representative. During Dayton, the European governments made high-level *démarches* insisting that the civilian role was emphasized and requesting that the High Representative be a European. The US partly conceded, but, in so doing, sought to reduce the significance of the High Representative position.¹² Once agreement was reached, it was understood that the High Representative would always be a European, although one chief deputy was likely to be German and one American.¹³

The Europeans had to fight their corner by stealth for more influence for the High Representative. The definition of the role and authority of the High Representative was intentionally left ambiguous. The Europeans wanted to have more influence but could not openly state this in the formalizing of the Dayton annexes in the run-up to the PIC conference, otherwise the US would have stonewalled. As Dame Pauline Neville Jones relates, the key victory for the Europeans was to manage to insert a role of 'coordination and facilitation' for the High Representative.¹⁴ Once the job was secured, the Europeans subsequently undertook a lot of 'underpinning', allocating tasks to strengthen the position. The main concern of the US was safeguarding the autonomy of NATO security operations; for this reason the – now European-led – High Representative was prevented from developing any meaningful mechanism to coordinate relations between the civilian and military implementation of the agreement. However, as the security aspects of Dayton implementation became less important, the Europeans took on greater responsibilities and the High Representative's power incrementally increased.

It should be noted that the Dayton process was an ambiguous, ad hoc and unaccountable one from the outset. At the time of its establishment, the Peace Implementation Council – tasked with overseeing the implementation of

Dayton – had no international legal standing. According to Dame Pauline Neville Jones, the PIC ‘was working in a legal vacuum’.¹⁵ It was only after the event that the PIC was recognized in a UN Security Council resolution of 15 December, which cast retrospective legitimacy on the proceedings.¹⁶

The Dayton peace agreement was unlike any other peace treaty of modern times, not merely because it was imposed by powers formally external to the conflict, but because of the far-reaching powers given to international actors, which extended well beyond military matters to cover the most basic aspects of government and state. The majority of annexes to the Dayton agreement were not related to the ending of hostilities, traditionally the role of a peace agreement, but to the political project of state-building in BiH, of ‘reconstructing a society’.¹⁷

Reconstructing Bosnian society was undertaken in the same interventionist spirit as Dayton itself. Carl Bildt, the first international High Representative for the new state, described the Dayton Agreement as ‘by far the most ambitious peace agreement in modern history’.¹⁸ It was ‘ambitious’ because, under the guise of a negotiated peace settlement, it sought to build a state – a state which was not a product of popular consensus or popular involvement and was seen by many Bosnians as an external imposition. The marginalization of the people of BiH from their own political system by external powers was summed up in Bildt’s observations on the new constitution (Annex 4 of the Dayton agreement)¹⁹: ‘No-one thought it wise to submit the constitution to any sort of parliamentary or other similar proceeding. It was to be a constitution by international decree.’²⁰

Although often presented as a peace agreement rather than a framework for the reconstruction of BiH, the civilian annexes comprised five-sixths of the Dayton accords and involved a wide range of activities in which international actors, coordinated by the OHR, were mandated to temporarily play key coordinating roles.²¹ For this reason, the state-level elections, to be held within nine months of the signing ceremony, were initially seen to be crucial for restoring ownership over the new state to its citizens. Under the Dayton agreement there was to be a year of internationally supervised transition, during which there would be elections and the establishment of the political institutions of the new state, which were to be elected and directly accountable to the people.²²

1995–99: Strengthening the High Representative

The planned year of internationally supervised transition to self-governing democracy was due to end with the election of state and entity bodies in September 1996, symbolizing ‘the democratic birth of the country’.²³ Although these bodies were elected under internationally supervised and ratified elections, the transitional international administration was prolonged for a further two-year ‘consolidation period’ and then, in December 1997, extended indefinitely. The extension of the time-limits for international withdrawal and the creation of new mandates for international agencies, coordinated by the PIC, was justified initially by the ambiguous wording of the Dayton agreement itself but later by increasingly subjective ‘interpretations’ of the mandate by the High Representative, including innovative reference to the ‘spirit of Dayton’.²⁴

The Dayton agreement provides little guidance for understanding the extension of international mandates or the mechanisms of international administration over the new state. This is because the agreement was ostensibly a treaty between the regional parties and not formally a treaty between the international agencies and the government of BiH. The Dayton agreement was rigid where it concerned the limits to BiH self-rule but extremely flexible in relation to the powers which international actors could exercise over this nominally independent state. As Paul Szasz notes, the Dayton agreement was 'merely a part of total arrangements to bring peace to Bosnia'.²⁵ It is worth quoting at length the international constitutional lawyer closely involved in the development of Dayton:

Explicitly mentioned or merely implied by those texts are a host of other agreements or arrangements, which are to be concluded...by or within the numerous international organisations assigned various roles by these texts, and which may take the form of bilateral or multilateral executive agreements, resolutions of the [United Nations] Security Council or decisions of NATO, the OSCE...and other organisations... [E]vidently the parties to the GFA [General Framework Agreement] and the ancillary agreements could not bind these external actors...nor, of course, are these external actors precluded from taking steps not foreseen in these texts.²⁶

This flexibility has been exemplified by the extension of the OHR's powers. The High Representative has explained this process as one which has no fixed limits: 'if you read Dayton very carefully... Annex 10 even gives me the possibility to interpret my own authorities and powers'.²⁷ The pattern of ad hoc and arbitrary extensions of international regulatory authority was initially set by the PIC itself as it rewrote its own powers and those of the High Representative at successive PIC meetings. The most important of these were the initial strategic six-monthly review conferences: at Florence, in June 1996; Paris, in November 1996; Sintra, in May 1997; and Bonn, in December 1997.

At the Sintra meeting, in May 1997, a new package of measures to ensure cooperation with the High Representative was announced, including the capacity to pursue deadlines announced by the PIC and enact measures in the case of non-compliance.²⁸ These measures included visa restrictions on travel abroad for 'obstructive' BiH representatives as well as economic sanctions targeted at a local level and the capacity to curtail or suspend any media network or programmes which contravened 'either the spirit or letter' of the Dayton agreement.²⁹ At the Bonn PIC summit, in December 1997, these measures were extended to give the High Representative the power to directly impose legislation, giving international officials both executive and legislative control over the formally independent state. The OHR was now mandated to enact 'interim measures' against the wishes of elected state, entity, cantonal and municipal elected bodies. These decrees were to remain in place until formally assented to by the respective level of government. The 'Bonn powers' also enabled the High Representative to dismiss elected representatives and government officials held to be obstructing the OHR's task of implementing the Dayton agreement.³⁰

It should also be highlighted that the extended mandates, laid down at Bonn, were qualitatively different from earlier extensions to the OHR's powers: the new mandates granted by the PIC, to itself, for the purpose of overseeing BiH, were also made indefinite.³¹ International withdrawal and the ceding of sovereignty and policy-making powers to BiH institutions was now to be dependent on an ill-defined set of 'benchmarks' to be determined by the PIC at a time of its own choosing.³² Since December 1997, successive High Representatives have grasped the opportunities unaccountable power has provided, using them to impose legislative measures against the will of elected bodies and to sack hundreds of BiH public officials, from members of the Presidency and entity prime ministers down to municipal civil servants.³³

By 1999, the PIC and the OHR had accumulated an array of powers unimaginable in 1995 when the Dayton agreement was signed. Yet, despite the new mandates and the indefinite extension of the power to impose legislation and to dismiss non-compliant officials, the international state-builders seemed to be running out of ideas. The international bureaucracy increasingly appeared to be running the country with little purpose or legitimacy. The war over Kosovo, and the more interventionist approach of the EU to the region which followed, finally provided the international administrators with a new source of legitimacy.³⁴ This legitimacy was to come not from any new attempt to involve or engage with the people of BiH, but from the promise of guiding the small and economically impoverished state to the pot of gold that was held to come with EU membership.

2000–2005: The Transition to EU 'Ownership'

Prior to 2000, the EU had been closely involved in the work of the OHR, for example, at its June 1998 Council meeting declaring the establishment of an EU/BiH Task Force, with the aim of increasing cooperation and assisting in policy-making in the crucial areas of judicial reform, education, media, good governance and economic reform.³⁵ However, despite an increasingly direct EU input into policy-making, the EU played a subordinate and supporting role within the PIC Dayton framework rather than dictating its own terms. The PIC Declaration from the December 1998 Madrid meeting, for example, stated that Dayton implementation was the priority and that it was BiH's 'performance in implementing its Dayton obligations' that would dictate 'the pace of integration into European structures'.³⁶ The EU's 'close involvement' in BiH politics was formally limited to the 'civilian implementation of the Dayton agreement'.

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

would be mandated to negotiate with itself in determining every aspect of policy-making in Bosnia.

In March 2000 the EU announced a Road Map as a first step for BiH in the Stabilization and Association Process (SAP). This document established 18 key conditions which BiH had to fulfil in order to start the preparation of a Feasibility Study which would then form the basis of negotiations for a Stabilization and Association Agreement. These conditions covered far-reaching policy reforms concerning elections, the civil service, state institutions, border services, the judiciary, trade regulations, foreign direct investment, property laws and public broadcasting.³⁷

This shift in perspective, away from international regulation under the increasingly strained legitimacy of the High Representative's 'interpretation' of the Dayton agreement, towards regulation legitimized by the requirements necessary for the EU accession process was confirmed by the PIC at the May 2000 meeting in Brussels.³⁸ As Carl Bildt noted at the meeting, in his capacity as the Special Envoy of the UN Secretary-General to the Balkans: 'the discussion has moved away from the exit strategies of the international community from Bosnia towards, instead, the entry strategies of Bosnia into the international community in general and Europe in particular'.³⁹

Since May 2000, the main objectives of EU assistance have not been couched in terms of supporting Dayton but in the much more inclusive terminology of support for BiH within the framework of the SAP.⁴⁰ More importantly, the framework used by the PIC and the OHR has increasingly been shaped by the EU Road Map and subsequent EU strategies of engagement rather than by Dayton itself. In fact, too strong an attachment to the Dayton settlement, through the defence of entity rights and 'vital interests' protections for BiH's constituent peoples, has been interpreted as a barrier to legislative progress towards EU integration.⁴¹

At the Zagreb summit of EU and regional top officials, in November 2000, the BiH leaders fully committed themselves to meeting the Road Map conditions, and the Zagreb Declaration has subsequently been used by the OHR to bring EU requirements under his mandate of regulation and coordination.⁴² Following the Zagreb Declaration, the EU established a Community programme of Assistance for Reconstruction, Development and Stabilization (CARDS) and a programme of EU technical assistance for BiH. In 2001, the European Commission adopted a Country Strategy for BiH which covers the period 2002–2006 and provides a framework for EU assistance. Since 2001, assistance of more than €240 million has been committed under the CARDS Programme, supporting BiH's participation in the Stabilization and Association Process. The EU also increasingly deployed conditionality in the granting of macro-economic support in return for recommended economic and political reforms.⁴³

The transfer of power to the EU more directly can be seen in the OHR's 2002 reform of the Council of Ministers with the post of chairman of the Council no longer subject to eight-month rotation but held for the whole of the legislative period and becoming a central administrative role, involving responsibility for

the work of the Directorate for European Integrations (DEI) – established under the same edict and charged with the task of preparing a strategy of European integration.⁴⁴

The DEI has, in effect, become the key executive body of BiH, supported in its operational structuring and institutional linkages by funding directly from the European Commission. The DEI is the main partner to the European Commission in the SAP and has been tasked with ‘special responsibilities’, including negotiating and supervising the implementation of agreements made with the EU. Based on the centrality of the EU accession process, the Chairman of the Council of Ministers (CoM) has been granted a high level of executive authority, becoming the *de facto* BiH prime minister.⁴⁵ The Chairman has the task of coordinating strategies and policies among state institutions and between entity governments and of ensuring the harmonization of BiH laws with the *acquis communautaire* of the EU. His office has the assistance of EU advisors to draft new laws compliant with the *acquis* and to conduct the compliance check of all BiH proposed legislation.

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

They certainly raise justified questions about BiH’s ability to sustain a SAA [Stabilization and Association Agreement]. Nevertheless, while the ‘Bonn Powers’ are certainly anomalous among EU partner states, their existence in BiH need not automatically exclude that country from moving towards SAA negotiations. To make this case, BiH needs to give evidence that the powers are generally declining in relevance and that their use occurs ever less within core SAA areas.⁴⁶

Interestingly, the use of the Bonn Powers to impose legislation by edict is not necessarily seen as problematic for BiH’s closer integration into the EU. There is a clear danger of ‘double standards’ in the EU’s turning a blind eye to the lack of democracy in BiH. For this reason, the November 2003 SAP progress report seeks to downplay the undermining of democratic processes involved in the use of High Representative edicts. The EU suggests that this is often merely a matter of imposing ‘soft decisions’, alleging that the OHR steps in merely to follow up policies already agreed in advance. Closer informal EU cooperation with the DEI and the Chairman of the CoM means that ‘agreements’ can then be imposed on governments at entity level without this appearing to be a ‘hard’ exercise of coercive power. The EU, in fact, wishes to conflate external diktat with freely-negotiated agreement in stating that: ‘Current evidence suggests. . .that the “push” of the Bonn Powers is gradually being replaced by the “pull” of European institutions.’⁴⁷

This process of alleging a basis of ‘policy agreement’ which is then imposed through ‘soft decisions’ could be seen in the OHR’s establishment of special reform commissions, involving appointed BiH nationals and chaired by an international representative. These commissions have helped provide a veneer of

'agreement' without going through a formally accountable political process. They have been used for policy issues where the OHR faces clear popular opposition, for example, on indirect taxation, defence, intelligence services and on Mostar city administration. Three of the four commission's findings have then been imposed by edict.⁴⁸ In the case of the Mostar commission, the major administrative reforms were imposed despite a marked lack of any 'agreement' by BiH participants (see Florian Bieber, this volume).⁴⁹ The dishonesty of the process was highlighted by the use of agreement on minor issues to argue that the imposition of the major reforms was merely the use of 'soft' power, clarifying reforms on which there was largely agreement.⁵⁰

At the EU Thessalonica summit, in June 2003, additional instruments to enhance EU regulation in BiH were developed. These included a Joint Declaration on Political Dialogue aimed at reinforcing the convergence of positions on foreign policy questions to reach alignment with the EU Common Foreign and Security Policy (CFSP).⁵¹ The most important EU initiative, however, was the development of a new European Partnership, established to 'enrich' and 'intensify' the SAP, setting out BiH's political, economic and other priorities.⁵² The Partnership priorities are divided into short-term, for 1 to 2 years, and medium-term, of 3 to 4 years, and include over 50 areas where policy-reforms are required to meet EU demands for 'harmonization', from the reorganization of political institutions and public administration to privatization and sensitive economic programmes to remove 'labour rigidities', 'implement bankruptcy legislation' and 'lower the ratio between government expenditure and GDP'.⁵³

The priorities of the Partnership are based on the EU's political and strategic priorities in the light of their assessments of the BiH government's Annual Reports. However, it should be noted that there is no relationship of accountability or Bosnian 'ownership' involved in this priority-setting process. The Partnership policy-guidelines only involve 'informal consultations' with BiH representatives.⁵⁴ The BiH government is then 'expected to respond to the European Integration Partnership by preparing and implementing Action Plans, with a timetable and details of how they intend to address the Partnership's priorities'.⁵⁵ The EU provides security, funds the international assistance, and runs the policy programmes for Bosnia; if this is a 'partnership' it is a highly unequal one.⁵⁶

The increased intensity of EU engagement with the BiH policy-making process has necessitated the reinforcement of the meetings of the EU/BiH Consultative Task Force, to assist in the Annual Reports and annual Action Plans. The EU has also established a Coordination Board for Economic Development and EU Integration in order to develop medium- to long-term economic strategy and direct the BiH Council of Ministers in the formulation of a Poverty Reduction Strategy Paper in negotiation with the World Bank.⁵⁷ In order to ensure that the DEI can cope with the huge amount of directives flying from Brussels to Sarajevo, the EU will be seconding civil servants from EU member states to work as advisers as well as providing targeted technical assistance and institution-building support under CARDS.⁵⁸

While the real transition to European Union ownership has been largely operating at the informal level, this has also begun to be reflected in formal changes,

such as in the EU Police Mission taking over from the UN Mission to Bosnia at the end of 2002 and the assumption of EU responsibility for a follow-on mission (EUFOR) to take over the broader security tasks from the NATO SFOR force in December 2004.⁵⁹ The ending of the UN International Police Task Force (IPTF) mandate is illustrative in this regard as it did not result in any greater 'ownership' for the Bosnian authorities. Under the EU, in the first ever civilian crisis management deployment under the European CFSP,⁶⁰ the mandate of the mission is no less authoritative than that of the UN IPTF. It establishes 'a broad approach with activities addressing the whole range of Rule of Law aspects, including institution-building programmes and police activities' and is designed not merely to support Dayton implementation but also to support the EU's institution-building under the CARDS regulations and the SAP more broadly.⁶¹ The Head of Mission reports to the EU's Special Representative Lord Ashdown, who reports to the Secretary General/High Representative for CFSP, thus ensuring a 'unified chain of command' – a chain of command which does not involve any BiH input or accountability.⁶²

Lord Ashdown was named as the first EU Special Representative in BiH in March 2002, taking up his duties when he assumed the position of the High Representative that May.⁶³ The creation of Ashdown's 'double-hatted' position as both EU and PIC representative marked a clear signal of transitional intent. As far as Ashdown understood his position, it was clear that he was to be the last High Representative.⁶⁴ By this he did not understand that 'ownership' was to be given to Bosnian institutions but rather that his role would be taken over by new mechanisms of the EU.

This move reflects other formal organizational changes. In 2002, the PIC was 'streamlined' providing a clearer European co-ordinating role. A Board of Principals was established as the main co-ordinating body, chaired by the EU Special Representative and meeting weekly in Sarajevo.⁶⁵ In real terms it would seem that the OHR is already more dependent on the EU than the PIC, and in 2003 the EU provided over half of the OHR's operating budget.⁶⁶ The so far largely informal process of EU regulation will become a contractual one once BiH signs up to a formal Stabilization and Association Agreement (SAA).

The SAA is an international agreement that has precedence over any other laws of the country. After being signed, the agreement becomes enforceable when it has been ratified by the BiH government, European Parliament and the national parliaments of EU members. Following this BiH will be legally obligated to undertake certain activities in SAA areas within strict time limits. Through the negotiation of the SAA the EU Special Representative and the executive policy-making institution of the DEI will maintain full regulatory control over the post-Dayton process.

Conclusion

By 2005 the EU was routinely involved in every level of BiH policy preparation and implementation, and annual BiH government work plans were being drawn up to meet the comprehensive SAP requirements. There can be little

doubt that there has been a transition from the ad hoc, unaccountable, and largely unfocused, rule of the PIC. Yet this transition has not been one towards Bosnian ownership. Even the EU recognizes that 'BiH "ownership" of reform remains limited' with international initiative, input and pressure guiding the process of transition.⁶⁷ As far as the engagement of the people of BiH or their elected representatives is concerned, little has changed over the ten years since the Dayton agreement. The BiH public have been excluded from the transition process and while there is general support for EU membership there has been little public discussion of the costs and benefits involved.

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

Today, BiH is administered directly through the ad hoc mechanisms institutionalized under the powers of the EU Special Representative, and policy-making is essentially the preserve of Brussels, implemented with the assistance of the EU-funded and advised Directorate for European Integrations. The policy input allowed for Bosnian representatives is purely consultative, through hand-picked and internationally managed special commissions. Those commentators who wish to argue that the external administrators have been constrained by Dayton, or who wish to blame the fragility of Bosnia's domestic governing bodies on the 'immaturity' of the people of Bosnia and their elected representatives, unfortunately tend to ignore this overarching framework of external regulation.

NOTES

1. Lord Paddy Ashdown, 'International Humanitarian Law, Justice and Reconciliation in a Changing World', The Eighth Hauser Lecture on International Humanitarian Law, New York, 3 Mar 2004, at www.nyuhr.org/docs/lordpaddyashdown.pdf. See also B. Denitch's view that Dayton was a 'terrible peace to end a terrible war', 'Postscript', in *Ethnic Nationalism: The Tragic Death of Yugoslavia* (revised ed.), Minneapolis: University of Minnesota Press, 1996.
2. See for example, M. Kaldor, 'One Year After Dayton', in *Dayton Continued in Bosnia Herzegovina (1)*, The Hague: Helsinki Citizens' Assembly Publication Series 11, 1997, pp.28–30.
3. Ashdown (see n.1 above).
4. On 'capacity sucking out' see, for example, F. Fukuyama, *State Building: Governance and World Order in the Twenty-First Century*, London: Profile Books, 2004, p.139 ff; also M. Ignatieff, *Empire Lite: Nation-Building in Bosnia, Kosovo and Afghanistan*, London: Vintage, 2003, pp.98–101.
5. UN Security Council Res. 1244, 'On the Situation Relating to Kosovo', 10 June 1999, at <http://daccess-ods.un.org/TMP/5321889.html>; UN Security Council Res. 1272, 'On the Situation in East Timor', 25 Oct 1999, at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/312/77/PDF/N9931277.pdf?OpenElement>.
6. W. Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power*, Oxford: Oxford University Press, 2003, p.150.
7. S. Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building*, Oxford: Oxford University Press, 2004, p.76.

8. See R. Holbrooke, *To End a War: Sarajevo to Dayton: The Inside Story*, New York: Random House, 1998.
9. The PIC comprises 55 countries and agencies that were involved in Dayton implementation, by assisting it financially, providing troops, or directly running operations in BiH. The London Conference established a Steering Board as the executive arm of the PIC, involving Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organization of the Islamic Conference, which is represented by Turkey. Since the London Conference, the PIC has come together at the ministerial level five times to review progress and define the goals of peace implementation: in June 1996 in Florence; in December 1996 in London; in December 1997 in Bonn; in December 1998 in Madrid, and in May 2000 in Brussels (for further information see 'OHR General Information', at www.ohr.int/ohr-info/gen-info/#pic).
10. Dame Pauline Neville Jones, keynote speech, 'Rethinking the Dissolution of Yugoslavia' conference, Senate House, Centre for South-East European Studies, School of Slavonic and East European Studies/University College London, 18 June 2004.
11. *Ibid.*; for the conclusions of the PIC conference, which were to form the annexes to the Dayton agreement, see 'Conclusions of the Peace Implementation Conference held at Lancaster House, London', 8 Dec. 1995, at www.ohr.int/pic/default.asp?content_id=5168.
12. See C. Bildt, *Peace Journey: The Struggle for Peace in Bosnia*, London: Weidenfeld & Nicolson, 1998, ch. 9.
13. E. Cousens and C. Cater, *Towards Peace in Bosnia: Implementing the Dayton Accords*, Boulder, CO: International Peace Academy/Lynne Reinner, 2001, p.46.
14. See the Dayton General Framework Agreement for Peace, Annex 10: 'Agreement on Civilian Implementation', at www.ohr.int/dpa/default.asp?content_id=366.
15. Interview with the author, London, 18 June 2004.
16. UN Security Council Resolution 1031, 'On Implementation of the Peace Agreement for Bosnia and Herzegovina and Transfer of Authority from the UN Protection Force to the Multinational Implementation Force (IFOR)', 15 Dec. 1995, at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N95/405/26/PDF/N9540526.pdf?OpenElement>.
17. Bildt, 'The Important Lessons of Bosnia', *Financial Times*, 3 April 1996, at www.ohr.int/articles/a960403a.htm.
18. Bildt, 'Response to Henry Kissinger's Article in the Washington Post of 8 Sept. entitled, "In the Eye of a Hurricane"', OHR Article by the High Representative', 14 Sept. 1996, at www.ohr.int/articles/a960914a.htm.
19. General Framework Agreement (n.14 above), Annex 4, 'Constitution of Bosnia and Herzegovina', at www.ohr.int/dpa/default.asp?content_id=372.
20. Bildt, (see n.12 above), p.139.
21. J. Gow, 'A Region of Eternal Conflict? The Balkans – Semantics and Security', in W. Park and G.W. Rees (eds), *Rethinking Security in Post-Cold War Europe*, London: Longman, 1998, p.169.
22. For more details on the Dayton agreement and annexes see D. Chandler, *Bosnia: Faking Democracy after Dayton*, London: Pluto Press, 1999, pp.43–51.
23. 'PIC Chairman's Conclusions of the Peace Implementation Council', Florence, 13–14 June 1996, §27, at www.ohr.int/docu/d960613.htm.
24. Under the Dayton agreement, Annex 10, Article 5, the High Representative has the 'final authority in theater regarding interpretation of this Agreement' (see n.14 above).
25. P. Szasz, 'Current Developments: The Protection of Human Rights through the Dayton/Paris Peace Agreement on Bosnia', *American Journal of International Law*, Vol.90, 1996, p.304.
26. *Ibid.*
27. Carlos Westendorp, 'Interview', *Slobodna Bosna*, 30 Nov. 1997, at www.ohr.int/press/i971130a.htm.
28. PIC Communique: Political Declaration from Ministerial Meeting of the Steering Board of the Peace Implementation Council, Sintra, 30 May 1997, §92, at www.ohr.int/docu/d970530a.htm.
29. *Ibid.*, §35, 36 & 70.
30. 'PIC Bonn Conclusions: Bosnia and Herzegovina 1998: Self-Sustaining Structures', Bonn, 10 Dec. 1997, XI, §2, at www.ohr.int/pic/default.asp?content_id=5182.
31. *Ibid.*, XI, §1.
32. See, for example, 'PIC Declaration of the Ministerial Meeting of the Steering Board of the Peace Implementation Council', Luxembourg, 9 June 1998, §108, at www.ohr.int/pic/default.asp?content_id=5188.

33. The archive of the High Representative's 'interim measures', at www.ohr.int/decisions/archive.asp. The archive of decisions to remove officials or to suspend them from office can be found at www.ohr.int/decisions/removalssdec/archive.asp.
34. See I. Kemp and W. van Meurs, 'Europe Beyond EU Enlargement', in W. van Meurs (ed.), *Prospects and Risks Beyond EU Enlargement: Southeastern Europe: Weak States and Strong International Support*, Opladen: Leske & Budrich, 2003, pp.63–4.
35. PIC Declaration, *Annex: The Peace Implementation Agenda, Reinforcing Peace in Bosnia and Herzegovina – The Way Ahead*, Madrid, 16 Dec. 1998, Section VI: Bosnia and Herzegovina within Europe, at www.ohr.int/pic/default.asp?content_id=5191.
36. *Ibid.*
37. The full text of the EU 'Road Map' is reproduced in *Europa South-East Monitor*, Issue 11, May 2000, at www.ceps.be/files/ESF/Monitor11.php.
38. See *Annex to the PIC Declaration: Required Actions*, Brussels, 24 May 2000, at www.ohr.int/print?content_id=5201.
39. Bildt, 'Is the Peace a Success?', Remarks to the Peace Implementation Council, Brussels, 23 May 2000, at www.bildt.net/index.asp?artid=176.
40. European Commission, 'The EU's Relations with Bosnia and Herzegovina', June 2003, at http://europa.eu.int/comm/external_relations/see/bosnie_herze/index.htm.
41. European Commission, 'Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilization and Association Agreement with the European Union', COM(2003) 692 final, Brussels, 18 Nov. 2003, §B.1.1, at http://europa.eu.int/comm/external_relations/see/docs/com03_692_en.pdf.
42. 'Zagreb Summit, Final Declaration', 24 Nov. 2000, at: <http://faq.macedonia.org/politics/eu/zagreb.summit.pdf>; see also Petritsch, 'Disappointing Progress of Bosnia and Herzegovina on the Path to Closer European Integration', Press Release, Office of the High Representative, 28 June 2001, at www.ohr.int/print?content_id=4469.
43. European Commission, 'Commission Staff Working Paper: Bosnia and Herzegovina Stabilization and Association Report 2004', SEC(2004) 375, Brussels, no date, §3.2, at http://europa.eu.int/comm/external_relations/see/sap/rep3/cr_bih.pdf.
44. Law on the Council of Ministers of Bosnia and Herzegovina, Office of the High Representative, 3 Dec. 2002, at www.ohr.int/decisions/statemattersdec/default.asp?content_id=28609.
45. In fact, Ashdown now refers to him in this way, see International Crisis Group, 'Thessaloniki and after II: The EU and Bosnia', *Balkans Briefing*, Sarajevo/Brussels, 20 June 2003; see also, European Commission, 'Report from the Commission to the Council' (see n.41 above), §B.1.1.3.
46. *Ibid.*, §B.1.1.5.
47. *Ibid.*
48. The exception is the Defence Reform Commission, see European Commission, 'Commission Staff Working Paper' (n.43 above), §2.2.
49. See Commission for Reforming the City of Mostar, 'Recommendations of the Commission Report of the Chairman', 15 Dec. 2003, at [www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20\(EN\).pdf](http://www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20(EN).pdf); 'Decision Enacting the Statute of the City of Mostar', Office of the High Representative, 28 Jan. 2004, at www.ohr.int/decisions/mo-hncantdec/default.asp?content_id=31707.
50. V. Perry, 'Quotas, Bridges, and Guarantees: The Politics and Process of Reforming Mostar', paper presented at the Institute for Strengthening Democracy in Bosnia and Herzegovina, Seventh International Seminar, Democracy and Human Rights in Multiethnic Societies, Konjic, Bosnia, 12–17 July 2004.
51. European Commission, 'Report from the Commission to the Council' (n.41 above), §B.3.1.
52. European Commission, 'Council Decision on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina', COM(2004) yyy final, Brussels, no date, at http://europa.eu.int/comm/external_relations/see/sap/rep3/part_bih.pdf.
53. These restrictive economic policies are sensitive as they would mean declining social protection in a state where half the population are already, according to the EU, 'at or near the poverty line', see European Commission, 'Report from the Commission to the Council' (n.41 above), §C.
54. European Commission, 'Communication from the Commission to the Council and the European Parliament: The Western Balkans and European Integration', COM(2003) 285 final, Brussels, 21 May 2003, §2, at http://europa.eu.int/comm/external_relations/see/2003.pdf.
55. *Ibid.*
56. For further information on the SAP process in the region see Chandler, 'Governance: The Unequal Partnership', in Meurs (ed.) (n.34 above), pp.79–98.
57. European Commission, 'Report from the Commission to the Council' (n.41 above), §B.3.7.1.

58. European Commission, 'Communication from the Commission to the Council' (n.54 above), §2.
59. European Commission, 'Commission Staff Working Paper' (n.43 above), §2.2.
60. 'Mission Statement', European Union Police Mission, at www.eupm.org/mission/ms.htm.
61. 'Council Joint Action of 11 March 2002 on the European Police Mission' (2002/210/CFSP), *Official Journal of the European Communities*, Council of Europe, §3, at <http://www.eupm.org/mission/bt/council1.pdf>.
62. *Ibid.*, §7.
63. Further information on the EU Special Representative, at www.eusrbih.org/.
64. Interview with the author, Vienna, 5 July 2002.
65. 'OHR General Information' The weekly meeting are attended by: OHR, SFOR, OSCE, EUPM, UNHCR, European Commission, the World Bank, the IMF and the UNDP.
66. European Commission, 'Commission Staff Working Paper' (n.41 above), §5. Its budget in 2004 was €21.1 million. Contributions to the OHR budget broke down as follows: EU 53 per cent, USA 22 per cent, Japan 10 per cent, Russia 4 per cent, Canada 3 per cent, Organisation of the Islamic Conference 2.5 per cent, others 5.5 per cent (see 'OHR General Information', (n.9 above)).
67. European Commission, 'Commission Staff Working Paper' (n.41 above), §2.3.