## ORIGINAL PAPER

# Bosnia and Herzegovina: The Quest for Sovereignty

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**Abstract**

This paper will examine the process of state-building in Bosnia and Herzegovina (BiH) with particular focus on exploring the domestic and international constraints to sovereignty. The main purpose is to demonstrate the prevailing issues and obstacles to state-consolidation that continue to shape Bosnia's political reality. I argue that despite extensive executive powers of the High Representative and the intrusive nature of his mandate, main constraints to sovereignty in BiH are self-inflicted. Competing ethno-nationalist narratives and ambitions that dominate the political scene are examined in the context of the EU conditionality and reveal that the lack of reconciliation and consensus among citizens pose the greatest risk to the success of the whole state-building project in BiH.

**Keywords**: *Bosnia and Herzegovina, Dayton agreement, European Union, sovereignty, state-building, international administration, conflict resolution, reconciliation*

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### Introduction

Formally Bosnia and Herzegovina (BiH) is not a protectorate of the international community, nonetheless the scope of power and authority exercised by external actors blurres the lines between effective sovereignty and international administration[1]. While robust interference was expected in the early stages of the post-Dayton state-building, two decades later there are serious concerns about the legitimacy, effectiveness and benefits of international presence in BiH.

This paper will examine the process of state-building in BiH, one of Europe's most divided post-conflict societies, where external actors assume the role of driving forces behind state formation and act as means of balancing the under-capacitated state structures. Particular focus will be placed on observing the domestic and international constraints to sovereignty in the light of the EU integration process.

The difficulty of studying the state-building process in BiH relates to capturing the degree and significance of the internal territorial and political divisions that create at least two separate and distinctive societies (Republika Srpska and the Federation of BiH). The confederal structure and the dual identity that are enshrined in this political setting cannot be separated from the study of state-building practices under the EU leadership.

I argue that there are two main constraints to sovereignty in BiH – executive powers of the High Representative and the incapacity of the state institutions to exercise sovereign powers. Furthermore, I argue that the technical and hands off approach adopted by the EU over the past decade has failed to address the underlying issues of reconciliation and coming to terms with the past, which, in turn, continue to undermine the state-building efforts.

The first part of this article will explore the concept of sovereignty in international relations and the way it reflects on contemporary debates on international state-building. The second part will shed some light on the institutional and political setting in BiH established by the Dayton agreement and the ways in which the external actors influence the state consolidation of BiH. Finally, sovereignty will be observed through the lens of the EU conditionality, as the single most important pre-condition to successful integration process.

### States and sovereignty: Building weak states

The concept of sovereignty is, without a doubt, one of the most contested, analyzed and criticized concepts in international relations. Despite this, the international system based on formal equality of sovereign states, has endured for centuries and firmly kept its position of being the '*only game in town*'. Even with the emergence of powerful supra-national organizations as well as challenges posed by weak and failing states, no concrete alternative to this system came near to replacing it. Internationally, 'sovereignty has been and remains the cornerstone of an entire, evolving system of diplomatic practices, conferring international status and enabling states to interact and cooperate on the basis of agreed methods and common understandings' (Heller 2001: 30).

The twentieth century has seen the fall of several totalitarian regimes and the end of colonisalism and this move towrads independence produced a temporary proliferation and uniformity of states across the globe (Badie 2000: 1). For the past two centuries the political thought, institutions and practies have spread from the West towards other parts of the world and carried the claim of universality of the Western political construct. The concept of strong Westphalian state resting on principles of sovereingty, legal equality of states and non-intervention to state's affairs became widely accepted and established the

foundation for international cooperation. Generally accepted premise was that the international system rested upon cooperation and conflict between equal and rational states in an anarchic environment and that threats to international security came primarily from powerful aggressive states (Newman 2009: 422).

The increasing contrast between this model  and the reality of international relations where states were no longer the sole or even the most important actors of international politics and where threats  came primarily from non-state actors,  opened up a wider debate on sovereignty and  the future of states.

With the growing number of fragile and failed states and developing new approaches to conflict resolution through state-building, the concept of sovereignty started to acquire new meanings. Traditionally, sovereignty was understood in terms of „final and absolute authority in the political community", with the provison that 'no final and absolute authority exists elsewhere' (Hinsley 1981: 1) Sovereignty essentially meant having the right and the power to govern without any interference from outside.

The end of the Cold war and the new political conditions paved the way for the redefinition of concepts of sovereignty, security and non-interference. Series of dramatic crises, from Afghanistan to Somalia, reopened the debate on normative and practical implications of intervening in weak and failed states. It was clear the international system was moving away from being an assembly of distinct, territorial, sovereign, legally equal states toward different, more hierarchical, and in many ways more complicated structures. (Creveld 1999: vii) There was a growing number of states that no longer claimed absolute and final authority over their territory and their national identities and state borders became subjects to dispute. The concept of state security was challenged by concerns for human security and responsibility to protect. Sovereignty was no longer percieved as a state privilage but as an *obligation*. Kofi Annan (2012) famously stated that *state sovereignty could no longer be an absolute shield behind which governments may hide to do what they please.*

While the concept of sovereignty as *shared responsibility of states,* followed by more practical notions of humanitarian intervention and responsibility to protect, represented a powerful new approach, it was easy to portray them as a form of neo-imperialist or capitalist exploitation of vulnerable societies. Moreover, there was a risk that, along with promoting peace and good governance practices in crisis areas, international intervention would also create a culture of dependency and produce more negative externalites.  The policy makers focused on technicalities related to capacity and institution building while the scholarly literature devoted more attention to redefining the concepts of sovereignty and state-building.

Stephen Krasner's work opened up the debate by unpacking the concept of sovereignty and demonstrating that there were many "varieties of sovereignty" and that in most cases they did not come hand in hand (Krasner 1999). He differentiated between international (juridicial independence and mutual recognition), "Westphalian" (exclusion of external actors from authority structures in a territory), domestic (organization of authority in a state and ability of authorities to exercise effective control) as well as interdependence sovereignty (ability to control cross-border flows). While most states in the contemporary international system enjoy international recognition, their domestic sovereignty is severely circumscribed as a result of which their "Westphalian" sovereignty is often limited, too. Furthermore, he emphasizes the discrepancies that occur in the system and labels sovereignty an *organized hypocrisy* that occurs when 'states say one

thing but do another; they rhetorically endorse the normative principles or rules associated with sovereignty but their policies and actions violate these rules' (Krasner 1999).

The vast majority of globalization studies claimed that the growing interdependence of states would inevitably lead to the erosion of sovereignty. However, the fact that states voluntarily delegate degrees of its sovereignty to supranational levels expresses more 'the value of sovereignty [rather] than a threat to its continuing importance' (Heller and Sofaer 2001: 31).

The changes in international order followed by failures of peace operations in Somalia, Srebrenica and Rwanda called for the revision of traditional peace-building principles[2]. New approach was multi-disciplinary and rested upon the use of state-building practices and democracy promotion as key instruments to building peace. Most scholars stressed the importance of building effective governmental institutions as a crucial part of the wider peace-building efforts (see e.g. Krasner, Chesterman and Paris). Krasner argued that, in order to achieve peace, effective institutions had to be built (Krasner 2004: 90) It was assumed that a functioning state, a stable democracy and the conflict as such were interlinked.

A significant number of concerns and dilemmas continue to surround the international state-building discourse. Can the external actors build a state without creating real or perceived neo-trusteeship arrangements? Is it possible to achieve local ownership in the presence of powerful external actors? Are there effective ways to avoid creating the culture of dependency in host societies? In the midst of these debates, BiH became the most crucial test case of international state-building efforts, a sort of a '*template for new experiments in international administration and external assistance in state reconstruction and post-conflict reconciliation'* (Chandler 2005: 308). Over the past two decades, the country has served as a ,*laboratory for European policies, transatlantic solidarity and western values'* (Eichberg 2004: 1) and attracted unprecedented international engagement. It is estimated that more than $14 billion worth of international aid was invested in BiH, making it the most extensive and innovative democratization experiment in history (McMahon and Western 2009: 69). There are still lesson to be learned from this particular case of international state-building and a detailed study of BiH could advance our understanding of post-conflict transition and provide clues for implementing more efficient policies.

The next section will provide an overview of political setting established by the Dayton agreement with regards to international as well self-inflicted limitations to sovereignty. Looking at the country's history in the 20th century, we can identify persisting patterns of limited sovereignty, weak institutions, internal struggles and extensive foreign involvement. The same pattern is observed in the post-conflict period when, apart from the international recognition, the country continued to experience similar challanges.

## Governing BiH after Dayton: Limitations to sovereignty

*'In BiH, outsiders actually set the agenda, impose it, and punish with sanctions those who refuse to implement it'*Knaus, G. and Martin, F. (2003: 62).

The roots of the current political setting in BiH can be traced back to the signing of the Dayton agreement in December 1995. At the time of the signing, the peace treaty was celebrated as a great diplomatic achievement and although there were some concerns about the complexity of the political system it had established in BiH, the primary focus was on ending the violence. Moreover, it was assumed that this system would be in place only temporarily, until the local parties would be ready to complete the transition and establish a fully consolidated democratic state. International officials commonly described the Dayton agreeemnt as treaty 'designed to end a war, not to build a state' (Denitch, 1996; Ashdown, 2004, Chandler 2006) and pointed out that the system it established was essentially 'the continuation of war by other means' (Ashdown 2004). Considering that the treaty was signed by the same political leaders that led the country to war in the first place, it is no surprise that it essentially provided political legitimacy to ethnic divisions resulting in territorial and political segregation.

More than two decades after the signing of the Dayton Peace Agreement, BiH is still in an ongoing process of reconstituting the main pillars of statehood. The peace agreement itself is perceived by many as the root of the problem as it established a complex and dysfunctional political system consisting of two entities (Republika Srpska (RS) and Federation of Bosnia and Herzegovina (FBiH)), ten cantons in FBiH and one condominium (Brcko District).  Such political setting translates into country being governed by no less than 14 governments - one at state level, two at entity level, ten at cantonal level and one for Brčko District (Noutcheva, 2007: 6).

Ethnically divided entities were granted a great degree of autonomy and the authority to essentially act as 'states within the state'. This left the central government weak and ineffective and overshadowed by the internationally appointed High Representative.  Initially, under the Annex 10 of the Dayton peace agreement, the High Representative was to guard the civilian implementation of the peace settlement and was envisaged as a sort of 'father figure' (Keane 2001: 74). His responsibilities and authority were significantly scaled up after the The Peace Implementation Council's (PIC)[3] meeting in Bonn in December 1997 where it was agreed that more intrusive approach was neccessary. The authority of the High Representative, under the so called Bonn powers, was advanced to the point that he could issue binding decisions when local parties seemed unable or unwilling to act; impose laws and remove democratically elected representatives from office in case they violated legal commitments or, in general, the DPA:

*The Council welcomes the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary…. such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation* (PIC 1997: chapter 11 para 2).

This indisputedly dominant role of the High Representative and his intrusiveness in Bosnian political life were justified by the notion of conditional sovereignty. If the local actors were unable or unwilling to undertake their key responsibilities, international intervention was justified and legitiamate. (Etzioni 2006). It is important to realize that in

this process of state-building where traditional rights of sovereignty had been suspended and overtaken by international actors, there was no real need to politically engage the citizens. Local ownership of the process was replaced by unaccountable mechanisms of external regulation, imposed from above and without any gunuine involvment of the local parties. This approach turned the Bosnian state institutions into empty administrative shells and essentially stripped the local leaders of political responsibility.

Even though Bosnia was an internationally recognized state and therefore possessed formal external (Westphalian) sovereignty, its dependence on external actors clearly showed incapacity of the domestic political sphere. Its legal sovereignty gave the appearance that it was an independent entity voluntarily cooperating with external actors when the actual system enabled the ‚international actors, unaccountable to the people of BiH, to shape and reshape the agenda of post-war transition'. (Chandler 2005: 336).

In relation to this post-conflict context we can establish that limitations to sovereignty in Bosnia take two different forms - the presence of international caretakers with executive powers and the inability to exercise sovereign powers. (Koeth 2012) The first limitation clearly stems form the nature of the Dayton agreement that legitimized the international presence in BiH and subsequently entrusted the the High Representative with extensive executive powers.

Though much has been written about the dominant position of the High Representative in Bosnian politics and although he is still technically overseeing the peace process, it is important to stress that the OHR has gradually stepped back and adopted the hands-off approach to governance in BiH. Comparing to active and intrusive manner adopted by ealier High Representatives and their extenisive use of the Bonn powers, the past few years were marked by rather symbolic presence and cautious phasing-out of the OHR.[4] This was evident in the absence of any form of action against the organizers of the last year's unconstitutional referendum in Republika Srpska.[5] The response of the OHR to this serious internal crisis remained in the sphere of verbal objection to referendum and calls for diplomatic dialogue. The responsibility of dealing with violations of the state constitution was left to the domestic actors - state persecutors and the constitutional court. These, however, proved to be too weak to open the case and act as guarantors of the rule of law in BiH.

This brings us to the second, above mentioned, limitation to sovereignty - inability to exercise sovereign powers. If the external actors are taken out of the picture, what is stopping Bosnia from functioning as a sovereign state? With its external sovereignty being unquestionably recognized and international caretakers' diminishing involvement, it becomes evident that Bosnia's present limitations to to the full exercise of sovereignty are largely self-inflicted. (Koeth 2012) The central state institutions are extremely weak and essentially controlled by the entities and their conflicting interests. Ethno-nationalist divisions that dominate every aspect of life in BiH negatively reflect on the state-building process and go against all efforts to transfer competencies to the central authorities. With Serbs in Republika Srpska calling for independence and Croats in Federation calling for a thrid entity it is clear that weak sovereignty is not the result of international presence in BiH but the result of domestic tensions and unwillingness to make the state function.

### Sovereingty as precondition to EU membership

The scope of the EU involvement in BiH culminated in 2002 when the EU formally took control over the state-building process.[6] It was acknowledged that the

country was finally shifting from the Dayton era and entering the ‚era of Brussels‘ (Chandler 2005; Bebler 2006). Contrary to its weak engagement in resolving the conflicts in the Western Balkans in the 1990's, the EU was able to take control over the most crucial aspects of the state-building in BiH and become the most powerful international actor in the region. The prospect of the EU membership had become the main force that set the agenda and put reforms in BiH into motion. Brussels is often referred to as the 'magnetic centre' that holds the weak state structure together and provides incentives for balancing the opposing views and interests.

Since the time the first promises of the EU future for the Western Balkans were made, it was clear that full external and internal sovereignty were a necessary precondition to seriously engaging in the accession process. In 2000, at the Council of Feira in Portugal, the EU made its first commitement to guarantee the 'fullest possible integration' of the Western Balkan countries (European Council 2000). The same commitment was stated again three years later in Thessaloniki by declaring that 'the future of the Balkans is within the EU' (European Council 2003).

It was believed that the safest path to stability and prosperity in the region could be achieved through cooperation and inclusion in the EU. To support this line of reasoning, comparisons were drawn between the Balkans and the post-WW II situation in Western Europe where history of conflict and animosity was replaced by regional cooperation and economic interedependence. However, the voluntary character of integration in the first case was in sharp contrast with the external control of the process in the Western Balkans. (Woelk 2013: 470).

With a relatively quick and smooth integration process in Central and Eastern Europe there was a sense of optimism in the EU about transforming post-communist societies and consequently "returning them to Europe". Nevertheless, the Western Balkans carried the additional heavy legacy of conflict that made the whole enlargement process qualitatively different and far more challenging. This time the EU was dealing with 'unfinished states' that were only beginning to recover from the structural socio-economic devastation and suffering from internal sovereignty struggles among competing ethno-religious elites. Bosnia and Herzegovina immediately stood out as a country that would require an innovative approach and long-term engagement.

The specific Road Map for BiH was adopted in 2000, identifying 18 initial steps that BiH had to undertake in order to officially launch the Stabilization and Association Agreement (SAA). From the very onset of negotiations, the EU pursued risk-avoidance mentality with a tendency to 'technify' the relationship with local elites. It was assumed that carrots provided by the EU would be attractive enough to produce positive and self-driven reforms and 'automatically put the country on the path to European integration and politico-institutional harmonization' (Venneri, 2007). Attaching deadlines, conditions and reforms to the prospect of the EU membership was conceived as the means to strengthening the state and overcoming the political instability.

The EU focused on implementing reforms aiming at increasinf the capacity of the central state institutions in hopes of achieving more coherence and compromise between the entities. This approach proved to be a double edged sword as it prompted opposite reactions - calls for more decentralization and autonomy in Republika Srpska (including frequent threats of holding a seccession referendum) and calls for creating a third entity for Bosnian Croats who were feeling increasingly marginalized. After several unsuccessful attempts to amend the constitution and delegate more power to central state institutions, the EU has started to acknowledge the limits of its transformative power.

Despite the initial optimism on both sides, the EU as well as the local political leaders started to suffer from (pre-)"accession fatigue" (Rupnik 2010) as the long-term status quo began to lose its appeal.

This once again points to the fact that attemps to build a sustainable state without actively engaging the citizens ineveitably carry the risk of overlooking significant dimensions of the process and eventually undermining it. In this particular case, the minimal involvement of the local parties, resulted in the general impression of the state being externally imposed on its citizens. The EU, as well as the earlier international caretakers in BiH, concentrated their attention on building institutions, setting rules and regulations and engaging in negotiations with political elites. However, what we are beginning to see now is that without genuine reconciliation among ethnic groups, all efforts to build a state would be in vain. There are no tools and instrsuments that can build a state that is unwanted and rejected by its own citizens. Ethno-religious tensions have a direct impact on the success of state-building and this was captured in the following statetement of the former High Representative: '*only once all citizens, and I stress citizens, not peoples, or ethnic groups, or collective bodies – only once all individuals can accept and respect the state of Bosnia and Herzegovina as a reality, then the project of state-building will have succeeded*' (Petritsch 2006: 6). Essentially, it is the reconciliation and building of trust among ethnic groups that decide the faith of state-building, its success and sustainability or its utter failure.

Achieving full internal sovereignty is far from being a merely technical issue - it requires profound cultural changes that can only happen through reconciliation and the building of a multi-ethnic society. The technical approach that was applied in the past two decades, aiming at preserving the status quo and not disrupting the inter-ethnic balance, tended to overlook the importance of reconciliation and "coming to terms with the past". Apart from the work of the ICTY and its efforts to bring war criminals to justice, the need for reconciliation has not been expressly acknowledged, addressed or encouraged by the EU. (Woelk 2013: 478) The lack of clarity and understanding of the recent past stand in the way of building a sustainable state, free of nationalistic myths and ideologies.

### Conclusion

In the post-conflict period BiH's sovereignty and territorial integrity were granted by external actors that gained significant executive powers and a great degree of authority over the country's development. The establishment of the Office of the High representative that was originally meant to supervise the implementation of the Dayton agreement gradually grew into lasting international presence and, contrary to its purpose, became a limimitiation to building a sovereign state. The Dayton agreement opened a pandora's box of perpetual deployments and unending dependency on foreign actors and resources.

In such conditions, insisting on building a strong Westphalian state, indicates poor understainding of the complexity of Bosnian social and political reality and ignoring the importance of relations in spaces beyond state's control. With the decreasing role of the OHR, limitations to sovereignty in BiH are largely self-inflicted, stemming from the lack of consensus among ethnic groups. The EU's emphasis on strengthening central government institutions as a precondition to membership only intensified ethnic tensions and achieved the opposite effect – desire for more decentralization.

BiH's example demonstrates that sovereignty is far more complex than mere control; rather, it represents a complicated structure simultaneously encompassing

authority, control, and legitimacy. Without gunuine changes in political culture, BiH will remain a quasi EU-protectorate – formally sovereign but de facto fully dependent on EU guidence and economic assistance.

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[1] While BiH is often put in the same category of international administrations with Kosovo and East Timor, the later two cases were established with UNSC resolutions (1244 and 1272) and the UN formally supervised the administration of the countries. This was not the case with BiH that, at least formally, exercised external sovereignty and enjoyed international recognition.

[2] The principles of the so called 'Holy Trinity' of peace-building – consent, impartiality and the minimum use of force.

[3] The Peace Implementation Council (PIC), consisting of 55 members (states and organizations), is an international body in charge of overseeing and assisting the implementation of the Dayton agreement. The Steering Board of the PIC provides the High Representative with political guidance (members of the Steering Board are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, Presidency of the European Union, European Commission, and Organisation of the Islamic Conference, represented by Turkey).

[4] The PIC planned to close the OHR in 2008 and to end the High Representative's mandate, however, the growing concerns for safety and stability of the country led them to extend that mandate indefinitely until a „set of positive benchmarks have been fulfilled". (see Press conference by the High Representative Miroslav Lajčák following the Peace Implementation Council Steering Board session in Brussels on 26-27 February 2008. Retrieved from: http://www.ohr.int/?p=37718 [6-5-2017].

[5] A referendum on the National Day of Republika Srpska was held on 25 September 2016. It took place after the Constitutional Court ruled against the constitutionality of the holiday, deeming it discriminatory against non-Serbs in the entity.

[6] This process was gradual and it unfolded in three main phases. In January 2002, the EU took over from the UN led International Police Task Force (IPTF) and established its EU Police Mission (EUPM). In January 2004, the EU took over the peacekeeping tasks from NATO as a result of which NATO's SFOR was replaced with EUFOR/Althea. And finally, in May 2002 the EU established a Special Representative (EUSR) whose role in Bosnia, was merged with the function of High Representative, resulting in a 'double hatted' structure (officially separated in 2011).

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