

Local Ownership Absence in the Police Reform in Bosnia-Herzegovina

Written by Kohsei Kurogi

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<https://www.e-ir.info/2013/11/06/local-ownership-absence-in-the-police-reform-in-bosnia-herzegovina/>

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Introduction

Since a conclusion of the Dayton Accords in 1995, the United Nations (UN) and the ensuing European Union (EU) have worked on security sector reform (SSR) in Bosnia-Herzegovina (BiH). The remit varies from defence to intelligence to police to other institutions regarding security. Among other things, the police are most directly related to public security in peacetime. Considering the legacy of the Socialist Republic of BiH and the war-time involvement in “ethnic cleansing”, the reform of the Bosnia police is not extricable from bringing back peace to the people. The police reform throughout 17 years was propelled by the UN and the EU. On 20 December 1995, the police reform was commenced by the International Police Task Force (IPTF) under the auspices of the UN Mission in BiH (UNMIBH).[1] The IPTF was mandated to contribute to establishing the rule of law in BiH by transforming a regime-servant police into a people-servant one.[2] The UNMIBH was assessed as the achievements of ‘establishing the foundation of a modern, democratic police force’, succeeded by the European Union Police Mission (EUPM) on 1 January 2003.[3] Under BiH ownership, the EUPM was aimed at creating ‘a modern, sustainable, professional multi-ethnic police force’ according to international standards for the purpose of tackling organised crime and corruption.[4] With an evaluation that the EUPM achieved the goals, it was terminated on 30 July 2012.[5]

Contrary to these positive assessments about the international community’s efforts in the police reform, the establishment of the rule of law still seems faltering as Human Rights Watch warns that ‘BiH continued to subject foreign nationals to indefinite detention without trial on national security grounds’.[6] Furthermore, the perception of the public security among people has been exacerbated as reported that ‘local law enforcement agencies, as well as the judiciary and most of the public administration, have recently become worse – more ineffective, expensive and corrupt than ten years ago’.[7] Thus, there is a gap in the assessments between the reformers and local people.

This paper will attempt to consider reasons for this gap by critically assessing the international community’s efforts in the police reform in BiH from the perspective of local ownership. Firstly, it will examine why local ownership in SSR is significant and what means by it. The following section will discuss that the UNMIBH avoided confronting the political sensitive areas which are necessary to negotiate with local elites for the implementation of the police reform while making few engagements of civil society. Subsequently, it will explore the failure of a top-down approach, which the High Representative (HR)/EU Special Representative (SR) took and the limited bottom-up approach of the EUPM in relation to local ownership. Finally, this paper will argue how an absolute absence of national ownership creates this assessment gap.

The Concept of Local Ownership in SSR

A concept of SSR has gained its prominent currency as ‘an essential component of any successful democratic transition’ since the end of the Cold War when SSR was indispensable to transformations of post-communist Eastern Europe’s security sectors into more effective, democratic and affordable ones.[8] The principles of SSR are derived from the Western liberal democratic tradition: people-centred; primacy of the rule of law; democratic accountability and oversight; operational effectiveness; civil-society engagement; a political process; ownership; and

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sustainability.[9] Despite some recipient-oriented principles like civil-society engagement and ownership, SSR ventures have tended to be predominantly donor-oriented owing to control of funding and agenda-setting in relation to deficiencies that recipients suffer from: lack of legitimacy, expertise and consensus to implement SSR.[10] Consequently, SSR often seems as 'an exercise in externally-driven social engineering'.[11] Without local ownership, however, SSR would be doomed to failure in the long run as demonstrated by the past projects.[12]

The concept of local ownership can be articulated as 'the reforms of security policies, institution and activities in a given country must be designed, managed and implemented by domestic actors rather than external actors'.[13] Furthermore, it is helpful to classify local ownership into two types: regime ownership and national ownership.[14] The former involves commitments of local political elites whose legitimacy is often perceived as problematic in post-conflict states, whilst the latter entails more inclusive and participatory commitments of non-state actors such as civil society that are usually regarded as a collective national owner.[15] Despite the recognition of the importance of local ownership in theory, donors in practice often feel resistant to ceding full responsibility of SSR to local owners for donor-side reasons characterised as 'a mixture of arrogance and naivety'.[16]

In reality, however, donors need recipients as much as vice versa to prevent SSR ventures from being superficially institutionalised. Here, the distinction between regime ownership and local ownership is facilitative to create a feasible strategy of local ownership that 'requires a dual policy of *negotiating* with state actors and *engaging* with non-state actors'.[17] On the one hand, regime ownership can be realised through "negotiated partnership" between state actors and donors that can be mutually beneficial; donors can offer state actors expertise and funding for SSR project that recipients in post-conflict states often lack, whereas state actors can convey local norms and political context that donors are often unfamiliar with.[18] This negotiated partnership enables both to make more local-owned SSR plans by discussing whether and how international norms in SSR can be reconcilable not only with local value system, but also with interests of the regime.[19] On the other hand, national ownership can be integrated into SSR plan by donors engaging with non-state actors, especially civil society. Civil society is expected to play the role of a watchdog for state security agencies by donors providing a space where people can argue their security and insecurity; after all, rendering state actors more accountable and transparent about security issues, and guaranteeing the more people-centred and sustainable SSR ventures.[20] This dual policy for local ownership strategy can be also applied to an analysis of the police reform in BiH here.

The UN Police Reform

Post-conflict policing in BiH has three features: authoritarian-socialism traditions, war-crime shadow, and the Dayton regime. First of all, the public policing in the former Yugoslavia was militarised and externally unaccountable, which constituted the occupational culture.[21] Subsequently, the authoritarian-socialism characteristic was manifested as ethnic cleansing and human rights abuses that the police force instigated during the war.[22] Finally, the post-conflict policing in BiH bears highly decentralised and overstuffed institutions without cooperation among different judicial districts that are ethnically demarcated by the Dayton Accords, which constrains the authority of the central government in the realm of criminal justice.[23] In short, the UNMIBH had to tackle 'mono-ethnic paramilitary units, unorganised in three parallel structures and entirely unsuited to civilian law enforcement'.[24]

To improve this difficult situation on the police, the UNMIBH initially embarked on the police reform through certification, co-locating and training.[25] In 1999, the UNMIBH tentatively started to work on restructuring the police so as to make the reform more sustainable.[26] The most remarkable achievement was the certification process that succeeded in downsizing the size of the police from 44,000 to 16,803 by eliminating the inappropriate personnel such as war criminals, and it concomitantly contributed to improving the quality thereof, accompanied by the mandatory training course and other special ones.[27] In the report of the Secretary-General on the UNMIBH (2002), 'the most extensive police reform and restructuring project' was estimated as 'high standard of security throughout the country [had] been established'.[28]

Regardless of such achievements of the UNMIBH in technical terms, public security for people remained unimproved. Rather, this mission is unintentionally more likely to help solidify political power structures of each community that were sustained by black economy and other criminal activities during war and expanded the post-war

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period.[29] The post-war public security structures in BiH were deeply entrenched along with the communities by three main nationalist parties that had little incentive to improve public security for people because a murky climate thereof beyond each community allowed them to control their people through provision of guaranteed protection from fear of the other communities.[30] This entrenchment of community-based security structures was preserved under the banner of “ownership” used by the international community; suggesting that BiH should assume responsibilities for providing public security, apprehending war criminals and ensuring returnees’ safety as opposed to their incentive.[31] Moreover, inadequate reintegration of demobilised soldiers who often ended up as unemployed under the circumstances replete with weapons contributed to exacerbating public security.[32] This was also applied to decertified police officers who stayed at their own community as threats to the population.[33] Furthermore, some of them were reintegrated into security structures by finding jobs in other security sectors.[34]

From the onset, the UNMIBH considered the Dayton Accords the boundary of the reform, and took local “ownership” into consideration when negotiating the police reform.[35] In light of deeply politicised public security emanated from the Dayton Accords, the UNMIBH should have dismantled the structures by negotiating with political elites in each community. However, it seemed that the UNMIBH circumvented the politically sensitive areas by focusing on only technical terms under the guise of embracing local ownership, implying that the smooth implementation of the reform was managed without reflecting its ramifications and the role of civil society. A successor of the UNMIBH, the EUPM and the EU then came to confront this politicised security structures.

The EU Police Reform

The police reform seemed inevitable to the HR/EUSR and the EU considering the cost-ineffective administrations, no coordination among different police authorities, and the politicised nature.[36] The mainly technical assistance of the IPTF to the police was concomitantly taken over by the EUPM whose strategic priorities consisted of four principles: fighting organised crime and corruption, de-politicisation of the police, financial viability, and institution building.[37] The intensive debate over the police reform between the EU officials and BiH politicians raged between 2004 and 2008.[38] This showdown illustrates that SSR is a highly political process while suggesting the significance of local ownership in SSR.

Following several reports that confirmed the necessity of the police reform in BiH, in July 2004, the then HR/EUSR, Paddy Ashdown, using the so-called Bonn Powers that allowed the HR to interpret the Dayton Accords for its implementation, established the Police Restructuring Commission (PRC).[39] The PRC ‘shall be responsible for ... proposing a single structure of policing for Bosnia and Herzegovina under the overall political oversight of a ministry or ministries in the Council of Ministers’.[40] The HR/EUSR nevertheless could not exert its Bonn Powers to enforce such a police reform favouring centralisation since this model contradicts the Dayton Accords that underpins the fragmented police structure; therefore, the HR/EUSR required approval of the Entities to implement the reform.[41] In need of a new political power, Ashdown persuaded the European Commission (EC) to incorporate the police reform into the requirements for signing the Stabilisation and Association Agreement (SAA).[42] The EC accepted this suggestion, and established three principles that would become known as “European principles”: ‘first, all legislative and budgetary competences vested at state level; second, no political interference with operational policing; and third, functional police areas determined by technical criteria’.[43] Thus, the HR/EUSR opted for a top-down approach by setting these particular principles.[44]

From the outset, this top-down approach was fiercely rejected by the government of the Republika Srpska (RS) since European principles obviously endangered the autonomy.[45] In addition, the RS suspected that Ashdown intended to integrate two entities into one state through the police reform.[46] On 5 October 2005, the pressure of the HR/EUSR allowed the EU and the government of the RS to reach a political agreement in which the RS engaged in the police reform along with considerably compromised “European principles”. [47] This 5 October agreement was followed by a creation of a single working body for the police reform, the Directorate for the Implementation of Police Restructuring (DIPR).[48] In contrast, the EUPM almost played no role in planning and negotiating about the police reform because HR/EUSR probably assumed that his top-down approach would be incompatible with the EUPM’s bottom-up approach, which embraced the significance of local ownership.[49]

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With the end of the mandate of HR/EUSR, Ashdown who was infamous for a “hyper-interventionist”, the police reform had lost the initial momentum. The approach had gradually shifted from the maximalist to minimalist in response to the changing political constellation. On the side of the EU, the renewal mandate of the EUPM included assistance to the police reform.[50] In January 2006, the new HR/EUSR was appointed to Christian Schwarz-Schilling who was a less interventionist and suspicious of Ashdown’s approach that linked the police reform with the EU conditionality.[51] On the side of BiH, especially the RS, the re-elected RS President Milorad Dodik publicly questioned the 5 October agreement, and the negotiation within the DIPR got deadlock against the backdrop of the uprising of the nationalism in neighbour countries as seen in the secession of Montenegro and the forthcoming independence of Kosovo.[52] This political atmosphere rendered the general elections in October 2006 nationalistic, and the rise of nationalism was furthermore fuelled by the verdict of the International Court of Justice approving Srebrenica massacre as genocide in February 2007.[53]

In order to break this gridlock, Miroslav Lajak, who was a successor of Schwarz-Schilling since June 2007, exerted Bonn Powers to impose a controversial amendment of procedures of the Council of Ministries for the purpose of disciplining the RS which had been often opposed to the police reform in October 2007.[54] However, this HR/EUSR’s action stimulated the RS to harshly protest, caused a political paralysis at the state level by resignation of the Bosnian Serb Chair of the Council of Ministers.[55] In addition to this domestic political crisis, the unstable situations in Kosovo and Serbia eventually made the EU delink European principles with a conclusion of the SAA to avoid destabilising the region further.[56] It followed that instead of pursuing Ashdown’s original plan, a police reform work group tried to find a compromise by adopting a minimalist approach aimed at establishing limited coordinating structures at the state level; finally allowing the BiH parliament to pass the two police laws in April 2008, which enabled BiH to conclude the SAA in June 2008.[57] After all, it was the EUPM that prevented the EU from losing the face in attempts to depoliticise the negotiations and to centralise some functions through technical reforms.[58]

The EU’s attempts of the centralisation process of BiH within the Dayton Accords framework through the police reform failed owing to an obvious underestimation of the significance of regime ownership and the lack of careful considerations on the political sensitivity.[59] In addition, the EU failed to offer the appropriate model of the police structure which should be compatible with parochial interests of the local elites. Given the police reform advocating a centralised state-level police was irrelevant to the *acquis communautaire*,[60] suffice to say that HR/EUSR Ashdown’s initiative unnecessarily politicised the police reform process and hindered the EUPM from achieving the original strategic goals.[61] However, the approach of the EUPM should be also criticised for only focusing on the police and turning few attention to civil society. The state-centric propensity of the EUPM is probably ascribed to the so-called “self-interested generosity” that refers to ‘the threat of a poorly policed BiH to EU member states’ as seen in the emphasis of *combating organised crime*. [62] Consequently, the Dayton security structures almost remained intact.

Conclusion

This paper provided a critical assessment of the police reform in BiH by focusing on local ownership. The UNMIBH operated within the framework of the Dayton Accords that determines the nature of public security, which consequently enabled the mission to be smoothly implemented. It, however, resulted in little contribution to improvement of non-politicised public security due to no substantial engagement with civil society. Following the UNMIBH, the HR/EUSR who tried to tackle the Dayton security structures could hardly achieve the original goals because of the failure in making the negotiated partnership with the RS. The top-down approach to politically sensitive issues rendered the negotiations deadlock. In the end, the EU had to recede to the technocratic and symbolic reform. Throughout the police reform, the most problematic is probably an absolute inattention to national ownership since only regime ownership cannot normalise the highly politicised public security; accordingly, leading to the aforementioned assessment gap. Without robust civil society, the mindset of local elites would not change. In conclusion, a “bottom-up” approach to forging civil society rather than only focusing on the regime should have been considered more seriously in this police reform.

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Date written: March 2013