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Civil Society and the Bosnian Police Certification Process: Challenging ‘the Guardians’

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This chapter focuses on a very particular aspect of the democratic reform of police forces that took place in Bosnia and Herzegovina as part of the post-conflict reconstruction efforts.ⁱ It provides an account of the ‘certification process’ - or vetting - of all police officers, carried out by the UN Mission in Bosnia and Herzegovina (UNMIBH) and the International Police Task Force (IPTF). This process, which officially was completed at the end of 2002 when the United Nations (UN) mission left the country, was kept alive - at least in part - by the activities of two groups (Association of Decertified Policemen of the Federation of Bosnia and Herzegovina, and Republika Srpska Association of Decertified Policemen), which contested the outcome of the process on the basis that it suffered from operational and, more importantly, structural shortcomings. In other words, they considered that the process had been undemocratic and its outcomes were having adverse repercussions for the rights of decertified police officers. The two associations engaged in a legal battle and a political fight, for the policy and related legislation to be changed. Their efforts failed to yield the desired response from national actors due to the powers enjoyed by the UN during its mission in Bosnia. However, the matter was referred to the UN Security Council, which ultimately was forced to overrule its policy of UN decisions being final and binding, and reach a negotiated solution.

This episode is remarkable for what it tells us about the process of democratising police forces in post-conflict settings. Civil society actors play an important role in advancing and consolidating aspects related to the demilitarisation and accountability of police forces, by strengthening civil-military relations while making the process more inclusive and legitimate. As Marina Caparini points

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out, ‘it reminds us that in the final analysis the client of state security institutions is the individual citizen’.ⁱⁱ Civil society performs this role through three types of actions. First, it can be the source of information and knowledge on security and defence matters for both the public and policymakers and, thereby, can contribute to the shaping, implementation and acceptance of policies. Second, it can promote and facilitate wider participation in the process through public debate on security and defence matters (newspaper reporting, public meetings and so on), which also contributes to the development of reforms that are locally owned and locally sustainable. Third, civil society can hold security actors accountable for wrongdoing and malpractice by performing an external oversight role.ⁱⁱⁱ It is this third type of action that best describes what was achieved by the two Associations of Decertified Policemen. In Bosnia this oversight was directed at both the Bosnian authorities and the UN, whose extensive powers drove the process of certification of police officers. Thus, the case study in this chapter sheds light on the ability of civil society in protectorate-style contexts to ‘guard the guardians’^{iv} by holding them answerable for their actions using the values advocated in their original reforms. The analysis in this chapter contributes to the study of civil society activism in post-conflict reconstruction efforts by including in the state-civil society equation the relationship of the latter with international actors. At the same time, in evaluating the significance of what the two Associations of Decertified Policemen achieved through their actions, we consider also the ‘unintended’, but still potentially negative, consequences that these actions might or could have had on the legitimacy of the statebuilding project in Bosnia and the sustainability of other reforms introduced by the international community.^v

The chapter begins with an overview of civil society developments in post-conflict Bosnia. The assessment focuses on Bosnian Non-Governmental Organisations (NGOs), reflecting the tendency in the majority of the literature to centre on this category when discussing civil society more generally.^{vi} However, the author understands civil society as a much wider concept encompassing other types of non-state actors that, as explained in the Introduction to this edited volume, shape political change through social activism. The two Associations of Decertified Policemen are not a typical example of civil society associations if we take into account that their members are private citizens who until

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decertification were part of a key institution in the state administration. Moreover, they were assisted at various points in their political and legal campaigning by police trade unions. However, exploring the social activism of these two associations contributes to the existing literature on civil society activism in Bosnia, and in post-conflict scenarios more generally, by focusing on a non-NGO example where the outcomes of the process speak directly to the roles that have been associated with civil society promotion in post-conflict reconstruction efforts. Moreover, due to the background of the members of these associations – as noted above – this case study allows us to reflect on what has been described, in the Introduction to this edited volume, as the blurred boundaries between state and society, public and private in post-conflict reconstruction efforts. The chapter also provides a brief overview of the certification process (goals, rationale, modus operandi) with particular attention to the operational, but more importantly the structural problems used by the two associations as arguments to mobilise, politically and legally, post-2002.

CIVIL SOCIETY IN BOSNIA

The number of NGOs registered in Bosnia in 2008 is estimated at 12,189 - a remarkable figure if we take into account that Bosnia's population at the time was approximately 4.5 million people.^{vii} However, one should be cautious about drawing conclusions on the basis of these figures. First, as Adam Fagan has noted, there have been discrepancies between the official figures and actual numbers of active NGOs.^{viii} Moreover, there seems to be no direct correlation between the number of NGOs and the consolidation of civic and democratic politics.^{ix} Although the position and role of the NGO sector seems to have improved gradually in Bosnian society, this follows more than a decade of at best mixed and at worst 'gloomy' assessments. NGOs were meant to be at the forefront of the peace-building efforts in Bosnia, acting as advocacy channels for the introduction of a locally-owned 'new culture of interaction and political engagement based on compromise, tolerance and participation' that would help delegitimise nationalist forces.^x Their advocacy role was based on the assumption that, if provided with the necessary support in the areas of sustainability and capacity building, NGOs would

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facilitate economic and political activity.^{xi} Notwithstanding huge variation across the country, several shortcomings can be identified that have worked against the implementation of this vision of NGOs in Bosnia. These limitations include the sector's dependence on external/foreign funds, the service-oriented nature of much of its activities, and its impact on the Bosnian state. An additional, more fundamental stumbling block, which Steven Sampson has highlighted, is that the vision driving NGO development is a 'model' and, thus, a simplified representation of a Western reality or an idealised aspiration of what an NGO should be and should do.^{xii} Roberto Belloni has argued along similar lines, pointing out that an idealised understanding of civil society becomes the more problematic when viewed against the actual structural, institutional and legal conditions (for example, ethnic divisions, corruption and cronyism, political fragmentation, the overarching powers of the international community, and so on) that have delimited in the years since the end of the war how Bosnian civic groups and organisations can work, a point also endorsed by Florian Bieber. In other words, 'the development of a properly functioning civil society is inextricably intertwined with the creation of a responsive, accountable, and transparent state structure'.^{xiii} We return to this issue later in the chapter when discussing the impact of the two Associations of Decertified Policemen on the statebuilding process in Bosnia.

One of the most common criticisms attracted by evaluations of the NGO sector in Bosnia is its huge dependence on external funds for its survival. To some extent, such dependence is not unreasonable given the economic precariousness of the country since the end of the war. It is undeniable that foreign funds have been crucial for keeping alive many of these NGOs. However, judging from evaluations of the NGO situation in Bosnia, this dependence has carried a high cost. It has led to a number of 'perverse' anomalies in the role, functioning and positioning of NGOs in Bosnian society. Florian Bieber describes this as a 'credibility gap' in relation to local NGOs vis-à-vis local constituencies.^{xiv} For instance, NGOs becoming more preoccupied with meeting the expectations of foreign donors than with prioritising the needs of the population, or those areas where there is capacity and willingness to establish governance partnerships with government offices and state agencies to continue with similar activities beyond the end of the project.^{xv} The latter type of activity

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is more conducive to developing sustainable, locally-owned processes of political, economic and social reconstruction. Vanessa Pupavac's analysis of international gender policies in Bosnia, for example, shows that women's NGOs reflect a pattern that has characterised other local NGOs; they are 'essentially oriented towards the international community and reliant on its continuing sponsorship for their survival, and they evidence a rather weak relation to the population [...] NGOs have failed to galvanise popular support among women and have moreover no formal accountability to the population, unlike elected representatives'.^{xvi} The alternative – dependence on public revenues from local authorities – can be equally problematic. According to the 2010 NGO Sustainability Index issued by the United States Agency for International Development (USAID), it seems that only politically non-threatening NGOs receive local financial support, a finding that begs the question of whether NGOs faced with decreasing funding from external donors might be forced to become 'para-state organisations'.^{xvii}

The apparent disconnect between NGOs and Bosnian society is explained – by many analysts – within a service provision approach encouraged by a pattern of foreign funding. The net result is NGOs that are technical, project-driven and apolitical, rather than advocacy actors engaged in mobilising the population according to non-nationalist political agendas.^{xviii} In this context, the approach of the European Union (EU) is considered problematic in prioritising the capacity of NGOs to organise and manage projects.^{xix} In addition to affecting the NGO-society relationship, this reality has impacted negatively on the Bosnian state. It has been pointed out that donors' emphasis on service provision has meant that NGOs have often substituted for the state (or market) in a range of socio-economic areas where state (or market) could not deliver. However necessary in the short-term, this has prompted accusations that the social contract between Bosnian citizens and the nascent post-conflict state has been undermined. Two reasons are given. Firstly, the 'siphoning' off valuable personnel attracted by the higher salaries and better working conditions in the NGO sector and, secondly, the 'appropriation' of key services and functions normally associated with the state (or market).^{xx}

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Nevertheless, there is evidence of a gradual attenuation of the effects arising from the problems discussed so far. Cynthia Simmons points to several ‘victories’ from 2000 onwards that – on the basis of citizens’ initiatives – have afforded some local NGOs a greater monitoring presence in municipal council meetings and, in the case of Tuzla Canton, at the parliamentary level. She refers also to their cumulated actions for electoral reform and the inclusion of courses on political consciousness into public school curricula.^{xxi} Similarly, the 2010 USAID NGO Sustainability Index finds evidence of NGOs’ capacity to interact and/or demand participation in decision making at the legislative level, due in part perhaps to the introduction of the 2006 rules on consultation during legislative drafting.^{xxii} However, the USAID report adds that this consultative and advocacy capacity is insufficiently developed and *ad hoc*. The report highlights the exclusion of NGOs from crucially important political decisions such as the 2009 Butmir constitutional process between Bosnian political elites and the international community.^{xxiii} NGOs also were unable to contribute to the Police Restructuring process (2004-2008), a major international effort to improve the transparency, accountability and cost-effectiveness of the police by tackling the fragmentation of the law enforcement system. This police process has been described as ‘top-down’, or as ‘seeking grand deals among party bosses behind closed doors’ with no meaningful room for the involvement of NGOs or any other civil society actors.^{xxiv} This is emblematic of a much wider trend in Bosnia of a generally limited involvement of civil society actors in police matters during both the UN and EU phases.^{xxv}

THE POLICE CERTIFICATION PROCESS

In the period 1996 to 2002 the UNMIBH Human Rights Office and IPTF conducted a countrywide screening of all Bosnian police officers. Those not meeting the criteria were ‘deauthorised’ (or decertified) from membership of the police ranks; that is, they received a lifetime bar on holding any position within the Bosnian law enforcement agencies. Against the background of significant police involvement with various aspects of the conduct of the war, the aim of this certification process was to assist the democratisation of law enforcement by removing any military and criminal elements and

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ensuring the police's professionalism and accountability.^{xxvi} This 'new' image of the police in a 'new' Bosnia was intended to bolster the process of reconciliation among communities and also between the state and society. The need for reform became clear during the immediate phases of the post-Dayton period when the police by and large continued to operate favouring their particular ethnic group, failing to respond to incidents of violence, intimidation and/or discrimination involving citizens from another ethnic group, or even perpetrating such acts.^{xxvii} There was also an economic rationale. In the aftermath of the war there were too many police officers. Some downsizing was required to achieve reasonable numbers that would be more representative of police-population ratios and financially sustainable over the long term for an impoverished Bosnian state.

The vetting process developed out of a range of agreements forged separately with the Federation of Bosnia and Herzegovina, Republika Srpska (RS) and Brčko District authorities, during 1996-98, and the gradually acquired institution building and restructuring powers of the UN presence in Bosnia. The UNMIBH/IPTF also had recourse to the Office of the High Representative (OHR)'s Bonn Powers in the effort to downsize the police force. The process was conducted in three stages, during which all police officers were checked against a range of criteria that constituted grounds for dismissal. The criteria included absence of valid education credentials and completion of UNMIBH/IPTF training, war crime convictions and criminal proceedings in the International Criminal Court for the former Yugoslavia (ICTY) or domestic courts, human rights violations prior to or during the screening process, violations of property laws, evidence of obstruction of IPTF policies and the responsibilities and obligations arising from the Dayton Peace Accords.^{xxviii} Local authorities, in theory, were obliged to take action upon receiving the recommendations on screened police officers issued by UNMIBH/IPTF, including, where necessary, commencement or continuation of criminal investigations based on domestic criminal codes and laws on internal affairs.^{xxix}

There are no precise data on the number of officers that were decertified. The final UN Security Council report on UNMIBH, published in December 2002, refers to 481 decertifications and 228 cases pending. The corresponding OHR figures are 687 with 37 cases pending, and the European Stability Initiative (ESI) evaluation of the process quotes 793 decertified officers including 150

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pending cases.^{xxx} Added to this, technical problems during the certification process have been used to call into question the reliability of the official Police Registry database where UNMIBH/IPTF stored the records and evidence required for the certification process.^{xxxi} The quality of this database is one of the possible explanations for the fact that, even after the vetting process was officially concluded, the ranks of Bosnian police forces still included officers who fitted the criteria for decertification.^{xxxii} There are still instances, even at the time of writing, of police officers investigated, arrested and/or prosecuted for war crimes and other crimes committed in the period prior to the police certification process.

Of course, given the sheer numbers of officers to be inspected (44,000 according to the UN) and difficulties during the data gathering stages, the certification process was bound to be a very complex endeavour, with room for misjudgements and error. There were also a number of operational difficulties that added to the already complex nature of the process, including lack of preparation of some IPTF officers for the investigative tasks, and under-utilisation of domestic (including civil society) actors in the data gathering stages. To this can be added the attempted politicisation of the process by local authorities, who used it sometimes to wage war against opposing political factions. However, the main source of contention surrounding the certification process is related to its structural shortcomings, which contravened the spirit and the letter of the UNMIBH/IPTF's assignment in Bosnia. Some police officers were decertified without explanation and unaware that they had been/were being investigated, or were denied the opportunity to appeal against the UNMIBH/IPTF charges (see below), or were in limbo with appeals unanswered when the UN mission departed. There were even more problematic cases of police officers that 'fell in the middle [...] did not show up in any list'.^{xxxiii} In other words, their names were not on the list of certified officers issued by the UNMIBH/IPTF to the police authorities, but they also had not received a notice of decertification. Because the certification process was not based on a Bosnian legal mechanism, but relied on UN Chapter VII authorisation, it was unclear how Bosnian law enforcement authorities should deal with this category of police officers, which left the final decision to their discretion.

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Starting in mid-2002, decertified police officers were given eight days (down from 14 in earlier stages of the process) from the date the final non-certification order became effective, within which to apply in writing for reconsideration of the order. If the request for reconsideration was accepted by the UNMBIH Appeals Commission (composed of UN personnel, but independent of the IPTF Commissioner), the corresponding Bosnian law enforcement agency's obligation to terminate the officer's employment was automatically suspended until further notice.^{xxxiv} Cases accepted for review were submitted to the IPTF Commissioner for reconsideration of his decision, but these were recommendations only and the Commissioner had the final word.^{xxxv} The decertified police officers were required to prepare their appeals without access to the IPTF files or other evidence, and could not appear either in person or through a representative to give evidence to the Appeals Commission. Certification decisions were being issued up to the last day of the UNMIBH/IPTF mandate (31 December 2002), evidence of the haste to complete the process, but resulting in there being no grace period for unfavourable decisions to be challenged.^{xxxvi} The incoming European Union Police Mission (EUPM) took the position that it could take no action in this area because of its very different mandate and responsibilities. Its view was that the certification process was over. However, the letters received by decertified police officers in December 2002 appear to have stated that in case of an appeal the applicant should contact UNMIBH/IPTF or EUPM.^{xxxvii} There are some very interesting questions to be asked about the agreement between UNMIBH/IPTF and EUPM on the follow-up to this issue. One such is regarding the fate of the official Police Registry database managed by UNMIBH/IPTF during the certification process. It is claimed that post-2002 there was no access to those UN records, which were taken to New York at the end of the Mission. However, it seems that, despite the EUPM's stated determination not to become involved in this matter, UNMIBH/IPTF left an 'unofficial' copy of the database with the EUPM. The database – albeit with amendments and updates – was used by EUPM from 2004 to 2009 as a source of background information for some of its policies (ethnic and gender recruitment, career progression policies, etc.) and for the downsizing process foreseen by the Police Restructuring Process (2004-2008). It was used also to monitor certain police appointments,

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sometimes at the request of the OHR, the EU-led military operation EUFOR Althea, and other international actors.^{xxxviii}

The August 2004 UN report on the rule of law and transitional justice mentions, crucially, that vetting of the police and prison services, the army and the judiciary, such as was carried out with UN assistance, should include elements that would distinguish the processes from ‘wholesale purges’. These ‘official’ vettings should include notification of the allegations against the parties under investigation with ‘reasonable notice’, provision of an opportunity to respond to or appeal against the allegations before the body carrying out the vetting process, and ‘the right to appeal an adverse decision’ in front of a court or any other independent body.^{xxxix} Also, drawing on lessons learnt from previous missions, this UN report highlighted that legitimate vetting processes must be respectful of the ‘sensitivities of victims and of the human rights of those suspected of abuses’.^{xl} These UN guidelines were issued over one and a half years after the end of the police certification process in Bosnia, but their marked contrast to the Bosnian case highlights the nature of the problem and questions the position adopted by the UN Security Council in the post-2002 period. This is not to say that all decertified police officers in Bosnia were innocent from the charges that led to their removal from the police ranks. Nor is one trying to underestimate the huge endeavour that providing every individual police officer with the right to recourse would have meant for the UN mission in Bosnia. It would have rendered a time-consuming and complex process even more difficult. However, adopting a *modus operandi* that denied individuals a ‘reasonable’ amount of time, and access to information, to gather the data necessary to contest any allegations, and the right to a fair trial, cast a shadow over the intended contribution of the vetting process to the development of democratic police forces.

THE ASSOCIATIONS OF DECERTIFIED POLICEMEN

Soon after UNMIBH/IPTF left Bosnia, a number of decertified police officers took their cases to the local courts (in March 2004 they numbered 150 and in 2006 were around 262).^{xli} More importantly (and notwithstanding the debate over whether these courts had jurisdiction on the matter),

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as early as 2003 some domestic courts had ruled that some decertified police officers should be reinstated into the police ranks. One of the arguments made at the time by these courts was that the dismissals were unlawful because Bosnian law did not include IPTF decisions as acceptable reasons for dismissal. Also, these courts pointed out that the police officers in question had not been given the right to seek legal remedy. The UN Security Council responded in June 2004 by calling on the Bosnian authorities to,

ensure, including through the adoption or amendment of domestic legislation, that all IPTF certification decisions be fully and effectively implemented, that employment of persons who were denied certification by IPTF be terminated, and that such persons be precluded from employment, either now or in the future, in any position within any law enforcement agency in BiH.^{xlii}

A variety of reasons have been offered to explain this response, including the potential impact of this episode on the sustainability of the UN reform period in Bosnia as a whole, and fears of setting a precedent that might affect similar questions related to other previous missions and might damage the UN's reputation. An alternative reading is to look at the possible bureaucratic and financial 'impulses' within the UN had a different position on this issue been taken.^{xliii} Regardless of what motivated this position, and even if UN Security Council Presidential statements are not legally binding, the Presidency of Bosnia and Herzegovina instructed all relevant authorities in the country to act in accordance with UNMIBH/IPTF certification decisions.^{xliv}

The Federation Association of Decertified Policemen and the RS Association of Decertified Policemen were founded respectively on 2 February 2004 and 31 January 2005. These two associations resembled in many ways pressure groups that mobilised to defend the rights of the 281 former police officers they represented. Their ultimate objective was a review of the UNMIBH/IPTF decisions and re-instatement of police officers judged unjustifiably disqualified. These associations conducted legal and political battles lobbying for policy change and gained increasing sympathy from

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the Bosnian public. Their efforts in Bosnia (mainly focused on Sarajevo) included a range of actions from peace protests, demonstrations and hunger strikes, to letters and petitions, media campaigns, meetings with international and Bosnian officials and the coordination of at least 157 applications to the European Court of Human Rights, according to European Stability Initiative data from 2007.^{xlv}

It would be farfetched to argue that the two Associations of Decertified Policemen, on their own, could have been successful in bringing about change. The OHR mainly, but also the Human Rights Commissioner of the Council of Europe, played significant mediating roles.^{xlvi} Nevertheless, these associations were important in providing the initial drive. Among their successes at national level was the decision in 2006 by the Bosnian authorities to form a State Commission to investigate the claims of those decertified police officers that had taken their cases to Bosnian courts. While being careful not to undermine the authority of the UN, the Bosnian state was nevertheless enacting its responsibility to protect the human rights of Bosnian citizens. However, from its inception, the State Commission came under intense pressure from the OHR and certain Peace Implementation Council members, on the basis of concerns about the impact it could have on the UN legacy in Bosnia and other reform processes (to which we turn later in the chapter).^{xlvii} Some local courts, the Ombudsman and the Human Rights Commission of the Constitutional Court of Bosnia and Herzegovina, joined in calls questioning whether the dismissals during the UN period complied with the provisions of the European Convention on Human Rights. Similar criticisms emerged at the European level. The Council of Europe's Venice Commission expressed concern about the lack of transparency and the integrity of the appeals system and recommended that the UN – not the Bosnian authorities – should set up an individual review process to look into the claims of the Associations of Decertified Policemen, without questioning the legitimacy of the whole process. This was supported by the then High Representative, Paddy Ashdown, but rejected by the UN. The Venice Commission emphasised that the certification process was for life and the socio-economic consequences for affected individuals were considerable (in terms of employment, but also reputation and standing in society especially if decertified on the grounds of war crimes or human rights violations). It 'freed' the

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Bosnian state from any blame stating that it was bound to implement the UNMIBH/IPTF decisions as part of the powers granted by the Dayton Accords and subsequent UN decisions.^{xlviii}

The cumulative effect of these critical voices forced the UN Security Council, in April 2007, to find a negotiated solution to their initial policy that UN decisions on this matter could not be challenged. The solution arrived at referred to ‘improvements in the legal standards and practices for the recruitment and selection of police officers within BiH^{xlix}’ and, thus, allowed officers denied certification to apply as new recruits (not to be reinstated) for police job vacancies in accordance with existing Bosnian police laws. The only other condition was that they disclose their decertified status in any application. There has been much debate over the ‘compromise’ implied in this decision, which does not call into question the validity of the decision-making process during the certification process, does not acknowledge UN wrongdoing and uses very conservative language, perhaps in order to avoid setting a precedent. Some Bosnian political authorities – namely the then Minister of Human Rights and Refugees – tried to contest the April 2007 UN decision and proposed reinstatement of all those officers, but this effort came to nothing. The response from members of the Associations of Decertified Policemen ranged from ‘optimism’ to what a long-standing observer of Bosnian affairs described as ‘cautious satisfaction’.^l There were also some whose response reportedly was immediate application for a police job, although the ongoing downsizing of the police forces to financially sustainable numbers casts some doubt – as pointed out by the European Stability Initiative – as to the number of vacancies that have become available since then.^{li}

The delay in implementing the UN decision overshadowed the importance of the abovementioned events and actions. Some commentators have blamed this on the confusion among Bosnian and international organisations about ‘how to effectively implement the new Security Council decision’.^{lii} The Associations of Decertified Policemen, therefore, continued to act although less intensively, by organising peace protests and hunger strikes with the support of the police trade unions, to demand from the OHR, but also EUPM, a prompt resolution of this new obstacle. For the OHR, the problem lay with the State, Entity, Canton and Brčko District authorities as responsible actors for the legislative changes required to accommodate the new UN position. The OHR believed that the two

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associations should be meeting with these Bosnian authorities.^{liii} Draft model amendments were nevertheless prepared by OHR and EUPM to assist local authorities with the implementation of the UN Security Council President's letter of April 2007, but it took over a year for the relevant authorities (with Republika Srpska taking longer) to complete the process.^{liv}

The Associations of Decertified Policemen played a role in the achievement of what had seemed impossible, forcing the UN to revise its position vis-à-vis an issue that had serious socio-economic repercussions for a specific group of Bosnian citizens. At the same time, not all the lessons from this story of civil society activism are positive. The manner in which the process evolved raises several still unanswered questions about the nature of the statebuilding process in Bosnia. Having the Bosnian authorities meet the original demands of the two Associations of Decertified Policemen (i.e. reinstatement of officers judged unjustifiably disqualified) could have further politicised police reform at a time when fresh attempts were being made to restructure Bosnia's police system (the 2004-2008 Police Restructuring Process). One cannot forget that there were instances, particularly in the early days, when local authorities did try to politicise the certification process in order to protect 'their own', while waging war against opposing political/ethnic factions. In other words, for reasons other than the goal of strengthening the statebuilding process in Bosnia. Accusations of political manipulation emerged as late as June 2008, from Raffi Gregorian, then Principal Deputy High Representative, who described as 'shameful' the attempt by politicians to feed false information about the OHR to these two Associations to mask 'their failure'. One could interpret 'their failure' as referring to the compromise solution offered by the UN Security Council or the difficulties in implementing the new policy.^{lv}

The activities of the two Associations of Decertified Policemen could have set a dangerous precedent and/or reinvigorated challenges to other areas of the international statebuilding project that were bringing much needed change to the country, but on the basis of a similar exercise of very extensive powers (i.e. OHR's Bonn Powers). In July 2006, Bosnia's Constitutional Court reached a judgement that the use of Bonn Powers whereby elected officials could be dismissed by the High Representative with no right to appeal, and with a consequent deprivation of a number of civic rights,

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went against the country's constitutional commitment to uphold the right of all persons in Bosnia to protection under the European Convention of Human Rights. The Court reminded all affected parties that Bosnia's international obligations to the OHR and UN 'cannot determine the constitutional rights of people who are within the jurisdiction of Bosnia and Herzegovina'.^{lvi} The Bosnian authorities faced a conundrum similar to the problems that surfaced during the certification process, of 'a collision course'^{lvii} involving either the Bosnian population or the international community. To return to the certification process, irrespective of whether the Bosnian legal and political institutions at the time had the capacity to review all contentious cases, solving the conundrum by curtailing the ability of those institutions to respond to the demands of the former police officers represented by the two associations (as well as others not members of these associations) may have satisfied claims about the country's international obligations and fears of unravelling the whole certification process.^{lviii} However, it raises important questions about the essence of the post-Dayton Bosnian state. It questions the legitimacy of the contractual relationship between state and society introduced by the international community. The Bosnian state showed limited capacity to fulfil the basic roles normally associated with 'stateness'. That is, to 'guarantee universal rights to its citizens, provide public goods, and implement coherent decisions despite potential competing interests'.^{lix} In fact, the activities of the two associations and the mediating role played primarily by the OHR but also the Council of Europe, rather than the actions of the Bosnian state, were crucial for obtaining concessions in New York.

CONCLUSION

It cannot be denied that the certification process was a much needed reform in post-Dayton Bosnia given the role of the police forces during the war and in the immediate post-settlement phases.^{lx} At the same time, the use of non-democratic means to achieve democratic progress within the institution of the police brought into play a number of 'disturbing dynamics' – to quote Marcus Cox – that were used by the two Associations of Decertified Policemen to mobilise legally and politically.^{lxi} From a civil society point of view, the Associations of Decertified Policemen are a case study with important

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lessons, even if the material interests that motivated their actions were very narrow in scope. These associations are a good example of the role that civil society activism can play as a form of external oversight to ensure transparency and accountability from decision makers, whether national or international, when wrongdoing is committed in the design and implementation of top-down policies. It illustrates also that despite the short-termism, 'projectmania'^{lxii} and service-orientation that seems to have predominated among NGOs in Bosnia, there is room for more engaged civil society actors in pursuit of inclusive and legitimate democratic reforms. At the same time, the fact that these associations were in some respects substituting for the state in defending the rights of a specific group of Bosnian citizens reveals 'uncomfortable truths' about the complexity of statebuilding in a context of a strong international presence and power, and weak local institutions. Describing the situation as a choice between 'human rights or the wishes of international bureaucrats'^{lxiii} may be an exaggerated description of the situation, but it does capture the dilemma during the certification process. The Bosnian state had a duty to respond to the needs of these citizens, but its exercise of that duty was hampered by the protectorate-style approach introduced since Dayton. This is what Bieber describes as the disempowering effects of overly interventionist methods.^{lxiv} At the same time, that very protectorate-style approach has shielded many of the much needed reforms from the politicisation that could ultimately undermine nascent institutions in Bosnia. There seem to have been no substantive repercussions for the legitimacy of the Bosnian state arising from the post-2002 police certification events - perhaps, in part, due to the small size of the affected group.^{lxv} Nevertheless, this episode of civil society activism raises important questions about the sustainability of the Bosnian statebuilding process as introduced by the international community.

NOTES

ⁱ 'Bosnia' is used throughout the chapter to refer to Bosnia and Herzegovina. The expression in the sub-title of the chapter is taken from R. Caplan (2005) 'Who Guards the Guardians? International Accountability in Bosnia', *International Peacekeeping*, 12 (3), pp. 463-76. The author is indebted to the editors of this volume and the anonymous reviewers, to participants in a seminar held in May

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ⁱⁱ M. Caparini (2004) *Civil Society and Democratic Oversight of the Security Sector: A Preliminary Investigation*, Working Paper 132 (Geneva: DCAF - permission to cite received from the institution and the author), p. 25.

ⁱⁱⁱ T. Edmunds (2007) *Security Sector Reform in Transforming Societies: Croatia, Serbia and Montenegro* (Manchester: Manchester University Press), pp. 33-4.

^{iv} Caplan (2005), op cit., p. 463-76.

^v For a detailed exploration of the meaning and impact of 'unintended consequences' in security governance see C. Daase and C. Friesendorf (eds) (2010) *Rethinking Security Governance: The Problem of Unintended Consequences* (London: Routledge). This volume focuses primarily on the gap between intentions and outcomes observed during the implementation of international policies.

^{vi} An explanation of the motivation for this NGO focus is beyond the scope of this chapter. For a discussion of this issue see R. Belloni (2001) 'Civil Society and Peacebuilding in Bosnia and Herzegovina', *Journal of Peace Research*, 38 (2), pp. 163-80; C. Simmons (2007) 'Women's Work and the Growth of Civil Society in Post-War Bosnia', *Nationalities Papers*, 35 (1), pp. 171-86; D. Chandler (1999) *Bosnia: Faking Democracy after Dayton* (London: Pluto Press), pp. 135-53; A. Fagan (2010) *Europe's Balkan Dilemma: Paths to Civil Society or State-Building?* (New York: I.B. Tauris), p. 1-17.

^{vii} USAID (2010) *The 2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia* 13th edition (Washington DC: USAID), p. 74.

^{viii} A. Fagan (2005) 'Civil Society in Bosnia Ten Years after Dayton', *International Peacekeeping*, 12 (3), p. 410.

^{ix} R. Belloni (2007) *State Building and International Intervention in Bosnia* (London: Routledge), p. 112.

^x Fagan (2005), op cit., p. 407. According to du Pont, OSCE support for civil society development in Bosnia was based on the assumption that, due in part to its universal citizenship, it would act as a 'counterforce' to nationalist authorities. Y. du Pont (2000) 'Democratisation through Supporting Civil Society in Bosnia and Herzegovina', *Helsinki Monitor*, 4, p. 8.

^{xi} An analysis of the motivations for this role attributed to civil society is beyond the scope of this chapter. Roberto Belloni relates them to failures in other international political, economic and social strategies. Belloni (2001), op cit.

^{xii} S. Sampson (2003) 'From Forms to Norms: Global Projects and Local Practices in the Balkan NGO Scene', *Journal of Human Rights*, 2 (3), p. 334.

^{xiii} Belloni (2001), op cit., p. 178. See also Chandler (1999), op cit., pp. 152-3; F. Bieber (2002) 'Aid Dependency in Bosnian Politics and Civil Society: Failures and Successes of Post-War Peacebuilding in Bosnia-Herzegovina', *Croatian International Relations Review*, January-June, p. 27.

^{xiv} Bieber (2002), op cit., p. 28.

^{xv} Fagan (2005), op cit., p. 417; Fagan (2010), op cit., pp. 77-110, 182-91.

^{xvi} V. Pupavac (2005) 'Empowering Women? An Assessment of International Gender Policies in Bosnia', *International Peacekeeping*, 12 (3), p. 397.

^{xvii} USAID (2010), op cit., p. 74. For similar observations on the relationship between NGOs and Bosnian authorities see du Pont (2000), op cit., p. 15; Fagan (2005), op cit.

^{xviii} Note here that civil society organisations can also become advocacy actors on nationalist platforms, reinforcing the existing situation.

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- ^{xix} A. Fagan (2008) 'Global-Local Linkage in the Western Balkans: The Politics of Environmental Capacity Building in Bosnia-Herzegovina', *Political Studies*, 56, p. 648; Fagan (2010), op cit., p.189.
- ^{xx} For a more detailed explanation see Fagan (2005), op cit., p. 409; Bieber (2002), op cit., pp. 27-8.
- ^{xxi} Simmons (2007), op cit., pp.176-7.
- ^{xxii} USAID (2010), op cit., p. 74, 78.
- ^{xxiii} Ibid.
- ^{xxiv} Centre for European Perspective and EUPM (2009) *Seminar on Police Reform in Bosnia and Herzegovina, Sarajevo, 4-6 June 2008* (Ljubljana: Centre for European Perspective), p. 23.
- ^{xxv} Anonymous interview with a senior member of a Bosnian civil society organisation, Sarajevo, September 2010. See also M. Fittipaldi (2006) *Security Sector Reform and the Media in Bosnia*, Sarajevo: Centre for Security Studies BiH, February; M. Merlingen and R. Ostrauskaite (2005) 'ESDP Police Missions: Meaning, Context and Operational Challenges', *European Foreign Affairs Review*, 10 (2), p. 232.
- ^{xxvi} For an elaboration of this point see G. Collantes-Celador (2005) 'Police Reform: Peacebuilding through "Democratic Policing"?', *International Peacekeeping*, 12 (3), p. 370.
- ^{xxvii} For examples see M. Berdal, G. Collantes-Celador and M. Zupcevic Buzadzic (2011) 'Post-war Violence in Bosnia' in M. Berdal and A. Suhrke (eds), *The Peace in Between: Post-War Violence and Peacebuilding*, London: Routledge, pp. 79-82, 87.
- ^{xxviii} UNMIBH/IPTF internal policy documents issued in the period 2000-2002.
- ^{xxix} For an elaboration of this point see Collantes-Celador (2005), op cit., p. 371; G.L. Naarden (2003) 'Nonprosecutorial Sanctions for Grave Violations of International Human Rights Law: Wartime Conduct of Bosnian Police Officials', *The American Journal of International Law*, 97 (2), pp. 342-52.
- ^{xxx} ESI (2007) *On Mount Olympus*, Berlin/Brussels/Istanbul, 10 February, executive summary; Council of Europe (Commissioner for Human Rights) (2006), *Issue of Decertified Police Officers in Bosnia and Herzegovina*, Special Mission to Bosnia and Herzegovina, Sarajevo, 20-22 December, para. 24; UN Security Council (2002), *Report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina*, Document No. S/2002/1314, New York, 2 December, paragraph 11.
- ^{xxxi} Anonymous interview with police expert, Sarajevo, September 2009.
- ^{xxxii} Other explanations include the narrow definition of 'police officer' adopted to decide who within law enforcement agencies had to be screened. Collantes-Celador (2005), op cit., p. 371.
- ^{xxxiii} Anonymous interview with police expert, Sarajevo, September 2009.
- ^{xxxiv} UNMIBH/IPTF internal policy document, 2002.
- ^{xxxv} According to Alexander Mayer-Rieckh the appeals panel was set up following a legal opinion from the UN's Office of Legal Affairs in New York. A. Mayer-Rieckh (2007), 'Vetting to Prevent Future Abuses: Reforming the Police, Courts and Prosecutor's Offices in Bosnia and Herzegovina' in A. Mayer-Rieckh and P. de Greiff (eds) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York: Social Science Research Council, p. 16.
- ^{xxxvi} Anonymous interview with police expert, Sarajevo, September 2009.
- ^{xxxvii} Ibid.
- ^{xxxviii} Anonymous interview with police expert, Sarajevo, September 2009; Anonymous phone interview with EUPM official, November 2011. The police personnel downsizing efforts in the post-UN period were independent from, and driven by a different set of motivations to, the certification process.
- ^{xxxix} UN Security Council (2004) *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies – Report of the Secretary-General*, Document No. S/2004/616, New York, 23 August, paragraphs 52-3.
- ^{xl} Ibid.
- ^{xli} ESI (2007), op cit., p. 16.

^{xlii} UN (2007), *Letter from Emyr Jones Parry, President of the Security Council, to His Excellency Mr Milos Prica, Permanent Representative of Bosnia and Herzegovina to the United Nations*, New York, 30 April, p. 1.

^{xliii} Anonymous interview with police expert, Sarajevo, September 2009.

^{xliv} ESI (2007), op cit., p. 22 and 24. Interestingly this ESI report notes that the police legislation at the time ended up going further than the original decertification sanctions by adding that those police officers could not work for or establish private security companies and could not stand for election (if their dismissal had been confirmed by the UN). The UN 2007 letter mentions that there is no prohibition on employment in private security companies

^{xlvi} Ibid, p. 27.

^{xlvii} Consult ESI's 2007 report *On Mount Olympus* (pp. 16-25) for a detailed account of the role played by former High Representative Paddy Ashdown. His successor, Christian Schwarz-Schilling, made it a priority during his time at the OHR.

^{xlviii} Ibid, pp. 28-30. The Peace Implementation Council comprises 55 countries and agencies that provide international support to the peace process, including political guidance to the OHR.

^{xlix} Council of Europe (2005) *Opinion on a Possible Solution to the Issue of Decertification of Police Officers in Bosnia and Herzegovina*, Opinion No. 326/2004, Adopted by the Venice Commission at its 64th Plenary Session, Strasbourg, 24 October; Council of Europe (2006), op cit.

^l UN (2007), op cit., pp. 1-2.

^{li} N. Ahmetasevic (2007) 'Sacked Police Hope for Justice at Last in Bosnia', *Balkan Insight*, 9 May.

^{lii} Ibid.

^{liii} *Balkan Insight* (2008) 'Sacked Bosnia Policemen End Hunger Strike', 23 June.

^{liv} OHR (2007), 'OHR Statement on Today's Demonstration by Police Officers who Failed to Secure Certification by the UN/IPTF', *Press Release*, Sarajevo, 10 December.

^{lv} OHR (2008) 'Protest in Front of a Wrong Address', *Press Release*, Sarajevo, 10 December.

^{lvi} OHR (2008) 'Manipulation of Former Police Officers Shameful', *Press Release*, Sarajevo, 12 June.

^{lvii} Constitutional Court of Bosnia and Herzegovina (2006) *Decision on Admissibility and Merits in the Case Milorad Bilbija and Dragan Kalinić*, Document No. AP-953/05, 8 July (published in mid-February 2007), paragraph 68.

^{lviii} ESI (2007) *Legal Dynamite: How a Bosnian Court may Bring Closer the End of the Bosnian Protectorate*, Berlin/Brussels/Istanbul, 12 March, p. 3. See also B. Topić (2007), 'Decertified Police Officers: A State Caught Between Human Rights and International Obligations', *Puls Demokratije*, 15 May, <http://www.pulsdemokratije.ba/index.php?a=print&l=en&id=385>, date accessed 19 June 2007. The removal from office of Bosnian officials using Bonn Powers is not necessarily permanent as High Representatives have in the past repealed the ban for those individuals where the reasons for removal no longer applied. An example of this is the repeal decision taken by High Representative Valentin Inzko on a number of banned Bosnian officials following Mladić's arrest and extradition to The Hague. Decisions to repeal bans have always been carefully worded to ensure they are not used to question the original removal decision, and are not interpreted as requiring compensation or restoration to the position held before the removal. Bosnian and international courts may nevertheless, as outlined by Matthew Parish, face 'several years [...] adjudicating compensation claims for breaches of the affected individuals' human rights'. M. Parish (2011) 'The Silent Passing of Europe's Proconsulship in Bosnia', *Balkan Insight*, 15 June.

^{lix} In this regard, as noted by the International Crisis Group (ICG), the international community has expressed concern over a law passed in Republika Srpska in July 2011. The RS Minister of Internal Affairs at the time Stanislav Čađo, claims that this law complies with the 2007 UN Security Council Presidential letter while EUPM officials fear that it will be used as a façade to 'quietly promote' police officers denied certification. ICG (2011) *Bosnia: What Does Republika Srpska Want?* Europe Report No. 214, 6 October, p. 10.

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^{lix} B. Bliesemann de Guevara (2011) 'Material Reproduction and Stateness in Bosnia and Herzegovina' in M. Pugh, N. Cooper and M. Turner (eds) *Whose Peace? Critical Perspectives on the Political Economy of Peacebuilding* (London: Palgrave), p. 375.

^{lx} This was emphasised by a senior Bosnian police official and a senior member of a Bosnian civil society organisation during anonymous interviews, Sarajevo, September 2009 and September 2010 respectively.

^{lxi} M. Cox (2003) 'Building Democracy from the Outside: The Dayton Agreement in Bosnia and Herzegovina' in S. Bastian and R. Luckham (eds) *Can Democracy be Designed? The Politics of Institutional Choice in Conflict-torn Societies* (London; New York: Zed Books), p. 272.

^{lxii} Simmons (2007), op cit., p. 174.

^{lxiii} Topić (2007), op cit.

^{lxiv} Bieber (2002), op cit., p. 25.

^{lxv} Anonymous interview with police expert, Sarajevo, September 2009.