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Governing through Crime Internationally? Bosnia and Herzegovina

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Abstract

The paper adapts and applies the governing through crime framework to analyse the EU and Office of the High Representative (OHR) as international governing actors in Bosnia and Herzegovina. Limited, ambiguous and opportunistic use of techniques associated with governing through crime are most evident in relation to OHR, but only as one of a wider range of governing logics, and are linked to specific challenges of legitimisation. The outward spread of criminal justice models and metaphors proposed by Simon is shown to be problematic in light of the breadth of activities that such a stance might admit to the framework.

Keywords

Governance, Bosnia and Herzegovina, International intervention, EU, Office of the High Representative, Legitimacy

Introduction¹

This paper explores the merit of adapting a criminological framework to analyse international intervention in Bosnia and Herzegovina (BiH). *Governing through Crime* (Simon 2007) is a key reference point in contemporary criminology. It has been adapted in analyses of the extent to which migration, anti-social behaviour and corruption are used to develop new forms and opportunities for governing (Bosworth and Guild 2008; Crawford 2009; Dorn 2009) and has been identified in the UK (Waiton 2009), the EU (Baker 2010), and the international system (Findlay 2008). I

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employ Simon's framework to examine the extent to which international actors in BiH govern through crime. Drawing on documentary analysis and interviews² to focus on the EU and the Office of the High Representative (OHR), I explore the possibility of international governance of *a state* through crime. The paper outlines how Simon's framework is adapted and applied, describes the local context of governance in BiH, and examines the two international bodies in turn.

This is not a review of how international and local actors govern crime. Rather, by exploring particular moments of governing action I examine if and how claims of acting against crime may be used as a tool to govern and to secure legitimacy in a context where it is contested. In this enterprise I am mindful of Simon's concern for democracy. Fuelling a culture of fear and control, governing through crime supports actions neither proximate nor proportionate to crime threats, narrows the framework through which governing actors interpret citizens' needs, undermines legislative scrutiny and challenges core democratic values of liberty and equality (Simon 2007: 3-7; 267). As BiH rebuilds and consolidates democracy, early steps on this path may have a lasting impact on longer term democratic outcomes. I find only limited evidence of governing through crime, which is often ambiguous or opportunistic. Thus while international actors have used crime scandals to pursue wider political objectives in BiH, this does not evidence the harmful narrowing of the governing framework akin to Simon's observations in the US. I also argue that acknowledging and developing an implicit and reductive focus on criminal justice logics as punitive brings greater analytic precision to the framework, regardless of the context in which it is employed.

Governing through Crime, Governing States through Crime

Simon describes the construction of 'a new civil and political order structured around the problem of violent crime' (2007: 3) in contemporary America. The risk of crime, specifically *violent* crime, serves as a structuring factor through which policy is conceived, implemented and legitimated, and underpins the exercise of authority. Three strands bring together a cluster of activities and practices that characterise governing through crime:

- S1. Governing actors claim to act legitimately when acting against crime as they act on behalf of the victim. The victim becomes a ‘symbolic citizen’, representing the needs of the wider public.
- S2. This legitimacy is politically attractive and is used to cover more contentious political goals.
- S3. ‘[T]echnologies, discourses and metaphors of crime and criminal justice’ spill-over and are adopted in other areas of governing.

(Simon 2007: 4-5).

From being one social problem among many, crime becomes the dominant challenge and a model for understanding other problems. In America this mode of governing is apparent in various ways: the increasing salience of crime and punishment in elections; increased legislative activity around criminal justice matters; and rising rates of incarceration.

Neither Simon, nor those using his analytical framework, consistently maintain the focus on violent crime. For example, he draws on accusations of drug use in custody disputes and terminations of public housing tenancies (Simon 2007: 191, 194). Baker does not specify the nature of the victim or quasi-victim in her analysis of the EU (2010: 196-199). Yet the lack of ambiguity in violence may prove central to claims to legitimacy when governing through crime. Boutellier’s concept of *victimalisation* (2000) stresses the importance of victims in legitimating criminal justice institutions and procedures. In a pluralistic society with weak markers of common identity, a sense of shared vulnerability provides a basis for public morality and the suffering victim becomes a “legitimising metaphor of criminal law” (Boutellier 2000: 15, 45). Boutellier draws on Braithwaite’s work, distinguishing predatory from non-predatory crimes. The unequivocally ‘clear damage’ of the former mobilises communities (Boutellier 2000: 46). This is equally apparent in Pratt’s analysis of narratives supporting populist punitiveness in New Zealand (2008: 368). In the examples presented in this paper, victimisation is often contested or ambiguous suggesting a diversion from the core of Simon’s analysis.

Adapting the framework

Although Simon's focus is the internal governance of America, and the governance of individuals, he does suggest that this model of governing has a global reach (2007: 265-266). I explore whether the rationalities and practices bound up in the phrase 'governing through crime' can apply to the governance of recently democratised or post-conflict states that are prone to external governing interventions. BiH is a clear example of such a state and has experienced extensive and intensive international intervention and supervision since the end of the conflict in 1995 (e.g. Chandler 2000; Ebner 2004; Dahlman and Ó Tuathail 2005; Jeffrey 2006; [AUTHOR] 2011). The application of the framework in BiH requires some justification. Firstly, as noted, the developments traced by Simon have already been identified in modified contexts elsewhere, including international settings (Baker 2010; Findlay 2008). The specific states (Waiton 2009), regional bodies (Baker 2010) and more loosely defined alliances (Findlay 2008) in which this approach to governing has been identified also play an important role in the international governance of BiH. Further, Simon's work fits into a broader set of criminological studies concerned with crises of legitimacy and authority (see McAra 2005: 283). Although these narratives have generally been developed with state authority in mind, international actors in BiH face their own challenges in maintaining legitimacy (Chandler 2000; Knaus and Martin 2003; Republika Srpska Government 2010). By looking at a specific site where international actors have been engaged over a period of time, this project hopes to circumvent the challenge inherent in Findlay's attempt to develop an account of global governance through crime (2008) which employed a level of analysis whereby the 'tangible signs of significant institutional integration' were not clearly evident (Papanicolaou and Antonopoulos 2009: 430).

The paper focuses primarily, but not exclusively, on the period from 2002 to 2006. This coincides with Paddy Ashdown's period as High Representative, a phase of heightened activity on the part of OHR ([AUTHOR] 2011: 51, Fig. 2.2) and involving negotiations on the Stabilisation and Association Agreement (SAA) between BiH and the EU. In this period there is prima-facie evidence of external interventions drawing on crime-based legitimations: the High Representative highlights criminal activity in various policy sectors while pursuing reform; EU officials highlight crime risks

presented by BiH to the EU; police reconstruction features, sometimes as a stumbling block, in pre-accession negotiations with the EU. This paper looks at these in greater detail and examines a wider set of policy areas for evidence of governing through crime.

The project required a conceptual leap: Simon focuses on crime and the regulation of 'the self-governing activity of *people*' (2007: 16, emphasis added); While governing is still taken as action structuring others' fields of possible action (Foucault, 2000: 341), the target is a state rather than the citizen and that state's conduct in relation to its own citizens and other states. The state is understood as a 'centre of the exercise of political power' (Poulantzas 1973: 115) through its function of organising and providing a framework for a number of institutions. However Burke-White's plea to disaggregate the state analytically (2005: 564) is central given the fragmentation of BiH described below. This allows the exploration of contradictory interests and actions and makes visible the interaction of international governing action with the domestic political contestation that is a strong feature of post-conflict states. The conceptual leap is not so big given that Simon uses governing through crime to explain the restructuring of the US state (2007, especially chapter 2); likewise, Baker uses Simon's framework to examine shifts in power between the Commission, Council and member states of the EU (2010: 203 ff). I propose three aspects of governing states through external intervention, of which the second two, G₂ and G₃, particularly inform my subsequent analysis³:

G1.Actions structuring, limiting or encouraging particular actions, or ways of acting, upon its own citizens, by a state.

G2.Actions structuring relations within a state, between, for example, central and sub-national units of government.

G3.Actions structuring a state's interactions with other states.

Governing actions may cut across these categories. For example, the European Commission sought one state-level ministry which could act as sole interlocutor on internal security in place of two entity-level governments, ten cantonal-level governments and the government of Brčko District. This attempt to shape the way in

which BiH relates to the EU (G_3 , above) also affects relationships between state-level and sub-state government in BiH (G_2).

Simon's objectives are partly polemical and normative (2007: 4, 6), his examples are open to argument, and his assertions can be 'difficult to test decisively' (2007: 5). Where he draws out indicators of governing through crime, many are difficult to transpose onto the context of international actors. From the three strands of governing through crime identified earlier (S_1 - S_3), I develop corresponding hypotheses of how governing through crime might manifest itself in an international context.

H1.If action against crime is seen as legitimate, international agencies will emphasise activities undertaken against crime to secure legitimacy.

H2.If acting against crime masks and legitimates action pursuing more contentious ends, international agencies will link controversial policy goals to crime risks.

H3.If crime is a model problem and criminal justice provides model solutions, a punitive criminal justice model will be evident in non-criminal justice contexts and policy problems will be cast in terms of crime. Punitive approaches will be taken to non-compliance among state-actors.

In what follows, I sketch out the domestic and international governing arrangements in BiH, before going on to analyse interventions on the part of the EU and OHR.

The Context of Governing: Bosnia and Herzegovina and International Intervention

The Bosnian constitution was established as part of a wider peace settlement (*GFAP* 1995) which gave certain powers to state-level institutions, but reserved most, including defence, policing and justice, for two entities: the unitary Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), itself divided into ten cantons. Post-war arbitration between the entities created a further special district in Brčko (Jeffrey 2006). The result is a complex of governments made up of 147 ministries, around one for every 23,000 to 29,000 people ([AUTHOR] 2011: 45). Antagonism and competition exist over competence, most notably between RS and state-level governments, and between cantons and the FBiH government. Common

institutions at state level are described as a ‘thin roof’ (Dahlman and Ó Tuathail 2005: 577) and any ‘thickening’ of the central state in BiH⁴ is a source of tension.

The settlement provided for an International *High Representative* to ‘facilitate the Parties’ own efforts and to mobilise and coordinate organisations and agencies involved in the civilian aspects of the peace settlement’ (GFAP 1995: annex 10). This figure is ‘the final authority’ on interpreting civilian implementation of the peace settlement. The office draws its authority from the peace settlement, the United Nations Security Council (UNSC), and a Peace Implementation Council (PIC). Since 1995, through seven High Representatives, the mandate and the way in which it is interpreted has shifted considerably, most notably between 1997 and 1998. The High Representative was initially limited to giving recommendations to domestic authorities (UNSC 1996). In 1997, the PIC, meeting in Bonn, welcomed High Representative Carlos Westendorp’s intention ‘to make binding decisions’, particularly where domestic parties failed to reach agreement. It was agreed that he may take ‘other measures to ensure the implementation of the Peace Agreement... [including] actions against persons holding public office’ (PIC 1997). These conclusions were supported in the Security Council and reaffirmed the following year (UNSC 1997, 1998). These ‘Bonn powers’ (see Ebner 2004) underpin decisions in defence reform and the removal of public officials explored below.

The OHR coordinates mainstream agencies implementing civilian aspects of the peace settlement⁵. Further agencies cooperate closely with OHR and thus it is central to political decision making in BiH. The concentration of power in one body, unaccountable to the people of BiH and beyond the reach of conventional mechanisms of judicial review, is controversial (Dorn 2009: 248). Chandler has long been concerned over the limited role of Bosnian politicians in the legislative process, describing the country as ‘a parody of democratisation’ (2000: 204). His later work continues this theme, identifying the problematic dissociation of law from local political processes of consensus building (2004: 578), a tendency for international actors to avoid openly stating controversial policy goals (2010: 80), and to criminalise opposition (2004: 586). Taken together these latter concerns point in a similar, if not identical, direction to Simon’s concerns in the US.

Before examining OHR in relation to the governing through crime framework, I analyse EU activity. Since the peace agreement of 1995, the possibility of EU membership has been extended to BiH, something reinforced at Thessaloniki in 2003. Already a key player through contributions to the OHR, the EU has become increasingly important in governing BiH and the ‘pull’ of Brussels is contrasted to the ‘push’ of the OHR’s Bonn powers (Commission of the European Communities 2003: 11). Internationally-sponsored reform in the field of criminal justice has been intensive and extensive, including major overhauls of personnel in policing and courts, new police institutions established at the state level, involving new ministries, and a new adversarial criminal procedure ([AUTHOR] 2011). This supports a conclusion that there is a strong emphasis on crime and criminal justice amongst the international community, but this in itself is not enough to support a claim that they govern through crime. The following section takes a more detailed look at whether the EU seeks to take advantage of the legitimating function of action against crime. Four areas are explored: the EU Police Mission (EUPM); the EU military force (EUFOR); pre-accession processes; and functional reviews of government.

The European Union and Governing through Crime

EU Police Mission

The EUPM monitors police in BiH, with the objective of establishing ‘a sustainable, professional and multiethnic police service operating in accordance with best European and international standards’ (EUPM 2008). The mission enjoys a high profile, participates in regular press briefings in BiH, produces a regular newsletter, and was the subject of press features outside BiH, particularly when its mandate began or was renewed. This alone is not evidence of a disproportionate focus on crime and criminal justice and so needs to be placed in the context of a wider range of EU activities.

EUFOR

The EUFOR military mission succeeds those of NATO and the UN (see UNSC 1995, 1996, 2004) and aims to contribute to a safe and secure environment and to prevent a resumption of violence (EUFOR undated). Although all missions were authorised in

terms of the military annexes of the Dayton Peace Agreement, EUFOR has undertaken crime-oriented activities including pursuing and detaining persons indicted for war crimes (PIFWCs), confiscating illegal weapons and targeting organised crime, including smuggling and illegal logging. If acting against crime is a privileged source of legitimacy, H₁ suggests EUFOR would emphasise this work.

From 2005 to 2007, EUFOR participated in 104 joint press conferences organised by OHR and contributed either a prepared statement or responded to questions in 52⁵. Table 1 breaks down EUFOR-specific content, highlighting crime-oriented topics. This shows variation from year to year: while issues around organised crime, terrorism, drugs and EUFOR support to police make up thirty per cent of topics covered in 2005, they barely feature in 2006 and not at all in 2007. Weapons harvests account for only eight per cent of identified topics in 2005, but over forty in 2006. The three ‘crime’ categories account for a majority of reports in 2005 (57 per cent) and 2006 (68 per cent) but hardly register in 2007 (five per cent), when most statements focus on reductions in EUFOR numbers.

Table 1. EUFOR Contributions to Joint Press Conferences 2005-2007

	2005	2006	2007	Total
Briefings attended/contributed to	43/25	33/12	28/15	104/52
EUFOR deployment, command and senior visits	6	0	11	17
Organised crime, terrorism, drugs and police support	11	2	0	13
Weapons harvest, seizure or destruction	3	7	1	11
Other	4	1	5	10
Persons Indicted for War Crimes	7	2	0	9
Domestic military	3	3	1	7
Charitable, public and reconstruction activities	3	1	1	5

The predominance of crime topics in 2005 and 2006 might suggest that EUFOR sought to legitimate their presence through their role in tackling crime in line with H₁. However, a closer reading of the documents shows that crime risks are not at the forefront of how EUFOR present their activities. Rather than linking them to

organised or violent crime, EUFOR often describe illegally held weapons targeted in 'harvesting' operations as 'life threatening hazards' or the likely source of accidents if discovered by children (17 October 2006, 7 and 28 November 2006). Moreover, where crime and victimisation are contested, basing legitimacy on action against crime and criminals is precarious. In contrast, operations to find and arrest PIFWCs are presented as being under the leadership of *local* authorities. When a EUFOR spokesperson responded to a press question with a blunt assessment of domestic activity against PIFWCs, comparing arrests as 'NATO 29 – Republika Srpska 0', he swiftly reemphasised that international forces were there to support domestic authorities:

Sorry, and obviously the other point for you to bear in mind of course is that the onus for capturing the war criminals lies with the Bosnian and Herzegovina authorities, in particular [Republika Srpska]. You know, we're here in a supportive role.

(8 March 2005, see also 11 October 2005)

EUFOR has not sought to legitimate their presence in BiH through their framing of the problem of crime. Other sources are used, including a broader concept of public safety, while the locally contested understanding of PIFWCs illustrates that action targeting particular criminals risks undermining legitimacy. A European Commission employee also suggested that EU agencies would be aware of various audiences in terms of securing legitimacy, speculating over likely negative responses from the UK press to EU funded soldiers pursuing illegal loggers in BiH (*Interview a*).

EU accession

Crime risks are mobilised in the Commission's work supporting BiH's aspirations towards EU membership, particularly regarding a push for consolidated policing in BiH under a state-level ministry and associated constitutional changes ([AUTHOR] 2011: chapter 4). The following quotations illustrate the type of risks highlighted:

Drug traffickers have exploited BiH's (now less) porous borders, divided legal jurisdictions and weak customs controls. They have used BiH mainly as a country of transit to Western Europe. (Commission of the European Communities 2003: 3.6.4)

... if BiH is not able to tackle crime effectively, that has a bearing on crime elsewhere in Europe, including within the EU... the current policing structure is not effective in combating those sorts of crime prone to cross borders and spread throughout Europe. (Chris Patten, letter to PRC, 2004, Reproduced in PRC 2005: Appendix 2)

... criminals are using the cracks in the policing management system to smuggle drugs, guns and people through BiH into the EU. We have the same reports on the explosions and gang killings across BiH and the increasing presence of drugs testify to the danger this represents both to Europe's cities and to BiH's citizens. (Javier Solana, in Numanović 2004)

Solana goes on to say that resolving these issues requires constitutional change when he notes that the Police Restructuring Commission (PRC) should not 'hide behind the current constitution' and that if need be they should recommend amendments to the constitution, representing a chance for BiH to 'break free from political restraints'.

The proposed solution to these crime risks, as much risks to the EU as to BiH, is a unified structure of policing under a state-level ministry. This contentious aim was supported by OHR through a radio and television campaign and public meetings throughout the summer of 2005 (OHR 2005). Were this simply a matter of more effective policing, it might be described as governing crime. What creates the possibility that this is a manifestation of governing *through* crime is the linking of crime fighting capacity to larger questions of the structure of the Bosnian state. Indeed, an OHR spokesperson was clear that the reform was a matter of differentiating the state from the entities:

It's [policing] at the heart of what the state's for. State and entity are two different things, and this is what Paddy's [the High Representative] been trying to get across. (*Interview b*)

The example suggests the legitimating power of acting against crime is used to support the contentious end of centralisation (H₂, G₂). Yet this interpretation relies on isolating substantive and structural goals. As the quotation below, from a manager at the EC delegation in BiH, shows, it is possible to pursue a substantive anti-crime goal and a structural project of institutional realignment simultaneously. Untangling and isolating the multiple ends in any governing act, or linked series of governing acts, to

suggest that one is the true objective is neither easy nor reflective of a governing actor's complex motivations:

From the Commission's point of view, we need a single interlocutor; I mean, for ourselves... [we] would never want to sit around the same table with the entities or the Cantons. We want a single person who we know can commit the country... as the situation stands now, we know that the Minister of Security is not in a position legally to commit the country... we feel that this fragmentation of competence when it comes to law enforcement actually hampers the police, and as you know there is a 'spill over effect' when it comes to organised crime... So these would be primarily the two reasons: one institutional/practical, if you wish, and the second substantial in terms of efficiency of the structures in the country. (*Interview c*)

In criminal justice, as elsewhere, the Commission seeks coherent state structures which allow a particular form of interaction with potential member states (G₃). As noted in an analysis of penal reform in BiH, the relationship of state-level government to entities and cantons blocks the translation of international obligations into action at the competent level of government ([AUTHOR] 2010: 87). Simultaneously, the structural fragmentation underlying this problem is seen as creating inefficiencies, blocking effective action against crime. In public discourse, the second substantive element is emphasised over the former structural one, suggesting that substantive crime-related justifications better convince particular audiences. This may be taken as evidence of governing through crime, but could equally suggest that governing actors prefer to present their activities in terms of substantive objectives, whether crime-related or otherwise.

So far I have presented explicitly crime-focused activities of the EU. Next, I examine EU activities in other policy sectors for evidence of a focus on crime risks. This is done in two stages: firstly, by examining the Commission's study on BiH's preparedness for a Stabilisation and Association Agreement (Commission of the European Communities 2003); secondly by looking at Commission reviews of sectors of policy where crime risks are credible, it is possible to see if the EU focuses on those risks at the expense of others.

The 2003 study on BiH's readiness to embark on a Stability and Association Agreement (SAA) followed a 'Road Map' produced in 2000 outlining the steps preceding eventual SAA negotiations. The Road Map covered 18 priorities across three fields derived from the *Copenhagen Criteria* for EU membership: political, economic, and democracy, human rights and rule of law (European Union 2000). Criminal justice reform features in the Road Map, through calls for the implementation of a law on the State Border Service and the implementation of laws on judicial, prosecutorial and court services. The 2003 study (Commission of the European Communities 2003) follows the Road Map and *Copenhagen Criteria* in handling political and economic readiness and the readiness of the country to meet the responsibilities arising from an SAA. The latter covers eight headings and a general evaluation, including obligations in the field of Justice and Home Affairs which occupy around a fifth of the section⁷. Nonetheless, this remains limited to one subsection, and the imperatives for reform, reconstruction and restructuring elsewhere in the report are most frequently put in *economic* terms, reflecting the EU's origins as an economic community (see also Baker 2010).

Functional reviews

The EU also conducted or commissioned a series of reviews of policy sectors in BiH, including agriculture, education, the environment, health, justice, police, and refugee returns. Outside those sectors directly concerned with criminal justice, there is a case for exploring EU mobilisation of a number of crime risks in the field of return of refugees and displaced persons (e.g. corruption, ethno-political bias and intimidation preventing returns)⁸, and in the environmental sector in the form of illegal logging. Yet neither of the relevant reviews raise the issue of crime (Agriconsulting 2005; FRR Team 2005).

Thus, while there is some evidence that crime risks are mobilised in support of a controversial programme of institutional realignment, it is not clear whether this is due to the legitimating factor of crime or the perceived merits of substantive over institutional goals in communicating particular policy programmes (*contra* H₂). Moreover, as might be expected given the relatively slight section of the Union *acquis* handling criminal justice matters, EU activities in BiH cover a spectrum of policy

sectors, and risks from crime and criminality are not a strong focal point in these (again, *contra* H₁).

The Office of the High Representative

This section presents evidence of OHR marshalling the legitimating potential of acting against crime in the areas of military restructuring, privatisation and taxation, suggesting opportunistic use of crime threats in governing. It then moves on to dismissals of public officials under the Bonn powers, in light of Simon's discussion of punitive techniques in the workplace (2007: chapter 8). I argue that to characterise these as governing through crime highlights problems at the limits of the interpretive framework.

Military Restructuring, Privatisation and Taxation

The 'thin roof' of post-war state-level government in BiH did not extend to defence and each entity retained its own armed forces. The Constitution (*GFAP* 1995: annex 4) handles defence in a slightly muddy fashion. Article 3.1 lists state-level responsibilities and excludes defence. All areas not listed in 3.1 are reserved for the entities by article 3.3(1). Yet outlining the role of the three member state-level Presidency, it states:

Each member of the Presidency shall, by virtue of the office, have civilian command over armed forces. (Article 5.5a)

In the context of the Presidency, each member representing one of three main constituent peoples of BiH, command rests with 'each member', not the collective body, and control is over 'armed forces', not *the* armed forces⁹. The two armies remained under entity control, with further fragmentation in FBiH. The armed forces have since been unified under a state-level Ministry, part of a progressive thickening of the central state. Two incidents suggest that the controversial restructuring programme to bring the entity armies under state-level control (as per G₂) sought legitimacy from tackling crime: The *Orao Affair* and revelations of Army of Republika Srpska (VRS) support to Ratko Mladić.

In October 2002, a NATO raid on an RS government-controlled armaments firm, Orao, found they had provided parts and assistance to Iraq, contravening a UN embargo. Paddy Ashdown, High Representative at that time, later wrote:

We knew at once that this would give us the opportunity I had been looking for to try to push through defence reform in order to abolish the two opposing entity armies and create a single entity army under state control...

... On 29 October I flew to Brussels to see George Robertson [Secretary General of NATO]... to tell him that I intended to use this scandal to initiate a complete reform of the defence structures in Bosnia... He agreed and issued some strong statements about the seriousness of the Orao affair. (2007: 248-250)

Speaking before the EU Political and Security Committee and the North Atlantic Council, Ashdown is less explicit about planned reforms, highlighting strengthened civilian control of the army and a state-level Committee on Military Matters (OHR 2002). Publicly, the plan to abolish the entity armies was played down. Ashdown describes the reform as a slow process, held up by his reluctance to remove Mirko Šarović, President of RS, for fear of generating ill will among predominantly Serb-parties and their supporters. President Šarović was ultimately convinced of the benefits of resigning rather than being removed¹⁰ and a Defence Reform Commission was subsequently established in May 2003 by Ashdown, who refers explicitly to the Orao affair in his justificatory preamble. The decision cites the Peace Implementation Committee's call, in relation to Orao, for, 'appropriate measures, taking into consideration the issues of systemic reform and political responsibility... essential to prevent such a situation occurring again' (OHR 2003). The principles informing the commission's initial mandate maintain entity oversight, but seek to secure command and control at state-level. There is no appeal to a victim as such here, rather to BiH's damaged reputation, and the crime is not one of violence, at least in the most immediate sense.

Subsequently, in November 2004, military files were published indicating that Ratko Mladić, indicted by the International Criminal Tribunal for Yugoslavia (ICTY), was employed by VRS until 2002, when he was officially discharged by Mirko Šarović. Further revelations pointed towards continued VRS support for Mladić, including the

provision of shelter at military facilities, contravening domestic criminal law and constitutional obligations. OHR condemned the ‘systematic connivance of high-ranking members of the RS military’ and noted that measures to tackle such systematic deficiencies were under consideration (OHR 2004a). According to Ashdown, this was used to ‘strengthen and accelerate state control of the armed services’ (Ashdown 2007: 294).

The events were closely followed by an extension of the commission’s mandate to develop legislation to transfer competencies from entity-level ministries of defence to common institutions (OHR 2004c). The two crimes of illegal trading in military equipment and expertise, and assisting a PIFWIC, were not the only driving force behind military integration. Possible NATO membership and commitments arising from OSCE membership are important factors. Nonetheless, the two moments when existing military structures could be linked to criminality saw the restructuring agenda pushed forward through OHR decisions. The example supports a hypothesis of governing, in part, through crime, but the capacity to tie other governing objectives to crime fighting (as per H₂) is simply one tool among others, employed here in an opportunistic fashion.

Similar evidence of the opportunistic use of crime risks to pursue wider objectives can be seen in proposed state-level structures for VAT and customs and the privatisation of state-owned utilities. Ashdown reports finding ‘a network of corruption even wider and deeper than [he] had imagined’ in an audit of state utility firms, but ‘wanted to drop this bombshell at the best time for maximum effect in the context of *our struggles* with the Republika Srpska on VAT and Customs’ (Ashdown 2007: 266, emphasis added). He goes on:

We used this report... to insist on the removal of corrupt managers and the cleaning-up of the system, so weakening the nationalist political structures in the area, accelerating the process of creating a single state framework for electricity generation in Bosnia and moving this towards privatisation. Indeed, these audits gave us crucial leverage to push forward the whole process of economic reform at a faster pace... pushing privatisation across the whole economy. (Ashdown 2007: 274)

OHR Dismissals

In the penultimate chapter of *Governing through Crime*, Simon analyses governance in the workplace. The controversial use of Bonn powers to dismiss officials mirrors the use of dismissal as a punitive management technique (2007: 236). Following PIC endorsement of the Bonn powers (PIC 1997: XI, 2), Pero Raguž was removed from mayoral office in Stolac in March 1998 (OHR 1998). Since then, Bonn powers have been used to remove or suspend over 170 individuals from public, elected or party political office, accounting for around 28 per cent of all decisions made by OHR¹¹. Often this has involved accusations of corruption, although as Dorn notes this is rarely accompanied by criminal or civil proceedings (2010: 296, 300-301). Most recent emphasis has been on rehabilitating those banned from public office, although powers of removal were used in 2008 and 2009 (OHR 2008, 2009a, 2009b). Removals impact all levels of political life in BiH from municipal housing offices to state presidency and have covered civil servants, elected politicians and managers in public enterprises (Ebner 2004). Removals peaked in 2004, when 75 individuals were removed from office within the space of a few days, mainly on account of evidence held by OHR regarding support for Radovan Karadžić.

Locating dismissals as an aspect of governing through crime depends on interpreting these actions in terms of S_3 and H_3 , whereby the logic of a criminal justice paradigm is employed in other contexts. Simon describes the growth of dismissal as the 'ultimate sanction' (2007: 234) as a 'penal' element in the governance of American labour, accompanied by workplace surveillance to detect illegal behaviour, managerial concern with the risk from potentially violent employees, and the use of civil law remedies in ways which 'closely parallel criminal law' (2007: 236-38). OHR dismissals lack this broader context, leaving punitive aspects of the decisions as the only link to the framework of governing through crime. These should not be minimised. The decision to remove has been accompanied with a bar on holding any public, political or elected office until lifted by the High Representative (for example, OHR 2008). While recognising that dismissal from a job can be interpreted as punitive, this is not sufficient evidence of criminal justice logics defining the High Representative's relationship with public officials in BiH as anticipated by H_3 . The solid foundation for assessing the intention behind the act as punitive is absent, for

example, from the *Decision* to remove Predrag Čeranić, which was justified in terms of prevention rather than punishment (OHR 2008). Criminal justice employs range of strategies beyond the punitive, and so showing the colonisation of other areas of governing by criminal justice logics and metaphors could draw on any of a diverse range operating within the field, whether rehabilitative, incapacitative, restorative, deterrent or punitive. Without clearer specification, this third aspect of governing through crime leaves the framework open to stretching. The reductive aspect to governing through crime strategies whereby the focus falls on the primarily punitive elements ‘most connected to its [i.e. crime control’s] core meanings’ (Jonathan Simon, personal correspondence, 8 March 2011) is implicit in Simon’s book and demands more explicit attention and explanation.

Discussion: Governing the State of Bosnia and Herzegovina through Crime?

Applying an adapted framework of governing through crime to international agencies in BiH has produced findings which are largely negative. The EU does not widely deploy crime risks to legitimate its activities in BiH and there are credible alternative interpretations where the EU uses substantive goals to justify structural change. Where the High Representative uses evidence of criminality to support contentious goals, this appears opportunistic, rather than systematic, and is employed alongside other tools including membership obligations, incentives and the use of Commissions sitting outside the normal domestic political structures. The opportunistic use of crime emerges in a context of general challenges to OHR legitimacy which are less relevant to the EU (e.g. Knaus and Martin 2003)¹² and more specific resistance to actions which threaten the autonomy of the entities and the resources of political parties.

Placing the nature of the crimes identified, opportunistically, by the High Representative alongside the violent crime, with which Simon’s analysis begins, and from the unambiguous suffering suggested by Boutellier, Braithwaite or Pratt, suggests that an observed tendency to slip beyond this analytical boundary (Simon 2007; Baker 2010) is damaging. Violent crime supports a strong image of a victim and the translation of this victim into the symbolic idealised citizen. This underpins the claim to legitimacy for actions which claim to serve victims or to prevent further victimisation. This can be contrasted to a vaguely defined victim, in the case of the

BiH's reputation in the Orao affair, or the non-specific victim of corruption. Even where the High Representative focuses on crimes linked to serious violence, where physical harm is unambiguous, the parallel with Simon's work is not straightforward. The focus on VRS support for Ratko Mladić links to the crime of assisting a PIFWC and the crimes of violence committed during the 1992-95 war, most notably in Srebrenica. There is no attempt to claim legitimacy for military integration through preventing future victimisation. Secondly, were a historical victim sought to provide legitimisation the impact would vary across different audiences. The High Representative's use of the Mladić case may be examined in relation to audiences composed of the different communities within and beyond BiH. In Republika Srpska, a previous RS government report acknowledging killings at Srebrenica was subsequently questioned; an initial Serbian parliamentary resolution which condemned those killings has in turn been criticised in RS (Arslanagic 2010, OHR 2010, SE Times 31 March and 1 April 2010). Victimhood is not universally recognised, and as noted earlier EUFOR were cautious in conveying their own role in arresting PIFWCs. This need not discount the case as an example of governing through crime, in line with H2, rather the target may be governments outside BiH upon whose continued support, material and non-material, the High Representative depends. Thus specific examples of governing through crime need to be understood clearly in terms of whose behaviour is being governed and whose perception of legitimacy is targeted.

The array of logics and techniques of governing employed in criminal justice provide a range of models and metaphors, not necessarily unique to the field. If no technique is intrinsically and uniquely attached to criminal justice, accounts of the deployment of logics of governing associated with criminal justice institutions as examples of governing through crime are untenable. While it may be possible to draw legitimacy through an apparent pursuit of crime fighting and crime reduction (S1 and S2, above), precise analytical application that part of *Governing through Crime* which posits the bleeding of metaphors and techniques to other sectors (S3) requires further specification regarding the tendency to reduce criminal justice to a punitive core. This is most credible where that punitive core is established as the dominant criminal justice narrative, and suggests limits to where the framework can be applied.

The limited evidence of governing through crime in BiH suggests a wider range of governing techniques and logics are employed by international actors. Operating with a ‘penologist’s microscopic lens’ (Savelsberg 2008: 1146) can limit the visibility of these, much as Boswell’s critique of securitization studies in the field of migration identifies the risk that a narrowly defined analytical focus will ‘constrain the observation of alternative trajectories’ in how issues are framed (2007: 592). In the opportunistic examples of crime and criminality mobilised in support of governing objectives, there is neither a focus on violent crime nor an attempt to generate or capitalise on a culture of fear and control. Democracy in BiH faces many challenges, not least those arising from the concentration of executive power in, and limited accountability of, OHR (Chandler 2000; Knaus and Martin 2003, Dorn 2009). On the basis of the evidence presented here, these challenges are not supplemented to any extent by the distortions of democracy generated by a politically generated and sustained culture of fear.

Endnotes

1. [ACKNOWLEDGMENTS]

2. These form part of, and an extension to, a broader research programme on criminal justice in post-war BiH (see [AUTHOR] 2011).
3. While G_1 is not evident in this analysis it is seen through the use of membership criteria, inspection, supervision and judicial oversight by international governing actors to support human rights (e.g. [AUTHOR] 2010) and in the internationally mandated constitution of BiH (see GFAP 1995: Annex 4.II.2).
4. This thickening includes the development of the State Investigation and Protection Agency, state-level prosecutorial and judicial authorities, tax raising powers and oversight of the military.
5. These include UN and EU agencies, OSCE, and various bodies mandated by the High Representative.
6. These are listed, and all transcripts are available, at OHR, undated.
7. The term *Justice and Home Affairs* in the 2003 report was superseded by *Justice, Freedom and Security*, subsequently split across two Directorates-General, *Justice* and *Home Affairs*.
8. Preventing returns features in various Bosnian criminal codes, beginning with the FBiH Criminal Code passed in November 1998 (article 186).
9. The English version was the authoritative version of the Dayton Constitution.
10. By resigning, Šarović retained his party role and the possibility of a return to office; he was later removed from his party role and blocked from public office over support for Radovan Karadžić (OHR 2004b).
11. By December 2008, 186 decisions removed or suspended individuals from office; 53 decisions lifted conditions of removal; four decisions changed general conditions or listed those removed in major sweeps.

12. For a more recent example, see the letter from the RS Government to Baroness Ashton, 12 April 2010.

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