

Statement to Helsinki Commission
by Kurt Bassuener, Senior Associate, Democratization Policy Council

July 26, 2011

Dear Esteemed Members of the Commission and Staff,

Thank you for the opportunity to appear before you this afternoon to discuss the situation in Bosnia and Herzegovina, the international posture there, and the implications for American policy.

I would like to ask that my statement be entered into the record; I will abbreviate it in my remarks to allow ample time for your questions to my panel colleagues and myself.

There is recognition in Washington that the situation in Bosnia and Herzegovina has deteriorated over the past five years, doing so at an accelerating pace. Assistant Secretary of State Philip Gordon said as much publicly last month in Sarajevo. Yet there remains a misapprehension of how the situation came to the point where the territorial integrity of the state has had to become a regular American talking point. This is what I want to discuss with you briefly today, as well as how the dynamic might be shifted so that citizens of *all* the country's self-identified communities who do want to make the country work for them can begin to gain traction.

To put it bluntly, the situation in Bosnia and Herzegovina now is in the midst of deterrence failure that has yet to flare into violent confrontation. The standard international approach of the past few years, demonstrated most recently in the latest communiqué by the Peace Implementation Council (PIC) Steering Board, is to implore the country's politicians to cooperate in the public interest. That is, form a state-level government, commit to passing the minimalist batch of reforms required by the European Court of Human Rights and demanded by the European Union and NATO to allow the country's progress toward integration. Yet there is an ingrained international unwillingness to grapple with the incentives in the current system that have led to this political impasse. Bosnia and Herzegovina's politicians are acting completely rationally within the Dayton constitutional system's incentives, fearing neither their electorates nor international sanction. They are insulated from the former by their ability to leverage both patronage – and more saliently of late – fear. These fears vary on the audience in question, but they boil down to the fears leveraged in the 1992-1995 war.

This brings us to why we are having this briefing this afternoon. Up until 2006, the prevailing sense among Bosnian politicians and citizens alike was that things would not be allowed to fall apart. This sense was grounded in the appreciation for the state-strengthening successes that had been accomplished from approximately 1999 through 2005. This perception began to crumble in 2006 as the international shift in posture and its implications became apparent. In late 2005, the international community represented in the PIC Steering Board came to the conclusion that the process of Dayton implementation and peacebuilding had been so successful that the progress made was irreversible and had developed its own momentum. While some unfinished business was acknowledged – constitutional reform and police restructuring – the prevailing consensus was that the international community could downshift in its role, confident that Bosnia and Herzegovina would propel itself into NATO and the EU; it was just a question of when. So the “transition” away from the executive responsibilities embodied in the international High Representative and the military deterrent of

EUFOR (until late 2004, a role performed by NATO) toward an undefined EU presence focused on promoting the country's integration was widely accepted.

Yet over the course of 2006, all the assumptions behind this policy course were proven wrong. Milorad Dodik's assumption of the Republika Srpska's premiership in March 2006 brought the reform process to a halt; Haris Siladzic's zero-sum political posturing vis a vis Dodik ended all efforts at compromise, and the failure of the "April package" of constitutional reforms heralded the regression that continues to this day. Dodik's aggressive use of nationalism illustrates one of the fundamental weaknesses of the Dayton system – it not only preserves the nationalist politicians who signed on to it (and who were themselves the drivers of the war itself), but also generates new ones, because it is politically profitable. By the Fall of 2006, the fact that there was a "stall" in the transition process began to be recognized. But instead of questioning the basis of the international approach or the reasons for political paralysis in BiH's political class, the PIC Steering Board has simply kicked the can down the road ever since. The international community remains on this bureaucratic autopilot.

The message has not been lost on Bosnia's politicians or citizens: the rules that applied in the decade after Dayton, an especially in the years 1999-2005, no longer apply. The tools are still there, but they have fallen into atrophy from disuse and are in the process of being hollowed-out. Bosnian nationalists and ethnic entrepreneurs got the message; there need no longer be constraint on unfulfilled agendas, of which there are quite a few-- RS independence and a "third entity" among them. This makes the situation increasingly dangerous, ripe for miscalculation by Bosnian and international actors alike.

Furthermore, it has become clear to all who wish to see that the PIC Steering Board is deeply divided into two camps, with that divide widening. The decision to discontinue international judges and prosecutors in the Court of Bosnia and Herzegovina's special chamber for organized crime and corruption, the continual fight over how to interpret the "5+2" criteria for the closure of the Office of the High Representative, the surprise visit of EU Common Foreign Policy Chief Catherine Ashton to Banja Luka on May 13, that month's battle over the OHR budget, and the divide over maintaining the supervisory regime over Brčko District all illustrate this. On one side, there are those PIC Steering Board members who hold that there is no need to maintain the executive powers of the High Representative and EUFOR; the EU enlargement process has enough in the way of incentives to facilitate a turnaround. This is the view held by the EU institutions themselves, as well as France, Italy, Germany, and Russia, and they have often acted unilaterally to pursue these goals without collective consultation, such as withdrawing contingents from EUFOR. They have also advocated sidestepping their own conditions. The second camp is increasingly skeptical of this approach and remains to be convinced. The US belongs to this group, along with Great Britain, Turkey, Canada, Japan, and the Netherlands. Until there is a course that generates the support of an overwhelming majority in the PIC Steering Board, this downward spiral will continue. And it will not end well. Absent a re-establishment of deterrence, there is nothing to prevent a re-emergence of conflict.

This is not to say that I believe that organic and meaningful progress toward a functioning state is impossible. I am a frustrated optimist about the potential of the country's citizens to find a *modus vivendi* – an agreement on a governance structure that can be responsive to their needs and allow

them to protect their own individual and collective interests as they – not their entrenched political leaders – see them. Yet under current conditions, traction toward that goal is well nigh impossible. To allow for progress, citizens of Bosnia and Herzegovina must be reassured that a collapse will not be allowed to happen. Confidence that this was the case was present up until 2006. It has long since evaporated.

The role of external actors in Bosnia is limited to providing those who want to make the country work with a more conducive environment to make progress; a solution to Bosnia's governance cannot be dictated from without.

As of now, the international guarantors of the Dayton Accords are failing in this role. Furthermore, the prevailing dynamic of allowing the EU alone to set the terms of international engagement in Bosnia is setting the whole PIC up for failure – the EU and the US included. The West will succeed or fail together in Bosnia. While the prospect of EU enlargement is doubtless an important factor and holds potential should it be more creatively used, relying upon it *alone* to drive progress in Bosnia, as the EU bureaucracy and majority of members espouse, will lead to collective policy failure. Washington does itself and its EU partners no favors by skeptically but politely going along for the ride.

To prevent further backsliding and allow for progress, the American role in the PIC needs to become more active and strategic. There is no reason that the EU cannot work together with the US and other Western members of the PIC toward a common position or that Russia cannot ultimately be brought on side. The roles of the EU and the PIC can be complimentary, but they are different. The movement to a successful policy shift necessarily must start in Washington. To this end, I propose that the US Government undertake the following measures to catalyze the necessary policy shift.

A policy that could help reverse the current dangerous deterioration is relatively simple. So long as the Dayton Annex 4 constitution remains in force, so should the executive mandates of the High Representative and EUFOR – and they should be used as-needed. There should be no more artificial timelines, since they encourage intransigence and foot-dragging by the political elites who benefit from the current system, which in turn leads to skepticism among average citizens that *anyone* at all is thinking how to resolve the country's problems. Developing the support within the PIC is something only the US can initiate. The mechanics of this are relatively simple, and require few additional resources, though it would require some political heavy lifting. But the nature of the shift would not be particularly arduous. First the US needs to develop a common approach with those PIC members who are skeptical of the current EU-directed policy, then it must develop support within the EU members for this alternative. Germany is the EU's center of gravity; a policy shift in Berlin will precede a shift of the EU's collective policy. However, given Washington and London's increased equities with Paris since the launch of the Libya operation, France might be worth approaching first.

In addition, let me propose some concrete contributions the US can make toward a change to a more honest and ultimately more constructive policy toward Bosnia.

- 1) **Propose an American High Representative.** The 1996 division of labor, with the US leading the military side of peace implementation and a European commanding the civilian side is now obsolete with the unification of the EU Delegation. This is conceptually akin to the idea of a US special envoy for the Balkans – a full-time actor, based in Bosnia, able to work to corral a Western consensus on strategy among PIC members. But it is worthy of note that the only time there was an international strategy toward Bosnia, in the Ashdown era, it was directed out of the Office of the High Representative.

- 2) **Contribute a mobile infantry company to EUFOR, to be based in Brčko District.** Brčko is necessarily the connective tissue of any attempt to establish an independent Republika Srpska. EUFOR's manpower has diminished to the point that it cannot provide a credible deterrent anywhere in Bosnia; Brčko is one obvious flashpoint where a deterrent force is needed. Offering to deploy a company of US troops to Brčko as part of EUFOR – could be a valuable contribution to calming the situation in Bosnia, and would also press the EU to honestly reassess its forces on the ground and its ability to fulfill its Dayton obligation to ensure a "Safe and Secure Environment." It could also leaven the contributions of other non-EU PIC members who are willing to contribute forces, most notably Turkey, which has repeatedly offered to fill the gaps in the EUFOR mandate (it is already the number two contributor) and has been consistently rebuffed, and catalyze contributions of others. Alternatively, the same contingent could operate under a NATO flag, the NATO Headquarters in Bosnia retains a Chapter 7 mandate, but has no current operation capability. The US government has invested significant resources into Brcko since the end of the war, and such a commitment would show continued resolve. While it is well understood that US military resources are stretched, a small investment in BiH would be low-risk, would provide an environment for innovative training and civil-military cooperation efforts, and would have a high chance of tangible success.

- 3) **Reinvigorate the Court of Bosnia and Herzegovina by including international judges and prosecutors at all levels in both the war crimes and organized crime chambers.** In December 2009, the United States helped undo its own policies by siding with the EU majority in the PIC Steering Board which was in favor of discontinuing international judges and prosecutors in executive capacities, dissuading the High Representative from deciding to impose an extension. The American position was decisive; had it remained in favor of extension of these personnel in both chambers, it could have generated majority support. The message sent by this decision was that the international community no longer saw organized crime and official corruption as a policy priority – at least not at the risk of rubbing the local powers-that-be the wrong way. This was a critical mistake and weakened the Court, as these personnel brought expertise, a sense of impartiality, and were less susceptible to political pressures. The war crimes personnel are to be discontinued over the course of 2012. Along with the extension of the executive mandates, international prosecutors and judges should be hired for both chambers and maintained until the judicial system is assessed to be able and willing to prosecute sensitive, high-profile cases, including through the appeals stage. The US should build support for this policy and contribute financially to ensure its viability; it has invested tens of millions into the BiH justice sector

over the past decade and more, yet if these two pillars of the judicial system disintegrate, the entire investment will have been for nothing.

I'd like to close by stating again I am not pessimistic about the country's potential. I'm rather a frustrated optimist. Citizens of Bosnia and Herzegovina *can* develop their own solutions and accommodations with one another. I firmly believe that this is far more possible than is commonly believed – even by Bosnians. I in fact work with many civil society representatives who are doing their best in a system in which everything – including the international community – is working against their efforts to make a country that works for all of its citizens. There is a large potential constituency for a functioning and accountable governance structure. The Dayton structures and the entrenched interests which inhabit them work to ensure that this constituency remains atomized, ill-informed, and resigned to the status quo. Even the most progressive civic activists often think they know what each other's positions are; when these subjects are actually broached, they can be pleasantly surprised at what their counterparts from elsewhere in the country actually believe and are willing to contemplate. What external actors *can* do is to provide a better environment in which Bosnia's rightfully frustrated citizens and activists can operate in – and to support them materially, morally and politically when they develop innovative methods to promote the accountability of the political class. This is not just in the interest of Bosnia and Herzegovina's citizens, but our own.

Many thanks, and I look forward to our discussion.