



USIPEACE BRIEFING

Unfinished Business in Bosnia and Herzegovina: What Is To Be Done?

AUTHORS

Kurt Bassuener and James Lyon

May 2009

UNITED STATES INSTITUTE OF PEACE
1200 17th Street NW, Suite 200
Washington, DC 20036-3011
www.usip.org

INTRODUCTION

This is the first of three papers USIP will publish this month on Bosnia, each with a different analytical perspective on what is happening in Bosnia and what needs to be done there to prevent a return to violence. We do this in the hope that these papers will generate a fuller debate on options that might be pursued by the U.S. government (USG), Europe and Bosnians.

This first paper resulted from a policy roundtable USIP organized on April 3, 2009 for people concerned about resolving Bosnia and Herzegovina's growing tensions and unmet challenges and the policies necessary to address them. The meeting was addressed by former High Representative Paddy Ashdown, and Daniel Serwer, vice president of USIP's Center for Post-Conflict Peace and Stability Operations, and Tomáš Szunyog, director of the South East and East European Department of the Czech foreign ministry, moderated two roundtable sessions.

Participants included guests from the State Department, National Security Council and Pentagon, four former U.S. ambassadors to Bosnia, several former principal deputy high representatives, the current principal deputy high representative, several former heads of mission of the Organization for Security and Cooperation in Europe (OSCE) in Bosnia, representatives from non-governmental organizations and academia, a former presidential envoy, congressional staffers and representatives of the European Union, its institutions, member states and missions in Bosnia.

This group focused on core issues of governance reform, the roles of the European Union and the United States, and the transition from the Office of the High Representative (OHR) to the European Union special representative (EUSR).

BACKGROUND

Following the Dayton Peace Accords that ended the 1992-95 war, Bosnia and Herzegovina saw a decade of substantial international engagement and investment (1996-2005). During this time the United States (U.S.) and European Union (EU) worked with NATO, the United Nations, the World Bank, OSCE, Russia, Turkey, Japan and numerous other partners to help Bosnia make steady and measurable progress in reconstruction, institution-building, governance (including security sector and judicial reforms), and refugee return.

Nonetheless, since early 2006, worrying signs of stagnation and backsliding have begun to appear. Although Bosnia signed a Stabilization and Association Agreement (SAA) with the EU in 2008, the country had long since stalled in the reform and EU integration process. Not only did the SAA not generate momentum, but Republika Srpska (RS) is busy unraveling some of the hard-won gains of the previous 13 years, including reforms required by the EU as preconditions for signing the SAA.

Today, political dialogue in Bosnia is sadly reminiscent of the immediate pre-war (and post-war) era. Aggressive rhetoric has escalated the ambient level of uncertainty and tension among Bosnia's citizens to a postwar high. Politicians from RS and the Federation often use language designed to raise tensions and polarize the population. Most notable are RS Premier Milorad Dodik and the Bosniak member of the presidency, Haris Silajdžić, though they are far from alone in generating angst amongst the populace. Beginning with the campaign for the October 2006 elections and continuing up to the present, both men, among others, have engaged in rhetoric that appears to call for violating the Dayton Peace Accords. Most notably, Dodik has repeatedly mooted secession of the RS, while Silajdžić has called for its abolition in the constitutional reform process.

The following is a summary of views expressed during the meeting.

VIEWS FROM WASHINGTON AND BRUSSELS

A wide variety of views emerged at the roundtable, and by no means was there uniformity on either side of the Atlantic. This summary presents the general centers of gravity of the various views and the divide between them, while attempting to reflect the full breadth of opinion.

Participants from the European Union and United States seemed to view Bosnia differently and disagree as to the gravity of Bosnia's current situation. Since 2001, the USG has been largely content to leave Bosnia to the EU and to support Brussels' policy, often more actively than many EU member states themselves. Only recently has the USG signaled intent to reengage more actively, largely out of concern that current EU policies are failing to address the core problems and that the country is sliding backwards.

There were Europeans in attendance, both governmental and non-governmental, who agreed with the majority "American" view, as well as Americans who expressed confidence in EU policy. The divergent assessments and threat perceptions are conducive to differing policy prescriptions. Brussels (and most EU member states) focuses on Bosnia through the lens of enlargement policy, whereas Washington places less stock in process and more on outcomes.

The discussion took place in a context far different from the early to mid-1990s. At a time when the world is facing a major economic crisis as well as wars in Iraq and Afghanistan, not to mention challenges from Iran, North Korea and non-state actors in the Middle East, U.S. and European capacity to deal with the Balkans is more constrained. But the potential costs of inaction also must be counted, and the amount of additional commitment required should not be overestimated.

AMERICAN VIEWS

There was a great deal of commonality among views expressed by American participants, who shared a sense that things in Bosnia were not going well. Most noted active backsliding in Bosnia since the departure of High Representative Paddy Ashdown at the beginning of 2006 and agreed that this had been further aggravated by the heated and confrontational rhetoric between RS Premier Milorad Dodik and Bosniak Presidency member Haris Silajdžić during the 2006 and 2008 election campaigns. This backsliding has included determined, sustained efforts by the RS to undo reforms required by the EU as preconditions to signing the SAA, as well as serious lapses in fiscal responsibility in the Bosnian Federation. Some U.S. participants diagnosed Bosnian politicians as critical elements of the problem. A number of speakers noted Bosnian citizens are not strongly wedded to their leaders, who have the greatest stake in maintaining the status quo, or at least their ability to wield power with little or no accountability. Others added that these personalities are manifestations of a deeper structural problem.

There was consensus that the guardrails that prevented re-emergence of conflict – a strong military presence and the Office of the High Representative (equipped with the executive “Bonn Powers” since late 1997) – were being dismantled without anything to replace them. Many, but by no means all, believed that violence was possible if Bosnia’s politicians and the EU maintained their current courses. The view that local incidents could spark wider turmoil was widespread, though others noted that in the Balkans “when leaders want violence, there is violence.” Although new conflict does not appear imminent, ethnic tensions are on the rise, and for the first time since Dayton, politicians and the media now mention war as a possible option. Other factors on the ground, including private security firms and hunting clubs that could function as *de facto* militias, have not been sufficiently monitored or assessed.

USIP Peace Briefing

Unfinished Business in Bosnia and Herzegovina: What is to be Done?

Most American participants expressed concern over the opacity of EUSR planning. One stated – and many agreed – that the EU didn't have a true foreign policy toward Bosnia and the Western Balkans, but solely an enlargement policy that failed to address many of Bosnia's unique problems.

A number of American participants stated that international executive powers need to be retained for some time, along with a credible enforcement capability, and that external guarantees for security and rule of law (anti-organized crime, international judges and prosecutors) also need to be part of the equation.

A consensus emerged among Americans (along with most Europeans) that the international community had to adhere "with integrity" to the current criteria for closing OHR and transitioning to EUSR. The so-called 5+2 criteria include five objectives (resolution of state property and defense property allocation, process on a defined set of rule of law objectives, fiscal sustainability, and ensuring Brčko District's rights within the state) and two conditions (signature of a Stabilization and Association Agreement with the EU and the Peace Implementation Council's (PIC) determination that the situation in Bosnia is in compliance with Dayton and sufficiently stable). They felt lowering the bar would send the wrong signals and open the door to further backsliding.

Americans widely believed that Bosnia is not on an irreversible path to EU membership, and that absent a strong High Representative, Dayton Bosnia tends to gravitate toward dysfunction and state dissolution. They felt that the EUSR needed to be empowered to use a wide array of tools once the OHR closed. Many expressed profound concern with the ongoing downsizing of EUFOR's deterrent capacity, especially the plans to relinquish UN Chapter VII authority. A majority believed that current EU plans to staff the EUSR mission at roughly 80 personnel, a level less than half the current skeleton OHR, were insufficient.

While EU membership is a desirable and necessary goal for Bosnia, broad skepticism was evident that the normal EU accession process will be sufficient

USIP Peace Briefing

Unfinished Business in Bosnia and Herzegovina: What is to be Done?

for preparing Bosnia to meet EU requirements. “Functionality” of government, as it came to be termed over the course of the meeting, was seen by an overwhelming majority as a necessity for meeting EU entry requirements. It will require additional assistance over and above the normal EU accession process, in particular in reforming Bosnia’s Dayton constitution as well as the electoral law and the functions of the two entities, RS and the Federation.

The general reaction to the “Prud process” – a series of meetings among the heads of leading Bosniak, Serb, and Croat political parties that began in the village of that name in November 2008 – was welcoming but skeptical. It was seen as helpful in facilitating the process that delivered the first amendment to the Dayton constitution, subsequently passed in the Bosnian Parliament. But some thought the Prud process dead; others regarded it as oversold or at least in need of strong external buttressing.

The Americans noted the need to make Serbia and Croatia part of the solution for Bosnia, calling on the EU to make Serbia’s and Croatia’s EU membership contingent on friendly relations with Bosnia, including actively promoting Bosnia’s reform process, as opposed merely to not impeding it.

U.S. engagement was seen as essential, with many holding the view that initiative from Washington would act as a catalyst to galvanize a common approach within the EU and energize EU policy towards Bosnia. Several discussed favorably the notion of a presidential special envoy for the Western Balkans. Others were uncertain as to whether this was necessary, so long as U.S. re-engagement was high-level and sustained. The idea that Americans should participate in the EUSR was widely held by American participants. Some went as far as stating that a U.S. deputy to the EUSR was needed, that EU members should end their individual diplomatic representation in Bosnia (which has sent multiple and confusing signals to the Bosnians), and that the U.S. should reduce its own considerably. These resources could then be devoted to the common EUSR.

A number of participants noted the likely consequences of doing nothing and asked if the international community is willing to live with them. If permitted to continue, the current political trajectory could lead to state dissolution. Should Bosnia dissolve, it will likely be violent, with ethnic cleansing, refugee flows, destruction of life and property, and a violent redrawing of internal boundaries. There is a potential for spillover that could affect not only the broader region (such as Kosovo, south Serbia, and Sandžak), but also precipitate intervention by neighboring Croatia and/or Serbia. This would result in worsened transatlantic relations and weakened EU credibility in the eyes of the U.S. and much of the world. Relations with Russia and the Islamic world would also be damaged. Few showed faith in the EU's grasp of the on-the-ground situation or Brussels' political will to contend with it.

EUROPEAN VIEWS

There was a greater difference of opinion between Europeans in official capacities and those outside government than among their American counterparts, but the majority sense of a perceived threat to Bosnia was considerably less. One participant decried "alarmist" assessments; another noted that while Brussels is paying attention to Bosnia, there is a conscious effort to avoid "overstating" threats. While political tension was acknowledged, this was not taken as having public security implications by most Europeans. Yet some noted a need to look deeper at potential security threats.

Europeans tended to describe events in Bosnia as a slowdown in progress as opposed to backsliding, and the accession process was seen as the main driver for reform. Concern was expressed, however, that Bosnia was falling behind its neighbors in the EU accession process. While acknowledging that this process may not be the ideal vehicle to deal with Bosnia's specific problems, they argue it is one that must be used and augmented where insufficient. Some European participants stated the EUSR mission should have a robust field presence, and that the EUSR should regularly brief not only the various EU structures (both the

USIP Peace Briefing

Unfinished Business in Bosnia and Herzegovina: What is to be Done?

Council and Commission), but also NATO's North Atlantic Council and the UN Security Council.

The view that the EU's transformative powers worked elsewhere in Europe was cited by some Europeans as a reason for confidence in a post-OHR, EUSR-led approach that would eschew the executive Bonn Powers. Most (though by no means all) participants seemed to accept this as a political reality. But there was no clear articulation of how this process would work. Many Europeans stated that use of executive powers was incompatible with the EU's approach.

Yet, some Europeans noted that the EU has substantial unused leverage, particularly through its ability to set standards. There were also Europeans who articulated clearly a need for both push and pull in the international approach, and for clarity on what the post-OHR EUSR mission would be. Those with this perspective said that the EUSR mission needed to be led by someone with "political gravitas," with appropriate resources and authority.

On constitutional reform, a number of European participants advocated a "step-by-step" approach, starting with the easier elements. Functionality was viewed as already being part of the integration process by others, though. Yet, another noted the need to confront with concrete advice the issue of the territory and administration of the state, stating the problem was not merely technical. The Europeans frequently raised the "Prud process" as a cause for hope. Imposition of reforms or laws was not acceptable (nor was it advocated by any participant).

More Europeans seemed to view Bosnia's politicians as partners than did their American counterparts. The articulated European assumption was that Bosnian politicians would naturally wish to take responsibility to move the country closer to European norms.

CONSENSUS VIEWS

In spite of the different diagnoses and prescriptions for Bosnia, European and American participants found significant areas of agreement. Most notably, all felt that the fulfillment of the 5+2 is necessary before the OHR can close and transition fully to the EUSR. All present felt that the 5+2 should not be weakened for reasons of political expediency or to create a false impression of progress; “5+2 with integrity” should be a rock-solid baseline.

All participants expressed the need for EU-U.S. partnership before, during, and after transition. All also agreed that governance reform and functionality, *including constitutional reform*, was necessary. The EU, however, tends to view functionality solely through the established requirements of its accession instruments and the adoption and implementation of the *acquis*, not state efficacy for citizens *per se*. From both sides of the Atlantic many expressed doubt as to whether Bosnia’s leaders actually *wish* to reform. A significant number with this view believes that Bosnian politicians are just stringing the international community along.

Most participants were of the view that the Venice Commission’s 2005 recommendations on Bosnia’s constitutional order would make a good starting point, with the added benefit that it, too, is “off-the-shelf” and available, meaning that there need not be debate among the 27 EU member states on their content. The recommendations need just to be adopted.

Many also articulated a need for “guidelines” or “standards” of what sort of elements needed to be included – or not – in an EU-compatible Bosnian constitutional order.

There was a recognition that many necessary reforms – including those on the election law, which carries divisive elements that create incentives for nationalist

USIP Peace Briefing

Unfinished Business in Bosnia and Herzegovina: What is to be Done?

politics, or the educational system, which inculcates nationalism – fall outside the constitutional realm.

A variety of views were expressed on Russia's role. While Russia is a real factor, and has complicated development of a common strategy through the PIC, many believed it has been overplayed as a problem. Most participants seemed to believe that so long as the U.S. and EU forged a common strategy and approach, Russia will not be able to act as a spoiler.

A number of participants from both sides of the Atlantic believed there was major potential to pressure politicians wedded to the old order built on ethnic antagonisms by working around and beyond them, with citizens, civil society, and local-level politicians. There is ample evidence that BiH citizens have no illusions about their politicians but feel their options are limited. Furthermore, they presently live under a pall of uncertainty and fear, generating *situational nationalism*.

In sum, the meeting achieved a consensus on the need for both reinvigorated U.S. engagement in concert with the EU and for state functionality in Bosnia; however, the meeting concluded without elaborating a strategy to achieve the latter. The following are the authors' views on how this goal can be attained and, in the process meet EU entry criteria.

TOWARDS A UNIFIED TRANSATLANTIC STRATEGY

The entropy that has seized the international community in Bosnia since the decline of the Bonn Powers (e.g., since 2006) is a result of a lack of common strategy. Identifying a common policy goal is necessary to develop that common strategy. The U.S. and EU face two main tasks in Bosnia. The first is stabilizing the situation by halting the backwards slide and averting state collapse. The second is strengthening state institutions, creating capacity for self-sustaining reform. This will in turn allow Bosnia to move itself forward toward EU and NATO

membership. Without a popular perception of security and stability in Bosnia, there can be no forward movement.

RESTORING STABILITY

Stopping the backwards slide will require sustained high-level U.S. engagement with the EU on forming and pursuing common policies (see below). It will also require that EUFOR maintain at least its current authorized 2,500 troops, retain its UN Chapter VII authorization, and alter force configuration, posture, and deployment patterns to amplify its deterrent capability.

Discussion of territorial and administrative units of the state is already happening in Bosnia; wishing it weren't so will accomplish nothing. Bosnia desperately needs a constitutional system that has broad popular legitimacy, which it can only gain from Bosnian control of the reform process. It is therefore important to unequivocally spell-out that reform cannot be done unilaterally, without popular buy-in from all constituent peoples and citizens, and that the current structures will be credibly guaranteed until that occurs.

NATO should therefore guarantee the external borders of Bosnia *and* its internal constitutional order until a democratic consensus view (e.g., a majority of each constituent people and "others") has been legislated through parliamentary structures. This guarantee needs to be perceived as credible by citizens. Only then can the fear that has re-entered Bosnia's political discourse be removed.

The civilian EU mechanisms are also crucial. The EUSR needs to be seen to wield these powers without having to seek approval from Brussels. These should include, but not be limited to: the power to issue visa bans, conduct asset freezes and hold the reins to Instruments for Pre-Accession funding. The EU needs to make clear that the EUSR has these tools and will back him up in his decisions, so the Council merely formalizes them, but does not debate them. Otherwise, BiH politicians will continue to go forum-shopping among EU member states to undercut the EUSR.

The regional dimension must also be central to the common approach. The U.S. and EU need to lean on Croatia and Serbia to actively pressure their ethnic kin inside Bosnia to cooperate with international policies. Should they not undertake efforts to support this common Euro-Atlantic policy toward a functioning and unified Bosnian state, their own Euro-Atlantic (just European in the case of Croatia, now a NATO member) prospects should suffer.

STATE FUNCTIONALITY IS THE COMMON STRATEGIC GOAL

State *functionality* must be the common goal. This term is preferred to *constitutional reform*, since more than constitutional amendments will be needed. There must be no doubt that making Bosnia a functional state means major change to the constitutional order. This will require considerable external engagement and facilitation, as well as specific guidelines and standards.

In addition to identifying functionality as the strategic goal, two elements are crucial for a unified strategy: 1) EU clarity on what is required for state functionality and 2) U.S. engagement.

Clarity on EU Requirements

The past three years have shown that Bosnia's central institutions are not yet sufficiently strong or self-sustaining to achieve functional governance and resist centrifugal forces. The "Prud process" – if it is still alive – has delivered less than advertised. Healthy skepticism is recommended in assessing its capability to deliver and implement reforms to achieve state functionality, as opposed to just attaining the minimum to make OHR disappear. The international approach should be to encourage this process and other such discussions among Bosnian politicians, but with an emphasis on results. Proclamations of unspecified deals count for little and should not be touted as signifiers of progress.

With EU entry beyond the visible time horizon for politicians and citizens, more intermediate prescriptive steps, incentives and targets are needed to prod

USIP Peace Briefing

Unfinished Business in Bosnia and Herzegovina: What is to be Done?

progress forward. The hope that politicians will somehow “step up” without further motivation has proven false.

As gatekeeper to its own club, the EU and its members have a real interest in getting Bosnia right. Rule of law, corruption and organized crime are major impediments to Bosnia’s functionality and EU aspirations. The EUSR must maintain the OHR’s anti-organized crime capacity, and the Court of Bosnia and Herzegovina needs to maintain international judges and prosecutors. As one participant noted, to widespread knowing murmurs, much is known about Bosnia’s political leaders that is actionable in court.

Transition should only occur when 5+2 are fully met, with an expansive and hard-headed view of the second condition’s call for stability and adherence to Dayton. It also must be predicated on a convincing plan on the part of the EU for a credible post-OHR mission mandate. The U.S. must be party to forging this. Brussels’ present position seems to be that it need not formalize and publicize its post-transition EUSR plan until after the PIC makes its decision. This approach is dangerous: far more than the EU’s standard enlargement toolbox will be needed should OHR close and the EUSR take on the leading international role in Bosnia. Significant advance preparation will be required.

The EU and U.S. also need to demonstrate support for BiH statehood by building their approach around BiH state structures and legally empowered politicians, not party leaders or entity-level figures.

Most of all, the EU needs to articulate clearly to both politicians and citizen what level of functionality Bosnia needs to have attained before becoming a viable candidate for membership in the EU, beyond its off-the-shelf *acquis* and partnership criteria. The EU must put forth a set of guidelines on what sort of Bosnia it can accept into its ranks, with clarity on what elements are unacceptable. This should be judged from a clear assessment of what elements in the Dayton order make the country dysfunctional.

This approach would not prescribe or impose a constitution upon Bosnia. Rather, stating such guidelines would allow the discussions on constitutional reform to take place within a clear framework. Such a framework should begin with review of the Washington Agreement and Annex IV of Dayton, as well as Venice Commission recommendations. But it should also spell out in clear terms understandable to citizens what sort of changes to the current order must be made to become a viable EU candidate and how these changes can and cannot be pursued.

Brussels must hold firm to these guidelines prior to awarding Bosnia candidate status. Once functional reforms are completed, Bosnia will be able to engage the EU fully on the *acquis* process. Only at this stage will the EU's soft power be able to gain the traction that it has had in other aspirant countries.

U.S. Engagement

America retains unrivalled credibility as a political actor in Bosnia, despite the preponderance of European assets on the ground. It needs to employ this credibility assertively to forge a common Western policy.

The way to sway Brussels to clarify its policy is for Washington to engage member states directly. A special envoy for the Western Balkans could help in this endeavor by signaling the level of attention the Obama administration is affording the region. A strong American envoy to deal full-time with the Western Balkans, with the visible backing of President Barack Obama and Secretary of State Hillary Rodham Clinton, would provide impetus for Europe to galvanize a consensus among EU member states and structures. An EU counterpart, working together with the U.S. special envoy, would be the ideal complement to a strong, empowered EUSR and a retained (possibly out-of-theatre) high representative.

AN OPPORTUNITY FOR THE EU AND U.S.

BiH represents both a growing problem for the EU and U.S. and an opportunity. The EU and U.S. must renew their effort to work together on Bosnia, where they invested heavily over a decade ago to resolve a problem that severely damaged transatlantic relations. Failure in Bosnia would have broader regional repercussions for EU enlargement and would land mainly on the EU's doorstep. The EU would *still* have to deal with Bosnia, perhaps indefinitely, as an insoluble management problem, with far greater investment of troops and resources than at present.

But the U.S. would not get away unscathed. Bosnia's current Dayton structures are rightly seen to have a *Made in America* label on them. A failed Bosnia would cost the U.S. in its relations with the Islamic world, with which the new Obama administration has made a point of building bridges. So it is best to confront the Bosnia problem while it can still be solved. Fortunately, the situation has not degenerated to the point where violence and state collapse are inevitable.

The international community cannot make Bosnia work. But it *can* catalyze reform and create conditions under which development of functional governance in the service of Bosnia's citizens is possible.

With a strategy for a functioning state order that protects the rights and promotes the interests of all its citizens, the EU and U.S. can achieve a success where failure presently looms.

ABOUT THE AUTHOR

This *USIPeace Briefing* was written by Kurt Bassuener and James Lyon, both senior associates for the Democratization Policy Council, with further input from many other conference participants. The views expressed here are not necessarily those of USIP, which does not advocate specific policies.

ABOUT THE CENTER FOR POST-CONFLICT PEACE AND STABILITY OPERATIONS

The Center for Conflict Analysis and Prevention conducts timely, policy relevant analysis of countries and regions where the threat to peace is particularly acute. The Center also designs and manages the Institute's efforts to forestall the outbreak of violent conflict. In addition, the Center conducts research, identifies best practices, develops new tools for preventing violent conflict, and supports related training and education efforts. Daniel Serwer is vice president of the center.

ABOUT THE UNITED STATES INSTITUTE OF PEACE

The United States Institute of Peace is an independent, nonpartisan, national institution established and funded by Congress. Our mission is to help prevent, manage, and resolve international conflicts by empowering others with knowledge, skills, and resources, as well as by our direct involvement in peacebuilding efforts around the world.