

THE GERMAN-BRITISH INITIATIVE (I)



Retreat for Progress in BiH?

On November 5, at a meeting of foreign ministers from the Western Balkans convened by the Aspen Institute at the British Embassy in Berlin, German Foreign Minister Frank-Walter Steinmeier and British Foreign Secretary Philip Hammond announced a joint initiative on Bosnia and Herzegovina

It had been foreshadowed in an October 24 opinion piece by Hammond which appeared on the Foreign and Commonwealth Office website and in the BiH media. The ministers outlined the new proposed EU approach in their speeches, a joint article, and in a letter to Federica Mogherini, the EU's new High Representative for Foreign Affairs and Security Policy, and to Johannes Hahn, the new European Commissioner for the Neighborhood Policy and Enlargement Negotiations. The aim of the proposal, the ministers wrote in their letter, was "to get Bosnia and Herzegovina moving again on the reform track towards becoming a state that can be functional as a member of the EU."

The convergence of British and German policy was noteworthy: it seemed to put an end to five years of divergence on Bosnia and Herzegovina. The new policy is supposed to be the basis for a long-awaited "new" EU approach to the country, given the widespread recognition of the failure of efforts on the part of the EU to date.

The Intellectual Foundations of the Initiative

In the introduction to their letter to Brussels and their subsequent articles, Steinmeier and Hammond explain the rationale of the joint initiative, including why Bosnia got stuck in the reform and EU integration process. A piece by Steinmeier and Hammond, published in BiH media on November 6, added: "We don't want to return to times when laws and decisions were taken on international order." Such statements are consistent with the narra-

**By Kurt Bassuener, Toby Vogel,
Valery Perry and Bodo Weber
Democratization Policy Council**

tive adopted by Berlin, many other continental member states, and the EU itself, according to which BiH politicians would adopt the reforms required to move toward EU membership even in the absence of external pressure. That narrative has been maintained despite the overwhelming evidence of its fallacy that has accumulated since 2007. Inherent in this approach is the assumption that those who criticize the ineffectiveness of the current policy pine for externally driven state-building through the use of the international High Representative's executive Bonn Powers. The fact that there have been no serious advocates of such a policy rewind - either among interested external powers⁶ or among those who attempt to affect their policies - has not dented its durable appeal as a talking point. It provides a convenient tool with which to deflect and dismiss any critique of the EU's demonstrated ineffectiveness in BiH, and sets the tone for the premature dismantling of international hard power tools in BiH - the High Representative and EUFOR. Germany has used this line of argument within the EU to parry British (and other member states') questioning of the EU-led approach, particularly since 2008-9. It appears that now Britain itself has signed on to it. A central element of the Hammond-Steinmeier thesis is that domestic political elites failed to meet their obligations while the EU acted in good faith. Conveniently forgotten is the extent to which EU officials have in

fact collaborated with party leaders throughout the recent period of non-reform, providing political cover for obstructionist BiH officials and making it more difficult for BiH citizens to even try to hold their leaders responsible for their (in)actions.

Also central to the German-British initiative is the implication that the EU's adoption of the European Court of Human Rights' December 2009 ruling in the Sejdic-Finci case as a requirement for the activation of BiH's Stabilization and Association Agreement has become an obstacle to progress toward other reforms, proving too high a hurdle for BiH politicians. According to the letter to Mogherini and Hahn: "Despite considerable goodwill and persistent efforts by the European Union...a local focus of political elites on narrow ethno-political and party interests has time and again impeded necessary reform... To avoid the impasse resulting from addressing intractable issues too early in the process, we propose to identify a broader agenda of reforms to be implemented in the next stages of Bosnia and Herzegovina's EU integration process..."

The Initiative and Its Discontents...

At least the letter specifically mentions "Sejdic-Finci." In his farewell article in the local press, outgoing EUSR Peter Sorensen merely alluded to the issue, despite the time he spent in (still opaque) and enabling negotiations with BiH political leaders on this topic. There was, however, nothing preordained in the failure to implement the Sejdic-

Finci ruling. As has often been the case in BiH, international conditions are adopted and set in the belief that they can be met in the short-to-medium term, thereby demonstrating reform momentum. Sejdic-Finci was no exception. There were multiple methods proposed which would not have threatened any people's or party's interests. Yet the EU's Enlargement Commissioner Stefan Fuele acquiesced to the ruling becoming hijacked by "the Croat question," ceasing efforts to find a remedy that would address the underlying problem identified by the Court, and instead supporting efforts to retro-engineer solutions to indefinitely ensure the complete dominance of the three constituent peoples at the expense of citizens and others. The Initiative also implies that the Sejdic-Finci requirement was a tactical mistake concerning an arcane, minor point. However, the ruling was about ensuring respect for the fundamental human and civil rights of BiH citizens, as guaranteed in Article 14 of the European Convention on Human Rights - one of the EU's own foundational elements. Past practice has conditioned BiH political leaders to conclude that international - and particularly EU - conditions are malleable, and therefore need not be met. Resistance to reform has not incurred costs, but rather paid dividends in terms of reduced conditionality and more policymaker attention.

While being presented as a proposal to jump-start the long moribund reform process in BiH by re-sequencing the agenda, the Initiative essentially advocates more of the same, while demonstrating a willingness to bend to the interests of BiH elites.

Room to Maneuver, not Room to Reform

Effectively mobilized, German-British unity on BiH should be an unalloyed good. The initiative recognizes the reality that the reform process in BiH will be a long one, requiring comprehensive reform, at least implicitly recognizing the failed incremental approach tried by the EU thus far. However, the initiative, at least as it is being explained at the present, is rife with troubling elements and fundamental misunderstandings of the nature of BiH's political paralysis. The initiative calls for an "initial agenda for reform" to "encompass socio-economic issues as outlined by the 'Compact for Growth,' rule of law, good governance as well as more readily resolvable institutional questions." None of this provides clear targets. The first point in the initiative's proposed way forward is that: "Bosnian party leaders... make a long-term,

irrevocable written commitment to establish - in the framework of the EU accession process - functionality at all state levels by implementing necessary reforms, with the objective of making Bosnia and Herzegovina ready for the EU... the EU would ask party leaders to agree in the written commitment to have an initial agenda for reform worked out under the leadership of the EU." It is not clear whether the EU's "leadership" would mean setting conditions or merely facilitating agenda-setting with party leaders. Nor



It is clear that the country's democratic institutions, such as the Parliament, are irrelevant for international interlocutors. The initiative apparently focuses solely on party leaders

is it clear which party leaders will be included. Those in state-level government? Entities? Cantons? It is clear that the country's democratic institutions, such as the Parliament, are irrelevant for international interlocutors. The initiative apparently focuses solely on party leaders, continuing the current EU policy.

The second point says that once such a commitment is signed, "the Council would then put the SAA into force... After some initial progress on the implementation, the Council would invite Bosnia and Herzegovina to apply for membership." In this wording, the ministers leave the definition of "some initial progress" open to interpretation and political expedience, rather than demonstrable and implemented results. The third and final point of the Steinmeier-Hammond letter reads, in its entirety: "The new government of Bosnia and Herzegovina should then continue to work on the implementation of the initial agenda for reform. After full implementation of the agenda the Council would request the Commission's opinion on the membership application. The state of play on the implementation of Sejdic-Finci should play an important role in the Commission's opinion."

Is This Approach Really "New?"

In this phrasing, it is clear that implementing Sejdic-Finci need not be an absolute requirement for BiH to get a positive assessment of its application for membership

(avis). This is an even lower standard than the risible "credible effort" demanded previously to simply activate the SAA. It suggests that resolution Sejdic-Finci might be postponed until membership negotiations.

While the initiative is being presented as a new approach, judging from its ingredients, it is in fact more of the same - only weaker and with fewer evident "red lines." The deferral of Sejdic-Finci conditionality until (maybe) the request of an avis on BiH's membership application recalls another episode in which the EU retreated from a condition in pursuit of restoring "momentum:" the reinterpretation of what constituted "police reform" to allow the initialing (2007) and signature (2008) of the SAA. In that case, the passage of laws and establishment of police coordination agencies was at least required. Needless to say, the hoped-for momentum on the EU reform path never emerged. The list of the EU undercutting its own conditionality and underlying reform aims in - conditioning BiH political leaders not to take the EU conditionality policy seriously - is long. Furthermore, with the exception of the stillborn "Compact for Growth," which was a composite of sensible but off-the-shelf elements, the ingredients generally identified in the Hammond-Steinmeier letter - "socio-economic reforms..., rule of law, good governance, but also selected functionality questions," are not only inherent in the acquis, but were also articulated in the 2008 Partnership Document, which the EU has effectively long since shelved as too demanding as a result of its being concrete, replete with some two dozen reform conditions. Among them were harmonized state-wide fiscal surveillance and financial mechanisms and financial audit institutions, a state-level agricultural ministry and Supreme Court. At the time of the Partnership Document's drafting, the BiH Council of Ministers was recognized as the "coordination mechanism" for IPA projects and other EU matters. However, as BiH politicians have taken advantage of the international hands-off "ownership" approach, there has been less and less inclusion of democratic institutions in any reform processes, in favor of ad hoc political-party driven bodies. As the appropriate institutions have been sidelined by the parties, the alleged need for new "coordination mechanisms" began to take hold as a mantra, and was in fact accepted by the EU and others. There are countless examples of the impact of these developments on practical reforms and normal citizens.

According to German and British officials, the "breakthrough" represented by the initiative is that the gap between them has now closed. This would be laudable if the joint policy were

credible. But the mere fact that Berlin and London have agreed is hardly sufficient to generate success. Judging from the ingredients on display thus far, the likelihood of success by any rational definition is slim. The initiative is aimed at promoting reforms of the kind citizens demand - socio-economic improvement and the rule of law - while avoiding or postponing topics that have been manipulated by politicians into "vital national interests," such as the Sejdid-Finci ruling. The implicit assumption is that economic issues are less vital to the political elites, and will therefore not engender resistance. This is clearly not the case, given the reliance of political elites on patronage. The posture of the West - and the EU in particular - has been to enable political manipulation by not defining and defending clear red lines on behavior. In pursuit of that goal, the initiative, presumably at Berlin's insistence, scrupulously avoids any mention of the obligations undertaken with the Dayton Peace Accords, again revealing division between the two capitals. In his October 24 article, Foreign Secretary Hammond went further than any other major Western official in reiterating this responsibility and what it means: "Don't waste precious time arguing about referendums and separation. That is not going to happen. We have a legal responsibility to protect the territorial integrity of Bosnia and Herzegovina, and we remain as committed to that responsibility as we were when the Dayton Peace Agreement was signed 19 years ago. The redrawing of borders in the Balkans is finished."

Fail, Retreat, Repeat

The fact that his German counterpart refused to sign-on to what was supposed to be a joint article because of its imperative tone was telling. None of Hammond's counterparts on either side of the Atlantic have repeated this commitment to date. Dropping the Sejdic-Finci condition on the grounds that it "cannot be imparted to citizens" also does the plaintiffs an injustice. The case emerged from two of many disenfranchised BiH citizens who fought and won a legal battle for redress of a wrong. It was a civic triumph over elites, which the EU adopted as a condition on the grounds of the fundamental rights involved. By acquiescing to the political elites' redefinition of the ruling for their own purposes, the EU once again disenfranchised not only the plaintiffs, but all citizens. They now add insult to injury by stating in effect that their rights are marginal to the body politic and should be postponed for the greater good.

Tomorrow: The German-British Initiative (II) - Denial of a Carrot Is a Stick

BiH Police Develop Regional Cooperation



Authorities intensify the fight against money laundering and narcotics trafficking, reports Southeast European Times

Police in the Balkans are increasingly cooperating to interdict money laundering that often accompanies trafficking of narcotics in the region and beyond. The Bosnia and Herzegovina state investigation and protection agency (SIPA) worked with regional police in the past six months to break apart organized crime groups involved in money laundering and drug smuggling. The BiH police conducted its biggest ever anti-money laundering operation in mid-October, code-named Gibraltar, assisted by Croatian, Slovenian and Austrian police. It arrested nine alleged members of a group suspected of laundering more than 5 million Euros. The Southeast European Law Enforcement Centre (SELEC) also recognized BiH's efforts to promote co-operation and congratulated Sarajevo for operations against trans-border crime through a project named Walker 2. The operation was conducted in June in co-operation with Croatia and Montenegro, and 23 alleged members of an organized crime group dealing with the trafficking of narcotics were arrested. The BiH prosecutor's office said it issued the latest arrest warrants for suspects employed as managers at television, marketing and telecommunication companies, which comprised the organized money-laundering group. The arrested are suspected of several criminal acts related to money laundering, including participating in fraud with fictitious contracts at television stations and networks, said Kristina Jozic, spokeswoman for SIPA. "Five million Euros were deployed on accounts of offshore companies abroad, mostly in Gibraltar. Part of the money was still in these accounts and another part was

transferred to private accounts of suspected persons who use it for the purchase of expensive properties abroad," Jozic said.

Gibraltar is an example of successful regional police co-operation and such cooperation will increase in the future, said Boris Grubescic, spokesman for the BiH prosecutor's office.

"We are very committed to strengthening regional cooperation in cases of organized crime, war crimes and other kinds of trans-border criminal acts," Grubescic told SETimes.

Grubescic said his office maintained good cooperation with prosecution offices and police agencies in region, especially in the battle against international trafficking of narcotics and persons.

Grubescic also said the level of cooperation was so perfected that arrests and detention of suspects were simultaneously carried out in two or more countries.

BiH prosecutor Dragica Glusac said the key to success of the prosecution in this - and similar cases - is having obtained strong evidence from the police.

"Written evidence is strongest and most reliable. The documents in this case are the best material we have," Glusac said.

The Office of the EU Special Representative in BiH said the country can make further improvements in the battle against money laundering.

"BiH may upgrade the anti-money laundering system by including international standards, stipulated in the revised 2012 FATF recommendations and international conventions ratified by BiH into domestic legislation," spokeswoman Jamila Milovic Halilovic told SETimes.