

# Democratization Policy Council

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## Democratization Policy Council Reaction to the PIC Steering Board Declaration of February 27, 2008

**March 5, 2008**—The Steering Board of the Peace Implementation Council (PIC), the international consortium with oversight over the peace process in Bosnia and Herzegovina (BiH), issued a declaration on February 27, 2008 at the end of its two-day meeting. Subsequent to its briefing paper of February 21, 2008, the Democratization Policy Council offers the following assessment of the PIC conclusions.

While the PIC clearly recognizes that the deteriorating political atmosphere in BiH requires an extended mandate for the Office of the High Representative (OHR) beyond June 2008, it is far from clear that the European Union is coming to grips with the nature of the problem in BiH and its downward spiral. The PIC Steering Board's agreement to maintain OHR, extending its tenure depending upon the situation on the ground, is a recognition of the gravity of the current situation and the challenge to BiH's territorial integrity. However, the anticipated Russian insistence on OHR's closure may have been throttled-back due to confidence that the OHR would not use its powers.

In a welcome addition, the PIC Steering Board also gave ample and requisite attention to the continued fugitive status of Radovan Karadžić and Ratko Mladić, calling on Serbia and the RS in particular to fulfill their obligations to the ICTY. Yet only the Netherlands and Belgium held-out against the other 25 EU members on signing a Stabilization and Association Agreement (SAA) as a pre-runoff gift to incumbent President Tadić of Serbia, and only the former has given a clear definition of what cooperation means: Mladić's physical transfer to the ICTY's Scheveningen detention facility.

The PIC Steering Board reiterated that the High Representative has authority and support to take "all appropriate measures" to see that its stated objectives are met. With this authority in hand as the international community's overall commander in-theatre, the High Representative should act accordingly to insist on full respect for Dayton.

### Seven Objectives Boil Down to Two

The PIC Steering Board set seven benchmarks ("objectives") that have to be met by local authorities for "transition" to occur. Five of these are technical, and two essentially political. The five technical criteria are listed in the PIC Declaration ([http://www.ohr.int/pic/default.asp?content\\_id=41352](http://www.ohr.int/pic/default.asp?content_id=41352)) as:

- Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other levels of government;
- Acceptable and Sustainable Resolution of Defence Property;
- Completion of the Brčko Final Award;
- Fiscal Sustainability (promoted through an Agreement on a Permanent ITA Co-efficient methodology and establishment of a National Fiscal Council);
- and Entrenchment of the Rule of Law (demonstrated through Adoption of National War Crimes Strategy, passage of Law on Aliens and Asylum, and adoption of National Justice Sector Reform Strategy).

Some of these objectives are already largely completed. The biggest hurdle remaining is the resolution of the dispute over ownership of state property.

In addition to these, the Declaration lists signature of the SAA with the EU, and a “positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Peace Agreement,” which in essence are political criteria.

After “transition” (to what exactly remains still undefined), the implementation of the five technical objectives can fall prey to Dayton politics, as have so many other reforms. If these five criteria are fulfilled and the SAA is signed (and the SAA conditions have proven infinitely flexible), those who would like to shut down the OHR will no doubt claim “substantial fulfillment.”

None of these seven criteria necessarily connote the ability of BiH to progress under its own power toward Euro-Atlantic integration. That the bar is set this low demonstrates an unwillingness to grapple with the roots of the continued crisis in BiH.

But the PIC Declaration includes two potential “trumps” among the seven stated criteria to ensure peace implementation and maintain the Dayton tools until the EU can articulate its constitutional reform criteria: 1) the US is sole arbiter on whether the terms of the Brčko Final Award (the third “technical” condition) are met and 2) the final requirement that the PIC Steering Board grant a positive assessment of the situation in BiH based on full implementation of the Dayton Peace Accord (the “elastic clause”). The United States, as guarantor of the Brčko Final Award and overseer of the District’s integration with the state of BiH, can insist that these criteria are not met. It is unlikely to be alone in its assessment of the latter. What remains lacking is clearly articulated strategic goal, the attainment of which would render moot the current Dayton-PIC-OHR complex of mechanisms and safeguards.

The PIC Steering Board hinted at what might accomplish this, but cannot advocate it due to its nature as a body to ensure Dayton implementation: fundamental constitutional reform.

The PIC “reaffirmed its view that constitutional reform will be necessary in order to equip Bosnia and Herzegovina to meet the requirements of a modern European state.” This would be the proper benchmark, if it were the PIC’s to set. The EU can make this a condition for progress in the BiH’s membership process, but Brussels has never declared this as a formal requirement for entry, let alone specified which criteria must be met.

### **Dodik Works to Kill Off OHR after PIC Meeting**

RS Prime Minister Milorad Dodik’s immediate post-PIC statement that he would not respect any use of the Bonn Powers, reiterated talk of secession, followed by a unilateral and uncoordinated announcement of a bond issue for foreign currency account reimbursement, are direct challenges that have yet to be met.

If, as the PIC declaration states, “there have been unacceptable challenges to the Dayton Peace Agreement,” why are there no penalties attached? In October 2007 it stated: “The PIC Steering Board underscores that it is time for BiH politicians to end the practice of questioning the fundamental

structure of the state or its component parts...the international community retains the necessary instruments to counter destructive tendencies and will not allow attempts to undermine the Dayton Peace Agreement, whether from inside or outside the country.” This pledge to BiH’s citizens, particularly to those who returned to their pre-war homes and whose sustainable return represents the glue holding BiH together, has now been exposed as no more than rhetoric.

### **Going Forward: Recommendations for Policy Actors Following the PIC**

#### ***For High Representative Lajčák:***

- Use the Bonn Powers on further statements or other challenges to BiH sovereignty and the Dayton Peace Agreement, in accordance with the PIC statements of October 2007 and February 2008. The planned RS bond issue cannot be allowed to go forward.
- Champion the municipalization idea outlined in the DPC briefing of February 21, 2008 by calling for a mayor’s summit. This could be unveiled at one of the public forums in the “Bosnia and Herzegovina’s European Perspective.”

#### ***For EU High Representative for the Common Foreign and Security Policy Javier Solana:***

- Clarify to the HR/EUSR that he does indeed have *carte blanche* to exercise his mandate, and that he need not constantly refer back to capitals to seek backup, providing him the unwavering support he’ll need to make the tough calls. This also includes operational coordination with EUFOR.

#### ***For the European Union bodies and individual members:***

- In accordance with the PIC Steering Board’s statement that BiH requires constitutional reform to function as a “modern European state,” provide clarity on the criteria required for BiH’s constitutional order to enter the Union, in addition to the *acquis communautaire*. In other words, recognize that Bosnia is not a typical post-communist accession candidate.
- Coordinate with the US to ensure that meaningful constitutional reform will be a *de facto* requirement for a “positive assessment of the situation in BiH” by the PIC Steering Board, allowing for OHR closure and “transition.” This reform process must include a requirement on implementation of the decision on constitutional peoples throughout the country as well as the civic rights of “others.”
- Define clearly – and publicly – what “reinforced EUSR” powers and capacities would look like, in coordination with all other EU actors, especially the European Commission. Unity of command is essential, as is the recognition that the standard EU accession playbook is not suited for BiH.
- Recognize that the Dutch and Belgian positions on ICTY conditionality for Serbia’s SAA are the cornerstone to peace and justice in BiH and the wider region. In the case of the UK in particular, this could involve returning to its former, principled stance, via support for the

Dutch position. Denmark and France, which have shown elements of a principled streak in this issue, should return to it as well.

- Accept that while signing an SAA with BiH is a worthy goal, and will allow for greater financial and technical resources to flow into BiH, this factor alone will not change the country's structural dysfunction, as the watering-down of police reform proved: further devaluation of the SAA as a yardstick for reform in BiH does not produce results.
- Stop debasing the accession process by using it for short-term political goals, usually with an overemphasis on geopolitical considerations. Only in the event of arrest and transfer of Ratko Mladić should an SAA be signed with Serbia before it is accorded with BiH. BiH and the other Western Balkan EU aspirants should not be treated as afterthoughts vis-à-vis Serbia.

***For the United States:***

- Coordinate with the EU the *de facto* requirement for constitutional reform for the PIC Steering Board to give a positive assessment of the situation in BiH as a prerequisite to OHR closure and “transition.”
- Await constitutional reform to recognize completion of the Brčko Final Award, thereby maintaining OHR until the need for it is obviated by a functional state capable of joining the EU.
- Arrange with the EU over-the-horizon requirements for a reinforced EUFOR, preferably relying on elements of the 173<sup>rd</sup> Airborne Brigade based in Vicenza, Italy.
- Appoint a senior envoy to BiH to coordinate a joint strategy with the EU.

***For Secretary of State Condoleezza Rice:***

- Stop claiming credit for waiving ICTY conditionality as a requirement for Serbia's Partnership for Peace (PfP) membership, as stated recently in response to Senate questioning, as if this were a positive achievement. Such statements further undercut the strong line the Netherlands and Belgium are taking within the EU. The PfP surrender by the US in November 2006 undercut the Netherlands, the UK, and Denmark, who at the time were also insisting on full ICTY compliance - until the US position flipped.

***For EUFOR/NATO:***

- The deteriorating political situation in BiH demands that EUFOR raise its profile with sufficient EUFOR operational capacity – including heliborne lift – to react to all security eventualities, including enforcement of HR orders. Looking to EU members who are not NATO members, in addition to non-EU partner countries, for the capacity might be a way to overcome the troop crunch.

- Consider the establishment of one other major base, ideally in the RS, housing a company-size IPU unit (Carabinieri, for example), with EUFOR providing appropriate airlift capability. A renewed international community security presence in the RS would provide a much-needed sense of security to returnee communities. Rising BiH political tensions, which have been translated into violent street demonstrations full of nationalist and even fascist iconography, warrant concern and protections for returnees.