

But Is There a Strategy?
**Defining a Transatlantic Consensus to Catalyze
Progress in BiH**

DPC Policy Brief

*Series on Rebooting
European and Transatlantic Institutions #2*

by Kurt Bassuener, Valery Perry, Toby Vogel, Bodo Weber

Berlin-Brussels-Dundee-Sarajevo

January 2021

A report from
Democratization Policy Council

Authors: Kurt Bassuener, Valery Perry, Toby Vogel, Bodo Weber

Editing: DPC Editorial Board

Berlin-Brussels-Dundee-Sarajevo

January 2021



Ovaj izvještaj omogućen podrškom Rockefeller Brothers Fund. Mišljenja i stajališta autora nisu nužno one Fonda.

TABLE OF CONTENTS

EXECUTIVE SUMMARY WITH RECOMMENDATIONS.....	I
INTRODUCTION.....	1
THE DIRE NEED FOR A NEW TRANSATLANTIC POLICY AND POSTURE.....	2
ENABLING AND CATALYZING – NOT DEFINING OR IMPOSING – PROGRESSIVE CHANGE.....	3
<i>Top-Down Elements, in Sequence</i>	4
<i>Bottom-Up Elements</i>	6

EXECUTIVE SUMMARY WITH RECOMMENDATIONS

This policy note dispels with the facile and simplistic myth that the only way for the international community to engage in Bosnia and Herzegovina (BiH) is through either imposed solutions, or through an ownership policy of reliance on local elites – the current default setting. What the situation calls for is employing the coercive advantage of a transatlantic consensus to create an environment in which focused engagement by citizens to define a vision for a new social contract can be articulated. This top-down, bottom-up dynamic can be described as a “pressure sandwich” aimed at squeezing an elite that has no incentive to change the status quo.

The **top-down** elements of this recalibrated strategy include:

- A clear commitment to a common policy for protecting BiH’s territorial integrity, employing visible and credible manifestations of that bolstered commitment in BiH: a reinforced EUFOR, including in Brčko, as well as a non-executive NATO presence.
- Clear messaging to Belgrade and Zagreb that the Peace Implementation Council (PIC), not they, are guarantors of peace in BiH under the terms of Dayton – and that the country’s political and democratic evolution should be driven by citizens of BiH alone.
- Clarity that Dayton BiH and the Office of the High Representative (OHR) are a package deal – and that the credibility of that institution must be strengthened to defend the peace and the institutional developments gained since.
- Recommitment to the rule of law, including shoring-up deeply damaged institutions such as the High Judicial and Prosecutorial Council (HJPC), the Court of BiH, and the police.
- Radical curtailment of capital infusions (IFI funds, infrastructure projects, etc.) in the absence of meaningful and implemented reform. Political elites have employed these for patronage purposes to rent popular acquiescence to their unaccountable misrule.

The **bottom-up** elements of this strategy include:

- Clarity that an accountable post-Dayton social contract and popularly legitimate constitutional order is the goal of the West’s posture and engagement.
- Support for a clear set of principles for a citizen-developed social contract based on government accountability to citizens and compatibility with Euro-Atlantic integration.
- Support for system design to prioritize: functionality and accountability; equality of service delivery and infrastructure; strengthened local self-government and capacity; balanced individual and collective protections for each self-defined group of citizens (not just three “constituent peoples”); and full adherence to all standing ECtHR judgments.

Together these elements combine to offer BiH’s people, however they self-identify, a *true partnership* for the first time – one designed with the express purpose to allow popular initiative and agency to flourish.

Introduction

Over the past few weeks, while the world's attention was focused on a worsening coronavirus pandemic and then on the assault on American democracy in the US Capitol, citizens of Bosnia and Herzegovina (BiH) have been left to wonder whether Germany is changing tack in its approach to peace implementation in their country. Was the reported nomination of a former German agriculture minister, Christian Schmidt, a personnel decision without a policy? If not, what is the strategy behind the apparent decision, first revealed in the BiH press on December 23, 2020 but only officially announced on January 20,¹ to appoint him High Representative? The one-month silence from German officialdom opened room for much speculation – all of which will make the path forward in BiH harder, whatever their policy is below the waterline.

This Christmas surprise followed a confluence of events which generated a great deal of discussion on the downward trajectory of BiH as it marked the 25th anniversary of the Dayton Peace Accords, and on the impact of the election of Joe Biden. Both the EU and the Biden campaign/transition team articulated a desire to work together to rebuild transatlantic ties to face common challenges, following the gratuitous damage wrought by the Trump presidency as well as a more long-standing drift.² A common purpose would, logically, be best served by a common assessment and strategic design following Biden's inauguration. But by all evidence available, this does not appear to have been the case with regard to BiH, which is unfortunate. To employ an old marketing slogan, "you never get a second chance to make a first impression."

But while almost all who care about BiH – on its own and as a regional bellwether – recognize that the EU and US can only achieve success there through common endeavor (whatever the goal), the impression which has been allowed to develop in recent weeks has been one of uncoordinated and opaque bumbling. Even a well-designed common policy – if it exists at all, even in capsule form – will now have to fight the headwind of perceived divisions, in addition to the challenges posed by the necessity of collectively confronting BiH's entrenched and mutually reinforcing political elites.

Ever since the US ceded Western leadership in BiH to the EU in the aftermath of the invasion of Iraq, neither has this role been seriously seized, nor has there been a real and articulated transatlantic BiH policy and strategy. There was some glimmer of hope in 2019 when the European Commission presented the Avis, its opinion on BiH's application to become a candidate for membership, which is a kind of mid-range roadmap for comprehensive reform in BiH.³ However, for the last 18 months no member state,

¹ "Kandidatur von Bundesminister a.D. Christian Schmidt für das Amt des Hohen Repräsentanten für Bosnien und Herzegowina," German foreign ministry press release, January 20, 2021, available at: <https://www.auswaertiges-amt.de/de/newsroom/-/2435772>.

² For example, see "Joint Communication to the European Parliament, the European Council, and the Council – a new EU-US agenda for global change," *European Commission and High Representative of the Union for Foreign Affairs and Security Policy*, Brussels, December 2, 2020. See also "Biden pledges to restore US global cooperation and leadership – but can he?" *DW*, November 8, 2020. Available at: <https://www.dw.com/en/biden-pledges-to-restore-us-global-cooperation-and-leadership-but-can-he/a-55537506>.

³ "Communication from the Commission to the European Parliament and the Council – Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union," Brussels, May 29, 2019, available at: https://ec.europa.eu/commission/presscorner/detail/en/COUNTRY_19_2778.

including Germany, has picked up on the Avis opportunity, demonstrating the enduring lack of political will over the last decade and a half to seriously deal with BiH on its own terms.

This policy brief will explain what that common policy *ought* to be: a new deal for BiH's long-frustrated population. This would entail action within the Dayton parameters to enable and assist citizens in developing and pressing for an alternative political system to take its place.

The Dire Need for a New Transatlantic Policy and Posture

The democracies on the PIC Steering Board⁴ need to undertake an overdue and intellectually honest reassessment of the EU-led Western policy, which has long been at best a *zombie policy* on bureaucratic autopilot for a decade and a half. The unwillingness to confront the reasons for regression in BiH has facilitated a rules-free environment, in which the nationalist political elites define the terms of engagement of those entrusted with enforcing the Dayton Agreement. In effect, the EU-led international community are partners with those who – as noted in the EU's own reports – are recognized as profiteers from malgovernance.⁵ This is perverse; humiliating and ineffective for the West, disheartening for BiH citizens, and emboldening for both the country's for-profit politics and illiberal external actors.

The necessary reckoning must include an *open* acknowledgement of policy mistakes to date.⁶ There is an urgent need to recognize that there is no way forward without stating the source of the problem: the entrenched political elites and their structural ecosystem, insulated from accountability to their own citizens, and made manifest by the Dayton system, its constitutional order, and the political dynamics intrinsic to it. The hold of this elite has tightened steadily over the past 15 years.

BiH's current condition reflects outsiders' misplaced hope that its ruling elites would take the opportunity provided by Euro-Atlantic integration to proceed on an evolutionary path of reform. This had been proven false since the door first opened for the region in 1999. Reform processes effectively stopped with the retreat of international enforcement of the Dayton rules, while domestic enforcement mechanisms for those rules were at the same time systematically hollowed out or dismantled.

The goal of a new transatlantic policy should be *explicitly* framed as follows: to create a conducive environment for broad, participatory popular engagement BiH-wide in developing an alternative to the current Dayton model – a new social contract designed by BiH citizens without the interference of their elites, following a set of guiding principles. Once articulated and demonstrated to have popular support, assistance should be provided to enshrine this new social contract in a draft constitution. The ultimate

⁴ The PIC Steering Board consists of Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organization of the Islamic Conference (OIC), which is represented by Turkey.

⁵ The European Commission's latest BiH country report on page 5: "with all levels of government showing signs of political capture directly affecting the daily life of citizens." See "Bosnia and Herzegovina 2020 Report," European Commission, October 6, 2020. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf.

⁶ A detailed DPC policy brief documenting these failures which led BiH to its current dead-end in greater detail will follow in February 2021. They are encapsulated in their essence and effect in this report.

aim is to develop a constitutional citizenry around a social contract of their own design, which can redefine the country's political landscape – in opposition to those empowered by the current structure.

Enabling and Catalyzing – not Defining or Imposing – Progressive Change

The EU and US (with the UK, Canada, and Japan) need to present this goal together, for while their relative weights in driving the policy have shifted over time, the concept of elite-propelled evolutionary progress toward Euro-Atlantic norms and membership has been at the core of post-Dayton and pre-Brussels strategy. This was the common denominator even under the different eras of High Representative Paddy Ashdown (a *bête noire* for many in the EU enlargement-grounded camp) and the EU-defined policy direction since his departure, which repudiated his methods. Despite their differences, both relied on affecting the cost-benefit analysis for BiH political elites – attempting to nudge evolution from above – although the EU eschews *any* coercive means.

Both approaches to date presumed popular identification with political elites, but also that at least some of the beneficiaries of the system would genuinely work in support of the open, though demanding, EU path ahead of them. The latter assumption has proven to be demonstrably false (and not just in BiH). The former is highly questionable – but has never been tested in a system that is designed to resist popular initiative in *any* sphere.

There is ample evidence that BiH's established political leaders, *as a class*, are highly unpopular for their perceived (and regularly demonstrated) corruption, abuse of power, and resistance to accountability.⁷ But those citizens also regularly relate their fear of both the coercive force of government (in myriad forms) and the dominant role of patronage in the public and private sector economy. Fear of confronting established power is endemic throughout BiH, though more pronounced in some places (e.g., Mostar) than others. Patronage binds even systemic critics to the system, for fear of losing one's (and one's family's) livelihood. Reducing the valence of these two primary levers is a prerequisite for creating functioning, popularly legitimate governance in BiH. This fundamental post-Dayton change needs to be done from above.

At the same time, and of equal if not greater import, the popular engagement, development of political and structural alternatives, and mobilization to press for them in the public sphere can only be undertaken by citizens of all self-identifications in BiH. Such a process can be enabled, encouraged, and even assisted (on demand) by external actors. But it can only be devised, developed, and propelled from below.

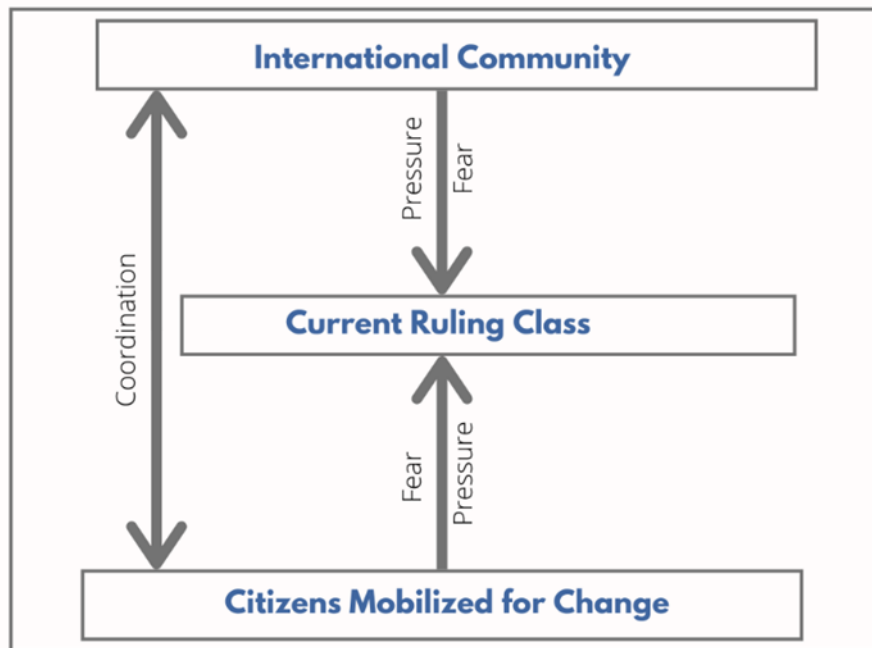
This dynamic, not guaranteed to succeed but evidently feasible and plausible, can be best described as a

⁷ A 2020 International Republican Institute poll found an aggregate 62% of respondents afraid to express their opinion publicly – 23% of them “very afraid.” It also demonstrated public distrust of political institutions, leaders, and parties across the board, as well as highly negative assessments of the economy (84%), law and order (73%), democracy (72%), and human rights (71%). See “Western Balkans Regional Poll, Center for Insights in Survey Research,” International Republican Institute, February 2-March 6, 2020.

“pressure sandwich,” as illustrated below.⁸ It entails coordination between citizens mobilizing for change and those empowered to affect the operating latitude of BiH’s entrenched elites – Dayton’s prime beneficiaries.

What this would require in practice is the following:

The Pressure Sandwich⁹



Top-Down Elements, in Sequence

- A clear commitment at the outset to a common policy for protecting BiH’s territorial integrity, employing visible and credible manifestations of that bolstered commitment within BiH, including Brčko. On the former point, both the EU and the US have trust deficits. A reaffirmation of the mandate and presence of EUFOR, and NATO, is needed, not to return to the immediate post-war role of the Western military in BiH, but as a credible fallback option and a deterrence that takes away the political elites’ potential to threaten secession or other methods of generating inter-ethnic fear – one of the two key features of state capture in BiH.
 - Secure credible over-the-horizon reinforcement to EUFOR, following the exit of the UK from these forces. Clarify that EUFOR’s UNSC Chapter 7 mandate is in maintaining a safe and secure environment in BiH, and not in supporting domestic BiH forces in maintaining a safe and secure environment.

⁸ The authors want to thank Dion van den Berg of PAX Netherlands for this pithy and memorable description of the diagram, which was developed by Kurt Bassuener. December 2020.

⁹ This graphic is adapted from Kurt Bassuener’s concept of peace cartels; see Kurt Bassuener and Senada Šelo Šabić, “EU needs alternative to Bosnia ‘peace cartel,’” *EU Observer*, August 21, 2020. Available at: <https://euobserver.com/opinion/149193>.

- Development of a standing NATO presence in BiH, in a functional non-peacekeeping role (akin to the NATO Mountain Warfare Center for Excellence in Slovenia, or the Joint Analysis and Lessons Learned Center in Portugal), perhaps to be based in Tuzla (with its NATO-standard airfield), to both demonstrate commitment to BiH and Balkan stability, as well as to facilitate BiH's development as a future NATO member state.
- Clarity to Belgrade and Zagreb that BiH's internal developments are to be defined within BiH. The PIC SB is the *guarantor* of the Dayton Peace Agreement; Serbia and Croatia are *signatories*. Their political interference, heavily and increasingly in evidence, is unwelcome and should carry consequences.
- A recommitment to the other enforcement arm of Dayton, the Office of the High Representative, and clarity on the purpose of the Office in a renewed strategy: to enforce the – admittedly deficient – Dayton order (including the institutions built by its apogee in 2005) so long as it remains. This role has been effectively stripped of the HR and his Office since 2006. The purpose will not be to be a placeholder, nor to return to the international policy prior to 2006, but rather as a safeguard against political adventurism and malfeasance until a popular alternative to the Dayton order, enforcing political and legal accountability, can be arrived at and adopted.
- A recommitment to rule of law in BiH, including shoring-up the structurally damaged institutions of the High Judicial and Prosecutorial Council (HJPC) and the Court of BiH, but also the deep politicization of policing. This will require both immediate term remedial action, such as a new role for international prosecutors and judges to kick off a process towards the judiciary addressing high-level organized crime and corruption in a sustainable way, as well as strategic efforts to reconstruct that which was allowed through neglect to be gutted in the past 15 years. The EU's own December 2019 Priebe report provides details on the structural maladies.¹⁰
- A radical curtailment of external capital infusions (e.g., IFI financing, infrastructure funding, assorted non-humanitarian EU funds, etc.) to coffers controlled by BiH political elites, who clearly employ them for patronage purposes. These disbursements, absent substantial conditionality on governing elites, have effectively turned these external funds into support for a *pacification* policy, and also a *protection racket* allowing these elites to extract patronage from the West.¹¹ Once ruling parties' coercive force ceases to be perceived as a credible threat by citizens, the barriers to their civic engagement will decrease significantly. In addition, coordinated travel bans and asset freezes (a la Global Magnitsky) will demonstrate consequences for abuse of power, reinforcing the broader judicial reform effort noted above.

These top-down elements of a strategic recalibration, directly in the scope of action of the US, EU, and

¹⁰ Senada Šelo Šabić, Valery Perry, and Kurt Bassuener, "Burying the Lede – The Priebe Report's Surprisingly Clear Recommendation," *DPC Blog*, December 26, 2019. Available at: http://www.democratizationpolicy.org/wp-content/uploads/2020/05/Burying-the-lede_BDaily-Dec-26-2019.pdf.

¹¹ See also Kurt Bassuener, "Stop Funding BiH Politicians' Irresponsibility," *Bosnia Daily*, January 16, 2014. Available at: <http://www.democratizationpolicy.org/pdf/e-bdaily%203194.pdf>. In response to the above article, a German diplomat remarked that ceasing to pour money into BiH's dysfunctional governance was an intolerable risk: "It's like rats in a cage. If you stop feeding them, they'll eat each other."

other democratic political actors on the PIC Steering Board, can *catalyze*, though not *initiate*, the amplification and targeting of bottom-up pressure on elites. Most importantly, taken together, the above-noted measures can create an environment conducive to *popular* initiative on collaboratively envisioning and developing an alternative to the current structure, which has been optimized by BiH's elites to self-deal and insulate them from accountability. There is ample evidence which leads the authors to believe this is feasible.¹²

Bottom-Up Elements

The most important step Western policymakers can take to lay the framework for a constructive process is to articulate a set of principles for a post-Dayton social contract, reflecting reform required to achieve Euro-Atlantic integration, but more importantly reflecting a duty to establish a government accountable to the people. This would help allay fears of multiple popular constituencies that change would be at their expense, rather than at the expense of the established beneficiaries of the Dayton system, "their" entrenched political elites. These should include:

- System design to ensure and prioritize functionality and accountability to citizens, allowing for impartial application of rule of law.
- Ensuring equality of service delivery and infrastructure for all citizens, employing savings made from streamlining governance to this purpose.
- Constitutional, electoral, and administrative structures of governance to guarantee citizens political and legal equality BiH-wide.
- Strengthening local self-government and capacity, given this is currently the only level at which citizens can exact political accountability in BiH.
- Defined collective protections for each self-defined group of citizens (not just three "constituent peoples") without making said protections the basis for the electoral and administrative system, balancing individual and collective rights in an institutional set-up that secures a strong rule of law, a vibrant democracy and a functional state.
- Full adherence to all standing European Court of Human Rights (ECtHR) judgments, as well as compatibility with the obligations of multilateral organizations of which BiH is already a member or that it intends to join.

These principles, grounded in accepted international liberal democratic norms and European practice, offer ample latitude for the assembly of an alternative social contract, which would require majority support from each self-defined group to be implemented and function. Some of them have already been defined or laid out in the EC's May 2019 Opinion, while others derive from the broader aim of Euro-Atlantic integration or existing membership of BiH in international organizations (such as the OSCE or the Council of Europe).

¹² Unpublished (as of this writing) research conducted for USAID and the UN in 2019 and 2020, based on extensive field interviews, focus groups, and polling, provides room for optimism.

This “pressure sandwich” model has actually been demonstrated, albeit in an *ad hoc* rather than strategic form, in North Macedonia. While the breakthrough in 2016-2017 began at the popular level prior to a civic-opposition alliance beginning in 2015, it has since largely been squandered by failing to confront that country’s deeply entrenched corruption and malgovernance issues, which had themselves propelled that breakthrough. The difference with the Macedonian experience would be that in that case, the EU and US were forced reluctantly and belatedly to *react* to popular grievance against the Gruevski regime’s malgovernance by applying pressure. In the BiH case, the Western policy posture, much more empowered by the Dayton architecture, would be *explicitly designed* to enable a self-organized BiH civic process to arrive at a popularly legitimate successor to the Dayton order.

It is with this concept in mind that the Dayton enforcement tools of a reinforced international High Representative and combined EUFOR-NATO deterrent are necessary. They are not to *propel* systemic change from without (as in the evolution from above era), but rather to *enable* BiH citizens deeply dissatisfied with the *status quo*¹³ and who articulate a desire for change through a participatory and collaborative process aimed to give these aspirations form and substance, without the overwhelming opposition of those with nothing to gain and everything to lose from functioning, accountable governance.

¹³ Polling demonstrates that citizens has consistently expressed their belief that the country has been going in the wrong direction since at least 2009. See Public Opinion Poll in Bosnia and Herzegovina (BiH) October 2009, *Puls/National Democratic Institute*.