

## Written Statement for the Congressional Record

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House Foreign Affairs Committee Hearing: "The Dayton Legacy and the Future of Bosnia and the  
Western Balkans"

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Mr. Chairman, Ranking member, members of this Subcommittee, I welcome this timely hearing, which I hope will draw overdue attention to the more than decade of negative trajectory in Bosnia and Herzegovina. The fact that Bosnia, in which the West has been so deeply engaged for over two decades, and where we have a wide array of mandates and incentives, is going in the wrong direction at an accelerating pace demands an understanding of what – and the policies which – have brought the situation to this simmering crisis stage.

It is apropos that this hearing makes Bosnia and Herzegovina (BiH) the focal point for a look at "The Future of the Western Balkans." The three-and-a-half-year war there was by far the most bloody of the conflicts in former Yugoslavia, drawing in two predatory neighbors, first Serbia, then Croatia. Western deterrence of further violence and challenges to Bosnian statehood, under American leadership or with strong U.S. backing, were conducive to the democratic transformations which followed in Croatia, then in Serbia, almost two decades ago. For a decade following the war, BiH was widely assessed – for good reason – as a (relative) success story. That internationally catalyzed, but popularly perceived, success helped foster a complacency that progress toward membership in the European Union and NATO was guaranteed – only the velocity was in question. That assumption has been demonstrated to be false ever more since 2006.

BiH's constitutional and electoral framework has been ruled deficient by reason of restricting equal rights to run and vote for office repeatedly by the European Court of Human Rights, to which BiH is bound in the Sejdić-Finci, Pilav, and Zornić cases, as well as assessed as an impediment to functionality and democratic development by the Council of Europe's Venice Commission. None of these have been respected by the HDZ or its political ally, the SNSD, or were weaponized into a political hostage situation as has the Ljubić case. At its root, the issue at hand is not a question of "Croat rights" or "constituent peoples" representation, but rather one deeper incumbency burrowing and self-protection of entrenched elites; a manifestation of a far broader, deeper, and longer-running problem. The politicization of the three international judges on the BiH Constitutional Court is a new and dangerous precedent.

This needs to be seen in tandem with the sustained assault on BiH constitutional, judicial, and state structure which has been mounted by the leadership of the Republika Srpska, one of the country's two "entities." The US rightly sanctioned RS President Milorad Dodik over a year ago for his referendum in defiance of a Constitutional Court ruling; unfortunately, our European allies did not follow suit – but still could. While there is no shortage of culpability among the full spectrum of BiH political elites, the fact remains that the alliance between Dodik and HDZ BiH leader Dragan Čović has steadily subverted all the progress achieved in the first decade after the war (at massive taxpayer cost) with the aim of effectively carving out more secure feudal fiefdoms of absolute control, ultimately leading to state collapse – which *could not* be peaceful under any foreseeable circumstances. This demands resistance.

The escalating challenge to BiH's sovereignty and integrity that we have witnessed over the past decade or so has brought out the worst in both Belgrade and Zagreb, which both are involved in Bosnia's internal politics to a degree not seen since the war. In fact, all the nationalist agendas unfulfilled during the war, foreign and domestic, are being pursued without restraint. BiH is now – and has been for over a decade – a rules-free environment. BiH and the wider region are suffering from deterrence failure; a bill we have yet to pay for, but one that *will* come due, should our policy and posture not soon change. For Bosnia and Herzegovina's current incarnation and configuration have a "made in America" label on them; our interest in maintaining U.S. credibility and European security remain as valid as they were nearly a quarter century ago. Failure in BiH will rightly be seen as an American failure, despite other contributing factors.

The deeper encroachment into the Western Balkans of malign, illiberal powers such as Russia, Turkey, the Gulf States, and China which many have highlighted in the past months, are symptoms of a more fundamental problem. Simply put, the widely held presumption of a decade and a half ago – that the "carrots" of potential EU and NATO membership would induce reforms which would yield self-sustaining representative and accountable democratic governance in the Western Balkans have proven insufficient to that task. Bosnia – but not just Bosnia – demonstrates that such positive inducement alone is not enough. The leadership class that emerged from the Balkan wars – and in Bosnia's case, co-designed their own political ecosystem in the Dayton Peace Accords – have clearly determined that their interests are better served by not sincerely engaging in the difficult reforms required to join the EU and NATO. The question is why.

I think there are really two basic potential explanations. The first is that these leaders simply do not understand the potential upside – that this is a political education problem. The second is that they do grasp the benefits on offer to their countries, but they have done a cost-benefit analysis and have determined that their own interests are best served – and their perquisites of power preserved – in another fashion. I believe the latter is far more convincing.

Bluntly put, Bosnia and Herzegovina's political elite constitutes a political-business-organized crime-media nexus which can currently a) keep what they stole, b) remain positioned to keep stealing, and c) remain unaccountable politically *and* legally. Nothing that the European Union can offer the country is better – *for them and their business model* – than that. It's just rotten luck for the country's overwhelming majority. While the ethnic political elites may compete for relative territorial and economic dominance, configuration of the state, or whether there should even be a state at all, they can all agree on those basic elements of BiH's political operating system. As they have demonstrated for almost three decades, political leaders of all stripes are unconcerned with popular suffering, unless it poses a direct threat to them, as it briefly did in February 2014. Coercing popular resignation and acquiescence is sufficient to maintain control, with all its benefits.

One might ask "how does this work?" Why would voters continue to elect leaders who so blatantly abuse the public trust and limit their own horizons? Political powerbrokers in BiH (and not just there, but regionwide – and beyond) have two main tools at their disposal: patronage and fear. These form a potent cocktail, given the size of the public sector relative to the overall economy, the

absence of a functional social safety net, and the ambient but palpable threats of destitution, dispossession, or worse.

To give one relatively prosaic example of the real-life mechanics, if Uncle Jovan, (or Josip, or Jusuf) works for the government in any capacity – even in maintenance – he is the sole breadwinner for his family, and one is unconvinced one’s vote is secret (as is the case), would one really vote against the powers-that-be? One might stay home wishing a pox on all options on the menu, as roughly half the electorate does, but it is unlikely that family would take that risk. And, generally, they do not. That is hardly the spirit of “consent of the governed,” despite the superficial respect for its forms. Understanding this dynamic is the key to squaring the almost universal popular disdain expressed by BiH’s citizenry (and documented in polling) across the board toward political elites and the remarkable durability of the country’s political class since the war, job security that – outside of Belarus – is unrivalled in Europe.

The ugly truth is that the incentive structure of the Dayton constitutional/political system is *an evolutionary dead-end*; a perfect environment for the apex predators who were present at its creation (or their political successors). Absent the external enforcement, pressure, and deterrence that attended its first decade with American focus and muscle, it defaults to precisely what we see today: slow but inexorable and accelerating dissolution of the state, attended with ever more open and shameless corruption, abuse of power, and generation of fear. Fear is potent, because the potential for significant violence is recognizably real to Bosnia and Herzegovina’s citizens. All the ingredients for organized violence, or escalation of a violent interethnic incident into organized violence, are present. The fact that such bloodshed could not rise to the levels seen from 1992-1995 should not engender complacency.

Even uglier is the reality that EU-led Western policy, to which the U.S. has subscribed, has enabled such malign behavior, effectively rewarding it through appeasement: cutting corners on standards, bankrolling political irresponsibility in the hope of buying stability and security. In fact, we have only been renting quiet – for now. The reality is that we have been operating in a very similar fashion to BiH’s own citizens: enablers, for fear of the alternative. But as the party that holds the greatest leverage, our failure to confront this challenge is unjustified and all the more culpable.

Regarding NATO, which ensured the peace in BiH since the war, progress toward membership with a Membership Action Plan has been stalled because of Republika Srpska’s unwillingness to allow registration of military property at the state-level. No longer should such intransigence be allowed to impede this process. But the reality is that BiH will not be able to convince NATO members to accept it as a viable ally without a fundamental reconstruction of its governance structure and decisionmaking mechanisms.

Bosnians and Herzegovinians of all self-identifications (and there are many more than the “constituent peoples” straitjacket allows to bloom) are far more reasonable than we, and they themselves, give them credit for. Given the amount of bloodshed, displacement, and trauma experienced in 1992-1995, one would think more acts of vengeance would have occurred. It’s not for lack of *means* – BiH is a country with an average of one firearm per household, many of which would be illegal even under American law. Not for lack of *motive* – most of the violence in the war

was up close and personal. People generally know who did what to whom. And there is no lack of *opportunity* – people can travel freely should they want to exact vengeance. So why is such violence so infrequent as to be almost unheard of? As someone fortunate enough not to have lived through a war, I can only venture an educated guess: people saw the social fabric unravel once, and it was bad enough the first time – they don't want to go back there. One can scarcely imagine a more restrained, reasonable mindset given the circumstances. We Americans kill each other for much less.

Furthermore, there are few illusions left among BiH citizens about the nature of the war and its political aftermath, despite understandably different perspectives owing to their personal experiences. BiH citizens across ethnic lines recognize now that *they lost* the war. The political elites in their ubiquitous black Audis were the *sole winners*. People are reminded of this fact *daily*, in the most humiliating fashion.

Like a broken leg poorly set in triage, Dayton's constitutional political incentive structure was an achievement that saved the patient but leaves her permanently hobbled. Dayton's wobbly framework must be broken to be fixed. Paradoxical as it might sound, reinvigoration of the Dayton enforcement tools makes moving beyond that flawed system possible by reducing the political leadership's ability to leverage fear. We have to enforce the bad old rules until there can be broad popular agreement on new ones. Only then can application of firm financial conditionality, never fully employed, have the desired effect – reducing the leverage of patronage on the body politic.

Even though violence has not yet erupted, the reality is that it could at any time, with the attendant dangers of malign actors (Russia and other foreign powers, radical Islamists, irredentist neighbors, etc.) supporting it, capitalizing upon it, or even instigating it for their own interests. The upcoming October general elections will raise tensions even higher. We must not remain anesthetized by complacency.

Nor should we continue the futile and self-destructive policy of addressing potential security risks with economic leverage alone, more deeply entrenching the protection racket which currently prevails. The time to act to deter and prevent such violence and further regression – and enable bottom-up progress – is now.

So much for diagnosis, what is to be done?

- 1) Arresting the downward spiral by re-invigorating Dayton's enforcement tools – a potent military deterrent force and a credible international High Representative. The U.S. could readily assemble pan-Western support for such a policy, if we are willing to lead. In terms of force requirements, it is hard to gainsay the last such assessment by former Deputy Supreme Commander of Allied Forces in Europe (DSACEUR) Gen. John McColl at the beginning of this decade – a brigade, upwards of 3,000 troops, is necessary to fulfill the safe and secure environment mission legally required in Dayton. The current force is under 20 percent of that size. The U.S. should not be the sole provider of forces. Demonstrated will to commit a significant proportion of the force in the most strategic areas and likely flashpoints – Brčko and Mostar – prior to the October elections would challenge our closest allies to provide the

remainder. There is also no reason that the next High Representative cannot be an American.

The civilian enforcement mechanism for Dayton – the international High Representative – is equally important, and equally moribund at present. Maintaining the Office of the High Representative only as a legal placeholder, rather than a vital and potent element of the country's constitutional architecture, pending a self-sustaining solution, as we have for the past decade has been a major accelerant to the ongoing downward spiral. Nominating and promoting an American High Representative as part of an overarching strategy is essential. A person capable of restoring the credibility of Dayton's civilian enforcement mechanism, would possess political gravitas, respect among our European, Canadian, and Japanese allies, and the will to take a hands-on approach toward creating the conditions under which the need for an international High Representative would be obviated.

Neither of these elements alone is sufficient to restabilize the situation. They only work in concert. Nor alone do they constitute a strategy – but they are essential elements of a potentially successful one.

- 2) That highly controversial Constitutional Court ruling in the Ljubić case demands a one-time only compromise regulation, undertaken to respect the narrow ruling (e.g., the House of Peoples alone), so as to allow the election and government formation to go forward. The U.S. should lead a transatlantic effort to press hard, including naming and shaming, to get the situation resolved in this fashion – and be prepared to accept the reality that such a solution may not be achieved.

But the time is long since due to address the broader structural impediments to accountable democracy entailed in the Dayton constitutional and electoral system. A commitment to begin this process must be part and parcel of any stopgap arrangement on the House of Peoples – or a failure to achieve one.

- 3) The *strategic goal* for the US, EU and other Western allies on the Peace Implementation Council needs to be arriving at a governance system that allows for functional democratic representation, accountability, and good governance. This needs to be the post-election focal point of American policy, for which we need to begin preparing, *now*.

While the shape of such a system must emerge from BiH citizens and gain supermajority support of each self-defined group, the initiative for catalyzing this necessary societal discussion and the fostering of a constituency for an organic, popularly legitimate system to replace the deficient Dayton structures can and must be undertaken by the country which brokered Dayton and drove its implementation for a decade: the United States of America. In my own view, this fundamental change should lead to directly elected legislators onto whom citizens could project their own concerns and to whom they could make their displeasure felt. At present, beyond the municipal

level, there is no such accountability. That level of governance, therefore, ought to be the elemental building block for representative governance in a citizen/voter-centered BiH.

There is a deep popular hunger for a rules-based political system and society in Bosnia and Herzegovina; this is fully compatible with publicly accountable collective protections, and with direct electoral representation. Our current posture makes it nearly impossible for those citizens who already clearly want – or could be convinced to support – something better to mobilize and get traction. These are America’s true friends in BiH, across the country.

While external actors like the U.S. cannot fix Bosnia and Herzegovina, we can create far better conditions for a democratic and accountable Bosnia and Herzegovina to develop and emerge. Only a country so governed will be saleable to current NATO and EU members as a potential contributing ally and fellow member. It is in our interest – and that of our European allies – we finally do so.

## Brief Explanation to the Bosnia and Herzegovina Political Dynamic Charts

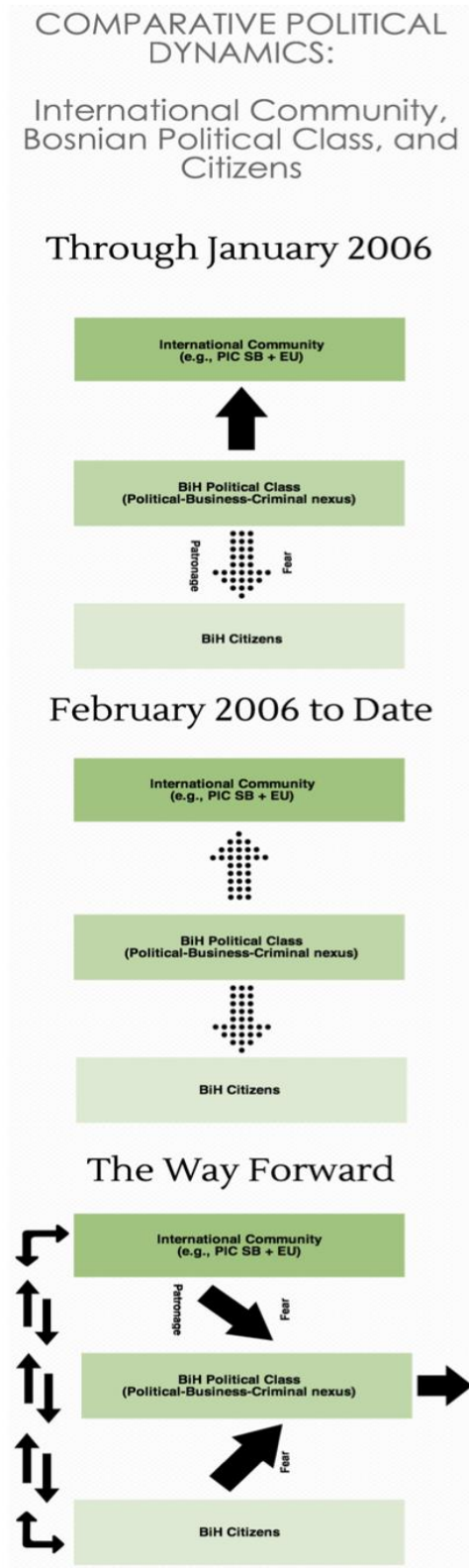


Chart 1 illustrates the political dynamic between 1996 and 2006. While BiH ethno-political elites had leverage over “their” people through application of patronage and fear (and therefore never really had to earn consent, as it was coerced), they also had to look up to a powerful international community which could – under the terms of the Dayton Accords – annul, amend, or impose laws, even remove officials or ban them from political life for violating the terms of the peace agreement. Since politics is a for-profit enterprise in BiH, that was bad for business. Furthermore, the leverage of fear was blunted by a presumption that the West – with American muscle paramount – would deter any resumption of hostilities or attempts to dissolve the state.

Chart 2 illustrates the political dynamic in Bosnia and Herzegovina from 2006 to date. The leverage of political elites over citizens of fear is amplified, since the countervailing force of committed Western enforcement of the Dayton Accords, in their civilian and military aspects is lacking – hence dotted lines in both directions. BiH’s political elites have never been as empowered. Effectively, they operate without political or legal constraint. Furthermore, they benefit from international financial largesse, with which they rent popular consent, as a sort of tribute. The West, including the US, is effectively renting quiet from these warlords-in-waiting, who exact tribute. Our policies are built around what they will and will not accept. They are not uniquely evil, but uniquely empowered – and they take full advantage.

Chart 3 illustrates the way forward. Pressure from both above – the US-mobilized West limiting their ability to generate insecurity by disarming them of their ability to generate fear and dispense patronage, combined with pressure from below – popular demand for political accountability, representation, and a rules-based society, would force BiH’s political elites to respond and accept the need for structural change. BiH’s political elites have had ample opportunity to do the right thing for the right reasons, but have refused due to their own personal interests. They must instead be compelled to do the right thing by making all other options more painful.