Speech by the High Representative, Wolfgang Petritsch at International Conference “Developing New Policies of International Support-Lessons (not) Learned in BiH” – Peace and Security – institutional development and the rule of law

Chairman of the Council of Ministers, Mr Lagumdzija

Prime Minister Ivanic

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Ladies and Gentlemen

In the two and a half years since I became High Representative in BiH, I have found myself repeating the phrases “institution building” and “rule of law” again and again – not because they have some sort of mantra-like power but because they are shorthand for the body of legislation and practice which a modern democracy needs in order to work properly. They sum up the mechanics of government. The theme of this conference is: lessons about international support that have – or have not – been learned in BiH. I would submit that very positive lessons have been learned here. To a large extent they concern changes

made to the mechanics of government, changes that have enabled the country to move forward from conflict and back to normality.

For six years, the mechanics of government in Bosnia and Herzegovina have been built around the Dayton Peace Agreement. We have learned on the job, sometimes the tough way and we have witnessed the remarkable capacity of the Dayton settlement to accommodate changing circumstances. Now the road to Europe is alongside the implementation of Dayton, and current political debate is addressing the best way of securing a place for the people of Bosnia and Herzegovina in the prosperous European mainstream.

There is now a conscious effort to transcend the gaps in Dayton. Simply implementing the letter of the agreement is not enough. It is necessary to develop it in order to deal with new challenges.

For one thing, Bosnia and Herzegovina's excessively devolved system of government with its many complex layers is an issue that has to be addressed as a matter of urgency. Comparisons are regularly made with complex governing structures that have worked well in countries such as Belgium or Switzerland. One fundamental difference is that in Belgium and Switzerland public institutions function properly, and another fundamental difference is that Belgium and Switzerland are rich, while Bosnia and Herzegovina is not. Devolution costs money. It costs the citizens of Bosnia and Herzegovina a great deal to maintain three state presidents, a president and vice president in each Entity, and a hierarchy of cabinets from the Council of Ministers down to the cantons, municipalities, governance and ministers. Just over a week ago I held a session of the Civic Forum in Mostar. One of the participants pointed out that to come from Livno to Mostar, a distance of just 80 kilometres, you have to cross three cantons, each of

which has its own cabinet government – it works out at one minister every two or three kilometres. This multilayered administrative system has to be streamlined if Bosnia and Herzegovina is to be made into a viable country. A debilitating combination of incompetence and bureaucratic overreach has undermined the rule of law and has provided the fertile soil for curruption. The same combination has eroded the integrity of the courts, the regulatory authorities, the schools, the police, and other institutions. In this respect, Bosnia and Herzegovina has highlighted a lesson which has been learned and re-learned as long as constitutions have been written – the test of an administrative structure is not how it looks on paper, but how it actually works.

The leaders of this country are now discussing a settlement that will eliminate flaws in the Entity constitutions and will normalise the politics of this country.

I should emphasise that there is no question of a kind of Dayton Two. My job is to implement Dayton. We are talking about the *evolution* of Dayton, about maintaining the strengths of the agreement – it has kept the peace in Bosnia and Herzegovina for six years and it can keep the peace for generations – and, through consensus, closing gaps in the agreement. The Dayton Constitution provides for its own amendment should the elected representatives of the country decide that amendment is necessary, or if amendment is needed, for example, in order to conform with Council of Europe or European Union requirements.

The Constitutional Court’s decision on the constituent status of Bosnia and Herzegovina’s peoples in both Entities is another example of how the Dayton Agreement offers possibilities for development and evolution.

The present constitutional talks must produce an agreement within weeks so that amendments can be made to the Entity constitutions and the BiH Election Law within the timeframe required to hold general elections on schedule in October under the provisions of the Election Law.

Only three days ago Mr. Walter Schwimmer underlined that the postponment of the elections is not an option. The people expect to vote. Undertakings given to the Council of Europe commit the government to an election in October.

The leaders of Bosnia and Herzegovina are engaged in intensive debate. They are working against the clock. I believe that collectively they now possess the skill and the vision to find a workable and durable solution. The very fact that these eight party leaders are meeting without international mediation in an attempt to solve a question that is crucial to the future of the country is encouraging and a positive sign.

Some will argue that the process of debate on efforts to harmonise the Entity constitutions with the BiH constitution has already dragged on too long – since the summer of 2000. But it should not be forgotten that an entirely new kind of consciousness has to develop – this is a process more time consuming and complex than the civic reconstruction process and simple negotiation. Thinking has had to change. Time has been needed for the potency of extreme nationalism to evaporate; it has had to be replaced by a civic alternative, a political culture within which compromise, consensus and cooperation are not viewed as weakness.

The rule of law and the established integrity of state institutions – the focus of this morning's discussion – are a product of normal politics and at the same time essential buttresses of normal politics. I should mention here that the

streamlining of the international presence in Bosnia and Herzegovina, which my office has been tasked with implementing, will include the setting up of an inter-agency task force to deal specifically with the Rule of Law and another task force to deal specifically with Institution Building. I have been pushing for these issues from the outset.

I should also note at this point that a function of normal politics is the development of a responsible and critical parliamentary opposition. Something that is easily overlooked here in BiH. The Alliance government has achieved much in the course of the last year. It would have achieved more had the opposition focused parliamentary efforts on constructive participation. Instead of this we have seen childish boycotts and procedural foot dragging.

This is not a matter of just abstract concern. The shortcomings of politicians – and I am speaking in general terms now – can have a terrible impact on people's lives. As many as three-quarters of the officials whom I had to remove from office during my tenure – I'm speaking now about Bosnia and Herzegovina in particular – have been responsible for preventing refugees and DPs from returning to their homes. This is a shocking reversal of the politician's proper role. In a system of normal politics, leaders *help* citizens pursue their legitimate aspirations, they do not hinder them. Obviously this is still not the rule here.

Return sits at the very heart of Bosnia and Herzegovina's normalisation. Return depends on the rule of law, including property law, and on the integrity of institutions, including efficient and impartial town hall administration and professional community policing. Now, what are the lessons that we have learned? Well, the latest statistics demonstrate that an effective mix of policy and practice can eliminate

political and bureaucratic roadblocks. In the first 11 months of 2001, according to UNHCR figures, a total of 81,000 refugees and DPs returned to their homes in areas where they belong to a minority group. This represented a 37 percent increase over the figure for the first 11 months of 2000. And 2000 was itself a breakthrough year, in which the total number of minority returns – almost 68,000 – indicated an unstoppable momentum in the process. This core Dayton obligation is on its way to being implemented.

The work involved in normalising the administration of Bosnia and Herzegovina has been detailed and painstaking. The Independent Judicial Commission, which I established at the beginning of 2001, is engaged in an ambitious overhaul of the courts. The wholesale scrutiny of judicial practice will clear dead wood from the legal system and put in its place a cadre of honest and competent judges and lawyers. Again, a lesson learned, albeit at a rather late stage in the peace-implementation process, has been that robust intervention at the operational level can have positive strategic consequences.

It is now quite clear that legal reform has economic as well as social and political implications. International investors want to know if the courts are competent and fair. They also want to know if statutory bodies, such as the Communications Regulatory Agency, are free of political control; and they want to know if the state follows internationally accepted norms of conduct – what they want to see is a functioning state. One consequence of globalisation is that companies won't invest in states that violate human rights, if only because this isn't good for corporate image.

The essential role of independent regulatory authorities is highlighted in a recent report on transition economies published by the World Bank* – Joe Ingram may have more to say

about this in his remarks this afternoon. Though it does not address the situation in Bosnia and Herzegovina specifically, the report articulates the general principle that privatisation cannot succeed without strong legal and regulatory institutions to oversee corporate governance. The free market is not the Wild West. There must be institutional checks and balances that protect workers and consumers and at the same time allow honest entrepreneurs to create jobs and generate profits. This is the role of the CRA and other independent regulatory bodies in Bosnia and Herzegovina.

In the last six years, Bosnia and Herzegovina has been undergoing a triple transition – from war to peace, from communism to democracy, from a planned economy to a market economy – and let's not forget that like many countries, including the other countries of former Yugoslavia, it has had to define itself – for the first time in its modern history – as an independent state. This is a modern sovereign state. It has experienced physical reconstruction and at the same time the construction of a modern legal environment and the development of a modern political and social mindset. The coordinated international and local effort has produced success – a recent editorial in the Economist newspaper, not always a great booster of multinational aid efforts, suggests that what Afghanistan currently needs is a High Representative. The Economist singled out the BiH model, not the Kosovo model, for instance, or models from further afield, such as East Timor. It has become crystal clear that countries cannot recover from war simply through material or military aid. They need institutions that work and they need a "culture" in which laws are properly debated and universally applied and obeyed. In Afghanistan, as well as other "failed states" even skeptics accept that institution-building will be at the core of a successful intervention.

This is a lesson other countries can learn from Bosnia and

Herzegovina. It is a lesson that Bosnia and Herzegovina – and the International Community – has learned through experience. The process is not yet complete. It will move forward significantly – and I am now referring to the constitutional reform discussions – if in the coming weeks BiH politicians demonstrate the statesmanship and breadth of vision which citizens have a right to expect.

Thank you.

* Transition: The First Ten Years, Analysis and Lessons for Eastern Europe and the Former Soviet Union