

Statement by Ambassador Klein, Principal Deputy High Representative to the Political Committee of the Assembly of the Council of Europe, Strasbourg

I am very grateful for this opportunity to speak to you this morning. I am grateful too to my colleagues from Bosnia, and for their assessments of the situation at this moment.

Let me, in a moment, comment, seriatim, on the eight minimum conditions set out in the memorandum of the Bureau of the Assembly dated 25 September.

But before I do so, may I say a word more generally on my views on the importance of eventual Bosnian accession to this Council? To Bosnia, Europe represents a beacon of hope. The Council of Europe stands for precisely the values which we are seeking to nurture in the new Bosnia. Tolerance. Diversity. Democracy. The rule of law. Respect for human rights.

No one here would pretend that these things exist in a perfect state yet in the Bosnia of today. And in commenting in detail on the eight conditions you have set, I will inevitably have to focus on some of the shortcomings.

But I do not want to give the impression that Bosnia is making no headway. It is. Just compare the situation today with that of two years ago, of a year ago, or even six months ago.

The role of the international community in fostering that progress has been and, in my view remains absolutely central.

This means NA TO; it means SPOR; it means the OHR and the other international agencies active on the ground. And it means too the leading European institutions, key among them the Council of Europe.

Your engagement in Bosnia is vital – both, as an incentive to the parties to implement reform, and in providing yardstick to measure the progress which has – or has not – been made in meeting the standards of openness and plurality for which the Council stands. I have no doubt at all that full membership of the Council will help to consolidate the peace in Bosnia; the question is not whether, but when accession would be both merited in its own right and most effective in reinforcing the peace.

Let me set out for the Committee where my Office consider we stand on the eight short term conditions specified by the Bureau of the Assembly:

(1) Cooperation with ICTY

The failure of responsible authorities, particularly the Republika Srpska, to hand over indicted persons presents a continuing obstacle to peace implementation. The surrender of 10 Bosnian Croats to The Hague on 6 October was a much welcome step towards improved co-operation by Bosnian Croats and the Federation. As of 7 October, only 4 of 18 Croats subject to publicly disclosed indictments remain at large and all 3 known Bosniac indictees are held in The Hague. In contrast, just 3 of 54 Serbs indicted by ICTY are in custody (the remaining 2 indicted Serbs, Simon Drljaca and Djorde Djukic, are deceased).

(2) Functioning of joint political institutions

Bosnia and Herzegovina continues to lack both a legal and an administrative basis for the common institutions established under the Peace Agreement to be able to perform their functions. A law on the work and organisation of the Council

of Ministers and the Ministries has been elaborated but not yet adopted. Most problematic, however, is the unwillingness of one party in particular to take the work of the common institutions seriously. The very location of the Council of Ministers is one such example. One side suggests, in all seriousness, that the Council should be permanently housed on the line separating the two Entities, with three separate "apartheid-style" entrances –one for each constituent people, and a heliport on top for international guests. The two other sides continue to undermine the common institutions by maintaining their illegal, pre-Dayton, administrative structures. In addition, the work of the Council of Ministers is made difficult by petty obstructions -altering the agenda frequently and at the last minute, for example, making proper preparations for the meetings impossible.

Citizenship laws

The issue of who is a citizen of Bosnia and Herzegovina and who isn't is a highly political problem, which goes to the very root of the conflict. Thanks to the helpful assistance of the Council of Europe, Bosnia and Herzegovina is about to adopt a citizenship law which, if adopted in the present form of the draft, meets the latest standards and recommendations of the Council of Europe. In particular, it satisfies the provisions of the European Convention on Nationality, which has been opened for signature today. I am proud to say that this is one of the fields in which the cooperation between the Council of Europe and my office has been the closest. Congratulations are, however, a bit premature – the law still needs to be approved by the Parliamentary Assembly, and in addition to that, as a next step, the two Entities need to adopt laws which are in conformity with the State law. Fortunately the Council of Europe is already involved in this second phase.

Passport law

It is a fundamental right for a person to leave and return to his or her country. But hundreds of thousands of citizens of Bosnia and Herzegovina still do not have a valid passport. Once the issue of who is a citizen has been solved, there would not seem to be any logical reason why a new passport law could not be adopted smoothly and quickly. However, this has not been the case. With passports, such as with many other issues, the interests of the people of Bosnia and Herzegovina have received little or no attention, while the decision-makers have let themselves be caught up for half a year in an agreement over symbols, rather than substance.

(3) Municipal elections (13-14 September 1997)

The voters of Bosnia and Herzegovina went to the polls on 13 and 14 September to cast their ballots for the first democratically elected municipal councils since the signing of the Peace Agreement. The elections were held in a calm, orderly and dignified manner. The huge turnout -at nearly 80 per cent of the electorate -represented a powerful signal that there is a substantial body of people in Bosnia and Herzegovina who wish to express themselves, and to do it peacefully through the ballot box rather than through violence. The voting remains primarily on ethnic lines, although less so than before. It will take time for people to vote ideologically rather than ethnically. I am very keen that European political parties -and the Council of Europe has an important role to play here -should come to Bosnia and teach Bosnian political parties how to operate in an open and democratic environment. The implementation of the election results represents, of course, the next crucial phase. The Election Implementation Plan endorsed at Sintra will be our guide in that respect.

Implementation will be a formidable challenge; but it is vital that we succeed if confidence in the electoral process is to be preserved.

(4) Voluntary return of refugees and displaced persons

More than 80,000 refugees have repatriated Bosnia and Herzegovina from countries in Europe since the beginning of the year and numerous displaced persons have been able to go home. However, almost all have gone to so-called majority areas -parts of the country administered by their own ethnic group – because of continued political, security and administrative obstacles.

–On Adoption of amendments to property laws of both entities:

Existing property laws in both the Federation and Republika Srpska substantially restrict the right of prewar owners/occupants to return to their homes. For example, in the Federation, persons who left “socially-owned” apartments during the war were required to reclaim their property by 6 January 1996, an insurmountable obstacle for almost everyone. Republika Srpska law imposes a reciprocity requirement on return to both “socially-owned” and private property under which the temporary occupant must willingly depart the dwelling before the rightful owner/occupant can return.

In August 1996, the OHR issued legal opinions on the property laws of both the RS and Federation in which it concluded that existing laws violated the rights to return and property set forth in Annex 7 of the Peace Agreement. The Ombudsperson for Bosnia and Herzegovina has found that both the Federation Law on Abandoned Apartments and RS laws violate the right to respect for home set out in Article 8 of the European Convention on Human Rights (ECHR).

Federation and Republika Srpska authorities conceded in July 1996 that their laws unduly restricted the right to return and agreed to bring them into compliance with the Peace Agreement, but they have not done so. Given this delay, the OHR, with substantial assistance from expert members of the human rights community, proceeded to prepare draft legislation itself, and

presented it to the Entities on 29 May.

At its 30 May meeting in Sintra, the PIC Steering Board called for property law amendments in order to make full implementation of Annex 7 possible. The Steering Board also recognised that economic levers may be necessary to prod the Entity governments to modify their laws.

On 20 August 1997 the Federation authorities agreed to ensure that the Federation Parliament considered and adopted the three draft laws prepared by OHR by 30 September 1997. Since that date, the Federation government has been preparing and considering amended versions of the OHR draft laws but none of the required legislative changes have been made. The federal

Government has submitted two of the three OHR draft laws to the parliament, but in a revised form which does not comply with the Peace Agreement.

The RS has not responded to the draft laws submitted by the OHR on 29 May 1997, and dissolution of the RS Parliament has impeded efforts to intervene on this issue in the ensuing months. The High Representative has recommended that the PIC Steering Board meeting in Sarajevo today should urge this Council to make amendment of these property laws a priority.

The OHR has also called repeatedly for amendment of the Federation's proposed Law on the Sale of Socially-Owned Apartments because it would give all occupancy right holders the ability to purchase their current residences, including persons who gained occupancy rights during the conflict. In so doing, the Law would erect a permanent barrier to return of pre-war occupants. Despite OHR intervention, this law was adopted on 30 October.

—full cooperation with the Commission for Real Property Claims of Refugees and Displaced Persons (Annex 7 of the Dayton Agreement)

While the Commission for Real Property Claims has issued some five thousand decisions on claims, neither entity (nor the Bill government) has put in place a mechanism to ensure enforcement of these decisions. OHR (with the CRPC) has drafted implementation legislation, and will be submitting this draft to the responsible authorities shortly. The Council of Europe should equally insist that this legislation be adopted promptly.

The Bill Presidency has recognised its obligation to support the Commission, but has sought assistance from international donors. The Presidency decided in July to allocate 200,000 DM to the Commission out of the 1997 budget, but this money has not yet been transferred to the Commission.

–prevention of destruction of property and harassment of returnees and prevention of continuing illegal evictions

There are continuing reports of destruction of property which is targeted to prevent return (several recent cases in Brcko, for example). More significantly, there have been several recent cases of violent crime involving minority residents/returnees (including two murder cases in Travnik). The fundamental problem is that these cases have never been properly addressed by the authorities. Suspects are rarely, if ever, arrested or prosecuted. The fact that those responsible for these crimes appear to act with impunity is a severe obstacle to return. UN IPTF reports that in recent murder investigations, the police have acted professionally, but the results in those (and many past cases) remain to be seen.

–abolition of discriminatory “war taxes” and other obstacles to the return of refugees and displaced persons.

“War tax” is a term used to reflect the practice of taxing people who left their home area during the war. Both the Republika Srpska and Federation authorities have levied war taxes against returnees. Several municipalities in the

Federation, particularly in the Tuzla area, continue to collect war taxes from returnees in contravention of instructions from Federation authorities to stop this practice. The OHR, OSCE, UN IPTF and UNHCR continue to raise this issue with the Federation authorities.

In the RS, the collection of war taxes is based on the law on the "Tax for the Reconstruction and Restoration of the RS" which requires payment of approximately DM 100 per month from pensioners and guest workers employed outside the RS. The OHR does not contest the right of the RS authorities to tax their citizens outside the RS. The problem is that the law is vague and fails to specify exemptions for returning refugees and displaced persons. We are pursuing this with the RS authorities.

(5) Freedom of movement

Although freedom of movement improves constantly, Bosnia and Herzegovina is still a country where it in practice is difficult, if not impossible for a person to travel freely or to choose his or her place of living. There has been a certain improvement in the charging of illegal visa fees and road taxes on citizens of Bosnia and Herzegovina by the RS, but there is still much to be done. Once again, much could easily be done for the benefit of the people of Bosnia and Herzegovina, if the decision-makers in Bosnia and Herzegovina could agree on common license plates with random numbers for all vehicles registered in Bosnia and Herzegovina.

The attempts to resume railway traffic between the Entities have so far been stranded by the fact that there is no agreement on the organisational structure even though Annex 9 of the Peace Agreement established a Transportation Corporation, to be formed by the Entities, for this purpose.

After many months of arguing over symbols, this time over area codes, there has, however, been an important step forward in

communication between the Entities. It is now possible to make phone calls between the Entities, although the telephone lines have insufficient capacity.

(6) Media

The general situation remains one of concern. Public media continue to pursue a nationalist and inflammatory editorial line, although this is less severe in the Bosniac-dominated territory within the Federation, where there are some signals of pluralism. Recent events in the RS including the seizure of SRT transmitter sites by SFOR have underlined the continued abuse of accepted norms in democratic media standards. The OHR are working with SRT to establish and entrench professional standards of conduct, and to guarantee objectivity and balanced reporting. Events in West Mostar have seen a resurgence of inflammatory language. We are tackling this firmly through action in the Media Support Advisory Group. However, there is now a plan in place for the full restructuring of the media through, inter alia, a new regulatory regime and a new media standards body.

(7) Human Rights

-full cooperation with the Ombudsperson and the Chamber of the Human rights of Bosnia and Herzegovina and the Ombudsmen of the Federation.

All three institutions have been hampered in their work by the low level of cooperation from the authorities. Authorities often fail to respond or respond inadequately to reports or requests for information. Implementation of decisions is poor. But there has been some progress by each institution. The Ombudsperson had registered 1060 cases by December and issued 59 final reports. The Chamber had registered 59 cases and rendered 11 admissibility decisions and two final decisions. The Federation Ombudsmen have recently opened an office in Travnik.

-progress in bringing legislation into line with the ECHR..., including reform of criminal and civil legislation; progress in the establishment of structures for inter-entity legal cooperation; further progress in the establishment of an independent judiciary in both entities and in the execution of judicial decisions by the executive authorities;

Good progress in the reform of the Federation Criminal Procedure. No progress in the RS. The High Representative wrote again to the Presidency on 4 November requesting action on this.

As far as the police are concerned, there is a clear commitment on the part of the Entities to restructure the police in accordance with Annex 11 of the Peace Agreement. There has been good progress in the Federation this year, especially in some of the more problematic Cantons. The restructuring process has begun in the RS, but is still lagging.

(8) Relations with neighboring states

The progress made, at last, in the appointment of ambassadors of Bosnia and Herzegovina is to be applauded. We are working hard to help to establish diplomatic relations between Bosnia and the FRY. However, the most recent member State of the Council of Europe, Croatia, must be urged to halt its unlawful and discriminatory treatment of citizens of Bosnia and Herzegovina registered in the territory of Republika Srpska, who are not permitted to Croatia freely, although their compatriots from the Federation may do so.

The agreements on special parallel relations between the Federation and the Croatia on the one hand and Republika Srpska and the Federal Republic of Yugoslavia on the other, must be brought in line with the Constitution of Bosnia and Herzegovina. In their current form, these agreements undermine the work of the common institutions of Bosnia and Herzegovina

established by the Peace Agreement.

Conclusion

I have set out, in some detail, what I believe to be the position at the moment on the issues of concern to the Committee.

But in closing, I would repeat the essence of what I said at the outset.

Bosnia yearns for- and needs -a broader political identity, and that means a European identity. To those who worry about religious fundamentalism in Bosnia-and some of those worries are in my view a trifle exaggerated-the answer is integration into the European family of nations. To those who note the inclinations of the RS towards continuing independence, or of the Croats to join Croatia, again integration of Bosnia into Europe would help to alleviate those concerns. So I appeal to the Committee. By all means examine closely whether Bosnia is living up to the tough conditions you have set for beginning the formal process of accession. But please keep in mind the wider picture, which is that it is in both Bosnia's and Europe's interest for Bosnia to become part in due course of the European institutional architecture. In the meantime, it is very important that Bosnia should feel that it will indeed be welcome; that the prize of membership is one well worth striving for; and, with the requisite effort on its part, a prize that is well within reach. I would therefore welcome an early visit by the Rapporteurs to Bosnia and Herzegovina in order to make their final assessment as to whether, or, as I very much hope, when the admission procedure should be officially initiated.

I applaud the work which the Council is already doing in Bosnia. I know how extensive that is. I would urge you to step it up even further, by sending as many of the members of this Assembly as you can, as regularly as you can, to work with

your counterparts in Bosnia. It is vital that Parliamentary institutions in Bosnia work as closely as possible with their European counterparts, to see how they operate and to learn from them. And there could be no better example than the breadth and diversity of modern European democracy that this Council.