



REPUBLIC OF SRPSKA
GOVERNMENT

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His Excellency Mr. António Guterres
Secretary-General
The United Nations
1 United Nations Plaza
New York, New York, USA 10017-3515

Dear Mr. Secretary-General:

To assist the Security Council in its upcoming meeting on Bosnia and Herzegovina (BiH), Republika Srpska (RS), as one of the two autonomous Entities that make up BiH and as a treaty party to the agreements comprising the Dayton Accords, presents the attached 26th Report to the UN Security Council. The RS reaffirms its dedication to the Dayton Accords, which have preserved peace and stability in BiH for more than 25 years, and emphasizes its conviction that BiH can be successful if the Accords, including the BiH Constitution, are implemented as written.

The first part of the Report reiterates the RS's commitment to the BiH Constitution and the rest of the Dayton Accords and explains that adhering to the Dayton compromise for decentralized power-sharing is the only way to build a successful BiH. Part I of the Report also examines the unlawful subversion of the BiH Constitution and how such subversion has caused BiH's current political crisis. The second part of the report highlights the crucial importance of the rule of law and outlines how it has been abused by some members of the international community and political actors in BiH. Part III of the Report explains the firm legal and constitutional basis for measures the RS is considering to uphold its rights under the BiH Constitution. Finally, the fourth part of the Report emphasizes that BiH's political disputes can and should be resolved through domestic dialogue, in accordance with Dayton's constitutional principles.

We ask that this letter and the Report be distributed to the Security Council's members. Should you or any Security Council member require information beyond what is provided in the Report or have any questions regarding its contents, we would be pleased to provide additional information.

Yours sincerely,

Prime Minister of the Republic of Srpska
Radovan Višković

Republika Srpska's 26th Report to the UN Security Council

October 2021

Republika Srpska’s 26th Report to the UN Security Council

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Republika Srpska's 26th Report to the UN Security Council

Introduction and Executive Summary

Republika Srpska (RS), a party to the treaties that make up the 1995 Dayton Peace Accords and one of the two autonomous Entities that make up Bosnia and Herzegovina (BiH), is pleased to submit this 26th Report to the UN Security Council.

The RS reaffirms that it remains fully committed to the Dayton Peace Accords, including the BiH Constitution, and to the continued progress of BiH toward regional and European integration. The RS fully respects BiH's sovereignty, territorial integrity, and constitutional order. The RS also insists that others in BiH and abroad respect and implement the Dayton Accords as written.

Despite inflammatory accusations made by certain parties who have never believed that the RS should be able to exercise its autonomy as recognized and guaranteed by the Dayton Accords, the legislation currently being formulated and implemented by the RS to assert and protect its constitutional rights does not "roll back" any "reforms." No prior act of any High Representative (HR) or any prior governmental entity in BiH that abuses the constitutional rights of the Entities or the constituent peoples can rightly be considered a reform. Rather, in an effort to create a more stable and successful BiH, the RS is merely correcting prior abuses, having lost hope of them being corrected in Sarajevo.

Those who accuse the RS of engaging in destabilizing or aggressive acts are merely seeking to provoke a crisis for their own benefit, typically in order to call for yet more attacks on the rights of the Entities and further erosion of the protections for constituent peoples set out in the Dayton Accords. Demands from the Serb or Croat peoples or institutions in BiH that their constitutional rights be respected in Sarajevo can only be considered destabilizing by those parties for whom "stability" is defined as total control and domination of all elections and governmental functions by the Bosniaks. It has increasingly become clear to certain members of the international community, regional leaders, and well informed analysts both inside and outside of BiH that, in reality, it is the constant pressure and attacks on the constitutional rights of the Serbs and Croats, and the refusal of the Bosniaks to accept the power-sharing principles enshrined in the Dayton Accords, that have produced instability in BiH—instability that will always persist until the Bosniak parties finally accept the Dayton principles in good faith.

The first part of this Report reiterates the commitment of the RS to the Dayton Accords and emphasizes that the Dayton formula for decentralized power-sharing is the only legitimate and viable basis upon which to build a successful BiH.

The second part of this Report emphasizes that nothing is more important for the future stability and prosperity of BiH than honoring and nurturing the rule of law in the county. This objective is severely hindered, however, when key officials and institutions in BiH ignore the Constitution, and influential members of the international community cynically disregard basic principles of due process and international law in their actions toward BiH and the RS. Such actions by certain members of the international community speak louder than their words, and rightly call into question whether it is the rule of law or rule by the powerful that really animates their policies.

The third part of this Report explains the firm legal and constitutional basis for actions under consideration to uphold the RS's rights under the BiH Constitution, including in connection with inter-Entity consent agreements (IECAs) and laws decreed by HRs in violation of the Constitution. The IECAs, under which the Entities consent to the exercise of Entity competences by BiH institutions, did not alter—and could not have altered—the basic constitutional structure of BiH, because they bear none of the attributes of a constitutional amendment. As mere political accommodations, the IECAs are neither permanent nor binding. The illegitimate foreign coercion under which the IECAs were signed further justifies a reassessment of how such matters should be addressed today.

Finally, as the Dayton Accords have provided for a peaceful and stable environment in BiH for over 25 years, it is important for all of its Parties and all other members of the international community to respect them and adhere to the principles that underlie those agreements. It is domestic dialogue, respectful of the Dayton structure and principles, that will resolve internal political problems in BiH. Because there is no material threat to peace in BiH, the Security Council should begin the process of ending the application of Chapter VII of the UN Charter to BiH.

Republika Srpska's 26th Report to the UN Security Council

I. Republika Srpska is committed to the BiH envisioned in the Dayton Peace Accords.

A. The RS is committed to the BiH Constitution and the rest of the Dayton Accords, and it insists on their full implementation.

1. Republika Srpska (RS) remains fully committed to the Dayton Peace Accords, including the Bosnia and Herzegovina (BiH) Constitution, and simply insists that others in BiH and abroad respect and implement the Accords as written. *The RS fully respects BiH's sovereignty, territorial integrity, and constitutional order.* It is the Sarajevo-based parties and their international allies who undermine BiH's sovereignty and constitutional order by supporting colonial rule over BiH by foreigners and subverting the BiH Constitution's division of competences between the BiH level and the Entities.

2. The RS has consistently respected the legal structure, rights, and obligations set forth in the Dayton Accords—including those set out in the BiH Constitution (Annex 4 of the Accords)—and it continues to demand that other parties and witnesses to the Accords do likewise, respecting not just the territorial integrity of BiH, but also the autonomy of BiH's two Entities and the rights of constituent peoples as guaranteed under the BiH Constitution.

3. The RS fully supports BiH as it is defined in the BiH Constitution, and it will continue to seek the Constitution's full and faithful implementation as the only viable option for BiH's long-term stability and prosperity. The RS in no way seeks to challenge BiH's territorial integrity or take away any of the powers and competences assigned to BiH-level institutions in the Constitution. Contrary to the allegations of some of the RS's critics, the RS has no plan to pursue secession from BiH. The RS simply insists that the letter of the Dayton Accords be respected as critical to the maintenance of stability and the rule of law in BiH. The RS has every right to demand that the constitutional structure established under the Accords, and the rule of law based upon that constitutional structure, be honored by parties both inside and outside of BiH, and it will continue working to enforce and protect its rights under the BiH Constitution through political and legal means.

4. All planned decisions and actions of the RS government and National Assembly are entirely consistent with the terms of the Dayton Accords and are simply intended to ensure that those terms are actually implemented. Any accusations that the RS is acting contrary to the Dayton Accords are preposterous provocations intended to further instigate a crisis and justify their calls for yet more counterproductive foreign intervention into the affairs of BiH.

B. The only BiH that is sustainable is the BiH agreed in the Dayton Accords.

5. The Dayton compromise has been successful in preserving peace in BiH for more than 25 years. Though BiH is dysfunctional today, BiH could be highly functional if it were allowed to operate as set out in the BiH Constitution. BiH can have a bright future as a successful and stable country, but that future can only be built in accordance with the Dayton Accords and the key principles of self-determination and human rights upon which those agreements were based. That conviction is the basis of all policies and actions of the RS.

6. The Dayton Accords provide for a sustainable BiH by recognizing BiH's ethnic and historical realities. The BiH Constitution as agreed at Dayton has succeeded in preserving peace and stability in BiH for so many years because it was tailored to BiH's political and historical reality, which is characterized by three peoples whose members fear domination by one or more of the others.

7. The Dayton Accords also recognized the fundamental human right of self-determination of peoples, which is a firmly established peremptory rule of international law. The BiH Constitution honors the principle of self-determination of peoples by providing for a decentralized system of government with two autonomous Entities and protections for the interests of each of BiH's constituent peoples. The dismantling of BiH's decentralized system and other constitutional protections for BiH's constituent peoples violate those peoples' right to self-determination, which is guaranteed and protected by the BiH Constitution.

8. Not only has experience demonstrated that the Dayton formula can succeed in maintaining peace and fostering progress in BiH, but there is no viable alternative and never has been. Even a half century of repressive government in the former Yugoslavia failed to extinguish Yugoslavia's separate ethnic identities and rivalries, which manifested themselves immediately as soon as the control of the repressive authoritarian regime receded. Proposals that ignore the troubled history and complex ethnic makeup of BiH in favor of unrealistic and utopian visions of a unified and centralized state represent either cynical attempts to gain an advantage for the majority Bosniaks, or the foolish triumph of hope over experience.

9. As Richard Holbrooke, the chief US negotiator of Dayton, said in 2007, "Bosnia is a federal state. It has to be structured as a federal state. You cannot have a unitary government, because then the country would go back into fighting. And that's the reason that the Dayton agreement has been probably the most successful peace agreement in the world in the last generation, because it recognized the reality."¹

C. BiH's Dayton Constitution has been—and continues to be—subverted by colonialist foreigners.

10. Since the Dayton Accords were agreed, successive HRs have acted illegally as colonial viceroys and worked aggressively to replace the highly decentralized BiH mandated by the BiH Constitution with the unitary state that was the Bosniak army's wartime goal. Over the years, successive HRs have, through legally preposterous decrees and coercion, achieved much of this agenda, creating scores of new BiH-level agencies created in violation of the BiH Constitution's division of competences. Instead of defending the BiH Constitution from these affronts, the BiH Constitutional Court, controlled by an alliance between the court's two Bosniak members and three foreign members, has admitted to rubber-stamping the dictates of the HR and weakened the Entities' constitutionally guaranteed autonomy at every opportunity.

11. Even so, political Sarajevo is still not satisfied. The stated platform of the main Bosniak political party, the SDA, demands the complete abolition of the Dayton structure—including the

¹ *Holbrooke: Kosovo Independence Declaration Could Spark Crisis*, Council on Foreign Relations, 5 Dec. 2007 (available at cfr.org/kosovo/holbrooke-kosovo-independence-declaration-could-spark-crisis/p14968).

Entities and the protections for constituent peoples—in favor of a unitary state that would be utterly dominated by a single constituent people, the Bosniaks. All of the actions and policies of SDA officials, throughout all BiH institutions, have aggressively sought to achieve this stated goal through systematically eroding the rights of the Entities and the participation of the Croats and Serbs in the political and civil life of BiH.

12. It is increasingly apparent to numerous informed officials and analysts, both within and outside BiH, that the centralized BiH that the SDA, the OHR, and certain of their allies in the international community have been trying to build has never worked in BiH, is not working now, and cannot possibly work now or ever. The RS's policy seeks to help BiH succeed through faithful adherence to the Dayton Accords, including the BiH Constitution.

D. Current crises in BiH are caused or exacerbated by deviations from Dayton.

13. A foolish disregard for the historical and current realities in BiH has often led certain foreign parties to believe that a more centralized, unitary BiH state could succeed in BiH if only certain individual boisterous Croat and Serb leaders could be brought to heel, but it is increasingly apparent, even to many of the SDA's most fervent supporters in the international community, that these illusions are not just mistaken, but destructive. Those who continue to blame BiH's dysfunction on particular politicians or the Dayton Constitution turn reality on its head. The main cause of BiH's dysfunction is not charged rhetoric or the structure of the Dayton formula, but the persistent refusal by the SDA to accept and abide by Dayton's provisions requiring power-sharing among BiH's constituent peoples. As Croatia's President, Zoran Milanović, said in August, "The Dayton Agreement has not failed, it is not respected and is violated. If it were respected, everything would be all right."²

14. Difficulties in achieving state-level consensus are inherent in a multinational democracy like BiH. As in numerous other countries with identifiable groups and regions, the BiH Constitution ameliorated that problem by strictly limiting the state level's competences, thus minimizing the scope of contentious decisions required at the BiH level.

15. Unfortunately, the unconstitutional centralization of competences, resulting from illegal decrees and coercion by the HR, has sabotaged the Dayton design. It is not the BiH Constitution that has caused dysfunction in BiH, but rather it is the violence done to that Constitution; it is the unconstitutional centralization of governance that has been the source of many of the frequent and most contentious deadlocks that have marked BiH-level governance.

16. Former OHR attorney Matthew Parish acknowledged this obvious fact recently when he wrote that BiH's "problems have been compounded . . . by successive High Representatives and other international officials pressing the parties to create ever more federal structures in a push towards the centralisation of power."³ He further explained, "It is decentralisation that defuses the

² *Croatian President: Dodik's initiative 'well-intentioned but unrealistic'*, HINA, 30 Aug. 2021.

³ Matthew Parish, *How to exit Bosnia*, Transconflict, 8, Apr. 2021.

political pressures of consociationalism when different groups do not want to compromise with one-another, not more centralisation.”⁴

17. Those who blame heated rhetoric for the political dysfunction in BiH are like those who would charge the crime against the frantic victim, not the quiet mugger; it is the violation of Entity and peoples’ rights and the persistent violation of the Dayton formula that causes the charged rhetoric.

E. Those calling for a centralized “civic state” seek mono-ethnic dominance of BiH.

18. Some advocates of doing away with the BiH constitutional order call for a “civic” BiH without protections for the constituent peoples. The word “civic” is meant to suggest a transcending of BiH’s ethnic divisions. In reality, however, the word is a smokescreen for Bosniak nationalism. Because Bosniaks are the most numerous constituent people and, according to the most recent census figures, make up a majority of BiH’s population, calls for a “civic” BiH are calls for a state governed by Bosniaks and for Bosniaks.

19. This vision is a dangerous delusion, because BiH simply could not exist as a “civic state.” Serbs and Croats in BiH have, through their votes, consistently and emphatically rejected the idea of a “civic” BiH.

II. A sustainable, peaceful, and prosperous BiH must be built on respect for the rule of law.

20. Many of BiH’s friends in the international community frequently emphasize—rightly—the importance of the rule of law to BiH’s development. Yet many of these same foreign powers often demonstrate their utter disregard for the most basic rules of international and constitutional law, and support or condone egregious abuses of the rule of law by actors such as the ad hoc Peace Implementation Council (PIC) Steering Board, the OHR, and the foreign judges on the BiH Constitutional Court. Moreover, recent threats to impose economic sanctions on certain BiH citizens due to corruption allegations—with no evidentiary hearing, no means to respond to the allegations, and no judicial process whatsoever—only further demonstrate that foreign interference in the affairs of BiH is undertaken by these external actors with total disregard for the most basic requirements of due process and the rule of law.

A. The self-appointed PIC Steering Board has shown disdain for the rule of law.

21. The PIC is an ad-hoc, self-appointed collection of countries and organizations that has no legal charter, no international mandate, and no legitimate authority whatsoever. It is merely, as the European Court of Human Rights characterizes it, an “informal group of states,”⁵ The UN Security Council has never delegated any power to the PIC, and the group is not mentioned in the Dayton

⁴ *Id.*

⁵ *Berić v. Bosnia and Herzegovina*, Eur.Ct. H.R., decision of 16 Oct. 2007, at para. 26; available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-83109%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83109%22]}).

Accords or in any other treaty. Yet the PIC’s so-called steering board, a smaller ad-hoc collection of countries, has bestowed on itself sweeping legal authorities to determine BiH’s future, including the power to appoint new HRs without Security Council approval and the power to set conditions for the closure of the OHR.

22. On 27 May 2021, a majority of the ambassadors representing members of the PIC Steering Board purported to appoint German politician Christian Schmidt to succeed Valentine Inzko as HR. This represents another serious violation of article 41 of Vienna Convention on Diplomatic Relations and the principle of non-interference in internal affairs of a host state. As explained in Attachment 1 to this Report, Mr. Schmidt’s purported appointment is entirely illegitimate, because there is no legal basis for the PIC Steering Board or a majority thereof to appoint a new High Representative. Neither the Dayton Accords nor the UN Security Council granted the PIC or its steering board any such authority. The purported appointment of Mr. Schmidt by certain members of the PIC steering board was simply an exercise of raw power, untethered from any law or legal process. Certain members of the board determined not that they had the legal authority to appoint a new HR, but simply that no one could stop them.

23. The PIC steering board likewise has no legal authority to set conditions for the closure of the OHR, but that, of course, has not stopped it from supporting the so-called five-plus-two agenda, an entirely arbitrary set of criteria that has little, if anything, to do with what BiH needs to succeed and prosper. Regarding the five-plus-two agenda, the International Crisis Group has observed that “there was little discussion of [the conditions’] feasibility,” and that the agenda “no longer has much to do with the state’s viability.”⁶

24. When members of the PIC Steering Board take actions devoid of any legal basis, invent legal authorities out of thin air, and declare that such actions will be binding upon the parties to Annex 10, such cynical actions demonstrate the insincerity of its members’ admonitions that BiH must improve its respect for the rule of law, and further corrode respect for law in the political and civil spheres in BiH.

B. Successive HRs and their supporters have shown disdain for the rule of law.

25. Until 2021, the HR—lacking international support—had gone ten years without handing down any illegal decrees or punishments. In the closing days of his term as HR in July 2021, however, the most recent HR, Valentin Inzko, imposed a decree criminalizing the expression of certain opinions about BiH’s wartime history. As explained in detail in Attachment 2 to this report, Mr. Inzko’s gag decree is a lawless and destabilizing attack on the Dayton Accords, including BiH’s democratic constitutional order and the right to freedom of expression guaranteed by the BiH Constitution and the European Convention on Human Rights. Mr. Inzko’s lawless decree is yet another example of the so-called “international community” casting the rule of law aside when it interferes with its own agenda.

C. The foreign judges on the BiH Constitutional Court have shown disdain for the rule of law.

⁶ *Bosnia: Europe’s Time to Act*, International Crisis Group, 11 Jan. 2011, p. 10, 16.

26. Instead of performing its duty to uphold the Constitution, a majority of the BiH Constitutional Court composed of the court's two Bosniak members and three foreign members has consistently given its imprimatur to the HR's unconstitutional centralization of BiH and the weakening of constitutionally guaranteed protections for BiH's constituent peoples. In effect, the body that is most responsible for establishing and honoring the rule of law in BiH has regularly ignored the law. The BiH Constitution provides, "All governmental functions and powers not *expressly assigned* in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities."⁷ Yet despite this clear instruction, the Constitutional Court majority has routinely approved BiH-level competences that are neither expressly, nor even implicitly, assigned to the BiH level. A former foreign judge on the court admitted that there is a "tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation."⁸

27. In a 2010 interview, Nedim Ademović, the former chief of staff of the Constitutional Court's president, said approvingly, "[C]onstitutional-law development has been exclusively a consequence of international interventionism."⁹ He boasted, "The BiH Constitutional Court has granted legitimacy to a host of imposed laws and introduced a balance between BiH sovereignty and international governance."¹⁰

28. The Constitutional Court has consistently flouted the rule of law, ignored clear constitutional requirements, and acquiesced to the HR's illegal imposition of laws by decree, which is quite obviously contrary to the democratic legislative system established in the Constitution.

29. The Constitutional Court has also used constitutionally groundless cases brought by Bosniak officials to further diminish the autonomy granted to the RS under the Dayton Accords. For example, the court outlawed the RS's flag, anthem, and coat of arms, and forbade the RS from marking the date of its birth with a holiday. The court has also been steadily depriving the RS of its public lands. In September, the court held that the public forest land that the RS has administered for almost three decades does not belong to the RS.¹¹ None of those decisions find any support whatsoever in the actual text of the BiH Constitution.

30. The reason a majority of the Constitutional Court has reliably supported the dismantling of the Dayton compromise is that in key cases the court's three foreign judges vote as a bloc with the two Bosniak judges, thus outvoting the four other BiH citizens on the court.

⁷ BiH Constitution, Art. III (3)(a) (emphasis added).

⁸ Joseph Marko, *Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina*, European Diversity and Autonomy Papers (July 2004) at 17 and 18.

⁹ Oslobodjenje interview with Nadim Ademović, 24 Apr. 2010.

¹⁰ *Id.*

¹¹ At the same time, the Brčko District Statute, which was imposed by the district's foreign supervisor in 2000, states that all public property in the district belongs to the district. Statute of the Brčko District, art. 8(5).

D. Political Sarajevo's intensified assault on BiH's constitutional order

31. As explained in Attachment 3 to this report, Sarajevo-based parties are abusing the rule of law and causing instability by intensifying their efforts to dismantle the constitutional system established in the Dayton Accords in order to achieve total Bosniak domination. For example, Sarajevo politicians have unconstitutionally usurped control over BiH's international relations apparatus, disregarding the Constitution's assignment of competence over foreign policy to the BiH Presidency.

III. An Entity has the right to withdraw its consent from inter-Entity agreements and resume exercising competences assigned to the Entities by the BiH Constitution.

32. For many years, in its reports to the Security Council and elsewhere, the RS has explained that the division of competences set out in the BiH Constitution must be respected and implemented. Yet, far from respecting and implementing that division of competences, political Sarajevo and its allies at the OHR and in the BiH Constitutional Court have continued to hack away at Entity autonomy in defiance of the Constitution.

33. The first two parts of this report have outlined: how the OHR and its allies have, over the years, eviscerated the autonomy that was guaranteed to the RS under the Dayton Accords; and how the OHR, the PIC steering board, the foreign members of the BiH Constitutional Court, and political Sarajevo have dispensed with the rule of law in order to pursue their agendas.

34. Rather than wait until there is nothing left of the RS but an empty shell, RS institutions are acting—consistent with BiH's sovereignty, territorial integrity, and constitutional order—to uphold the RS's rights under the BiH Constitution. The BiH Constitution, as its article III(3)(b) provides, "supersedes inconsistent provisions of the law of Bosnia and Herzegovina . . ." Thus, any BiH law that was decreed by the HR in defiance of constitutional procedures, or that is inconsistent with the division of competences set out in the Constitution, is superseded by the BiH Constitution and may be treated as null and void.

35. There are currently several political agreements in which the Entities consented to BiH institutions' exercise of competences reserved to the Entities in the Constitution. As explained below, the RS National Assembly (RSNA) would be fully within its rights to withdraw its consent from these inter-Entity consent agreements (IECAs). Such an action would in no way challenge BiH's sovereignty, territorial integrity, or constitutional order.

36. As explained above, the BiH Constitution entrusted the Entities with all but a few governmental competences. In the years since Dayton, however, the two Entities—often under extreme pressure from the HR—reached several political accommodations consenting to the exercise of additional competences by BiH. In light of the continued unconstitutional centralization of BiH through the efforts of political Sarajevo, the OHR, certain foreign powers, and the foreign members of the BiH Constitutional Court, the RS National Assembly is prepared to withdraw the RS's consent from IECAs.

37. The rights and obligations of the Entities are governed by the Dayton Accords, including the BiH Constitution. As the BiH Constitutional Court has confirmed, an IECA is not an amendment to the BiH Constitution, and cannot be given the legal effect of an amendment, because

such agreements did not undergo the proper procedures for an amendment. An IECA cannot effect a permanent change to BiH's constitutional structure. The BiH Constitutional Court correctly held in 2006 that IECAs are not part of the BiH Constitution and that the Court does not even have jurisdiction to determine whether a contested act is inconsistent with them.¹² Rather, any such instrument is merely a political agreement that does nothing to change the Constitution or the Dayton Accords.

38. Just as Entities can make a political agreement consenting to the BiH level's responsibility over a matter, they can also withdraw such consent. Nothing in these political agreements says that they are permanent and forever binding. Indeed, any clause of an IECA that claimed the agreement to be permanent would be unconstitutional, because the IECAs did not undergo the constitutionally prescribed process for amending the Constitution. As former OHR attorney Matthew Parish has observed, treating IECAs as irrevocable would mean that "signature of an [IECA] would be tantamount to permanent amendment of the Constitution, an analysis without significant precedent in international or domestic law."¹³

39. The BiH Constitution lays out clearly the process for its own amendment in Article X(1). Apart from enacting a constitutional amendment according to this process, no politician, government, or legislature in BiH has authority to effect a change in BiH-level competences that is binding on future politicians, governments, and legislatures. As Article 1 of the Constitution states, BiH "shall operate under the rule of law" rather than the rule of men. The positions of politicians do not determine the constitutional competences of BiH's various levels of governance—the Constitution does.

40. The Constitution provides at Article III(3)(a), "All governmental functions and powers not *expressly assigned* in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities."¹⁴ Any responsibilities that BiH assumes in accordance with an IECA are certainly not "expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina." Hence, such responsibilities remain, as a constitutional matter, "those of the Entities."

41. The constitutional provision that allows for IECAs provides that BiH "shall assume responsibility for such other matters *as are agreed by the Entities . . .*"¹⁵ Thus, once BiH responsibility for a matter is no longer agreed on by the Entities, BiH no longer has responsibility for that matter.

42. As explained above, the IECAs are merely political accommodations, not binding treaties or legal contracts. But even if the IECAs were legally binding instruments, the RS would still be legally justified in withdrawing from them, because the RS's consent for them was wrested by

¹² Decision on Admissibility and Merits, Case U 17/05, BiH Constitutional Court, 24 May 2006, at para. 16.

¹³ Matthew Parish, *A Free City in the Balkans* 144 (2010).

¹⁴ Emphasis added.

¹⁵ BiH Constitution, art. III(5)(a) (emphasis added).

coercion and threats by external forces. It is a universal principle of law that an agreement of any type that is entered into under coercion is voidable by the coerced party. For example, the Vienna Convention on the Law of Treaties provides, “The expression of a State’s consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.”¹⁶ Similarly, contract law around the world makes contracts void or voidable in cases when a party was not free from undue coercive influence. The Commission on European Contract Law’s *Principles of European Contract Law*, for example, provides that a party may avoid a contract in cases of a threat by a third party.¹⁷

43. The RS’s consent to IECAs often came under heavy pressure and threats from the HR. At the time of these agreements, the HR routinely imposed extrajudicial punishments on public officials—especially Serb officials—who failed to do his bidding. In his book recounting his tenure at the OHR, Matthew Parish wrote of HR Paddy Ashdown, “By pressuring Entity representatives into signing IECAs, through express or implied threats of removal or other unpleasantness imposed by the High Representative’s decision, Ashdown could expand significantly the scope of his state-building project.”¹⁸ Parish further observed, “RS politicians agreed to and voted for [Indirect Tax Authority] reforms under colossal pressure from Ashdown.”¹⁹

44. In its Final Report, the Independent Judicial Commission, a body created by the High Representative, admitted that the negotiation of the IECA on the High Judicial and Prosecutorial Council “only succeeded following intense high-level pressure.”²⁰

45. The IECA on armed forces was also the result of extreme foreign duress. According to a research paper published by the University of Manchester, “The creation of a single, central defence establishment . . . was agreed under intense international pressure. OHR pushed relentlessly on this issue Some local actors, especially the Bosnian Serb leadership, tried hard to prevent the unification of armed forces yet were eventually *forced to relent*.”²¹

46. The historical record demonstrates clearly that the consent of RS politicians to IECAs was the result of coercion by unelected external forces. Thus, given the defect in the formation of these

¹⁶ Vienna Convention on the Law of Treaties, art. 51.

¹⁷ The Principles of European Contract Law (2002), art. 4:111. *See also* Restatement (Second) of the Law of Contracts, §174.

¹⁸ Parish at 178.

¹⁹ Parish at 258.

²⁰ IJC Final Report, p. 96.

²¹ Slobodan Perdan, *Bosnia: SSR under International Tutelage*, p. 261, available at <https://www.research.manchester.ac.uk/portal/files/25290170/POST-PEER-REVIEW-PUBLISHERS.PDF> (emphasis added).

agreements from the outset, the RS would be especially justified in voiding or withdrawing from them.

47. With regard to the IECA on armed forces, it should be noted that the RS has long advocated—and continues to advocate—the demilitarization of BiH. The armed forces are BiH’s largest expenditure, yet serve no real purpose. The BAM 350 million in annual funding for the armed forces would be much better used elsewhere. The RS will also continue to cooperate closely with Western security and intelligence services on counterterrorism and other important matters.

48. On 20 October 2021, the RS National Assembly approved legislation to re-establish the RS Agency for Medicines and Medical Devices. This move was urgent and essential because the BiH-level Agency for Medicinal Products and Medical Devices, which was established in 2009, has been obstructing, through its regulations, the production and delivery of life-saving oxygen to health facilities in the RS. The BiH agency has refused RS officials’ entreaties to resolve the issue. This issue of life and death compelled the RS to resume exercising its constitutionally allocated competence. This valid exercise by the RS of the regulatory responsibility assigned to it under the Constitution does nothing whatsoever to challenge the sovereignty, territorial integrity, or constitutional order of BiH, and the overreaction from the SDA leadership simply demonstrates that the SDA is more concerned with consolidating all political control than with the health of BiH citizens.

IV. Political problems in BiH should be resolved through domestic dialogue.

49. BiH, though burdened with political divisions and problems like so many countries, has—thanks to the Dayton Accords—been peaceful and secure for many years. BiH’s political crises and challenges can and should be resolved through domestic dialogue, respectful of the BiH Constitution and its key principles. Indeed, the RS believes that there is no material “threat to the peace, breach of the peace, or act of aggression”²² that justifies the Security Council acting under Chapter VII of the UN Charter. The Security Council should thus begin the process of ending the application of Chapter VII measures to BiH.

²² See Chapter VII of the UN Charter.

A New High Representative Has Not Been Appointed

Despite claims by some countries that German politician Christian Schmidt is the new High Representative (HR) in Bosnia and Herzegovina (BiH), Mr. Schmidt has not been legally appointed to the position. There will not be another HR until such time as the UN Security Council has agreed to an appointment.

The Peace Implementation Council (PIC) is an ad-hoc group of countries and organizations with no charter, no grant of authority, and no legal power. As the European Court of Human Rights has indicated, the PIC is merely an “informal group of states,”¹ On 27 May 2021, ambassadors representing a majority of the members of the PIC's Steering Board—an even smaller ad-hoc collection of self-appointed countries—purported to appoint Mr. Schmidt to be the next HR. There is no legal basis whatsoever for the PIC Steering Board or a majority thereof to appoint a new HR, and the ambassadors' action is interference in BiH's internal affairs in violation of the Vienna Convention on Diplomatic Relations.

A collection of countries like the PIC cannot bestow legal authority on itself. The PIC Steering Board cannot summon the legal authority to appoint the HR out of thin air—it must come from somewhere. The only conceivable sources of authority to appoint an HR are the Dayton Accords and the UN Security Council. Neither the Dayton Accords nor the UN Security Council granted the PIC or its Steering Board any such authority.

The Dayton Accords do not even mention the PIC. Annex 10 of the Dayton Accords, the only source of the HR's lawful authority, provides that “the Parties request the designation of a High Representative, to be appointed *consistent with relevant United Nations Security Council resolutions*, to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement”²

Annex 10 does not lay out an appointment process for HRs, because there was only supposed to be a single HR. Annex 10 authorizes the “designation of a High Representative,” not a succession of High Representatives. The drafters of the Dayton Accords never authorized multiple HRs or contemplated that the OHR would remain entrenched in Sarajevo after more than a quarter century of peace.

Annex 10 does not even mention the PIC or its Steering Board, much less grant them any legal or appointment authority. Rather, Annex 10 makes clear that the HR can be appointed only “consistent with relevant United Nations Security Council resolutions.” The Security Council has not authorized the PIC Steering Board to appoint a new HR, nor has the Security Council approved or ratified Mr. Schmidt's appointment.

¹ *Berić v. Bosnia and Herzegovina*, Eur. Ct. H.R., decision of 16 Oct. 2007, at para. 26; available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-83109%22%5D%7D>.

² Agreement on the Civilian Implementation of the Peace Settlement, Annex 10 of the Dayton Accords, art. I(2).

Thus, the purported appointment of Mr. Schmidt by a select majority of the PIC Steering Board has no legal validity, and Mr. Schmidt is not invested with, and cannot claim, any valid legal authority under Annex 10 or otherwise.

The purported appointment of Mr. Schmidt by the PIC Steering Board was an exercise of raw power, untethered from law. Members of the PIC Steering Board determined not that they had the legal authority to appoint a new HR, but simply that no one could stop them from doing so. When members of the PIC Steering Board take actions devoid of any legal basis and declare that such actions must be binding upon the parties to Annex 10, such baseless actions show disregard for the rule of law and can only lead to further cynicism and erosion of respect for the rule of law within the political and civil spheres in BiH.

Not only was Mr. Schmidt's purported appointment not done in accordance with law, it was not even done in accordance with precedent. All past HRs have been chosen by consensus of the PIC Steering Board and, with one exception,³ their appointments have been expressly agreed to by resolutions of the Security Council. Mr. Schmidt's purported appointment was neither the result of a consensus on the PIC Steering Board, nor has it been approved by a Security Council resolution.

Mr. Schmidt's purported appointment by the ad hoc PIC's Steering Board was also carried out without any consultation whatsoever with the parties to Annex 10 who initially requested the HR's designation—parties that include the RS.

Mr. Schmidt has struggled in his attempts to defend the legal legitimacy of his "appointment" as HR. In an interview in September, Mr. Schmidt said: "The High Representative is elected by the Peace Implementation Council in BiH, so I recommend that we do not discuss the procedures but the content." It comes as no surprise that Mr. Schmidt does not wish to discuss the procedures used to "appoint" him, because such procedures were entirely illegitimate.

In another September interview, Mr. Schmidt defended his presence in the OHR by saying, "It is very clear that the international community, the Peace Implementation Council, has nominated me. I'm in office, I'm here, I'm living."⁴

This is not the response of someone with a legitimate legal argument. Leaving aside that the "international community" is a fictional concept, the "international community" was never given authority to appoint a new HR, in the Dayton Accords or anywhere else. To the extent that the "international community" exists, it is absurd to suggest, as Mr. Schmidt has, that it is synonymous with the PIC. The countries of the PIC Steering Board that voted to "appoint" Mr. Schmidt as HR account for only about 11.6 percent of the world's population. To equate a majority of the PIC Steering Board with the "international community" illustrates the extent to which the colonial mindset remains alive, at least when it comes to BiH. A body somewhat more

³ Christian Schwarz-Schilling's appointment was instead endorsed in a letter from the President of the UN Security Council.

⁴ *High Rep: It's up to BiH political leaders to agree on electoral reform*, N1, 22 Sep. 2021.

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Attachment 1

representative of the "international community" is the United Nations, which, as mentioned above, declined to appoint Mr. Schmidt as HR.

Until the UN Security Council approves the appointment of a new HR, the position will remain vacant.

Former HR Valentin Inzko's Attack on BiH's Constitutional Order

In the closing days of his term as High Representative (HR) in Bosnia and Herzegovina (BiH) in July 2021, the most recent HR, Valentin Inzko, imposed a gag decree criminalizing the expression of certain opinions about BiH's wartime history. Mr. Inzko's decree is a lawless and destabilizing attack on the Dayton Accords, including BiH's democratic constitutional order and the right to freedom of expression. Beyond that, the decree is unwise and cannot be enforced in a just, non-political manner.

Mr. Inzko's gag decree is an unlawful attack on democracy and human rights in BiH.

It was manifestly illegal for the HR to impose a gag law—or any other law—on BiH. BiH is a sovereign state, and its Constitution establishes a democratic system for enacting laws. As detailed in the paper *The Illegality of the Bonn Powers*, which is attached to the RS's 22nd Report to the UN Security Council, Mr. Inzko has no authority under the Dayton Accords, or any other source of law, to impose laws or otherwise act as a foreign dictator of BiH.

Annex 10 of the Dayton Accords, the sole source of the HR's legal authority, defines a strictly limited mandate for the HR, authorizing it to engage in such activities as to “[m]onitor,” “[m]aintain close contact with the Parties,” “[f]acilitate,” “[p]articipate in meetings,” and “[r]eport.” The HR's mandate does not include the slightest suggestion of the dictatorial authority to impose laws by decree, and neither the UN Security Council nor any other body has ever given the HR additional authority.

In order for any BiH law to be legally binding, it must be duly approved by both chambers of the Parliamentary Assembly as required by the BiH Constitution. Far from approving a gag measure such as Mr. Inzko's, the Parliamentary Assembly has repeatedly voted against such legislation. BiH's friends in the international community often emphasize—rightly—the importance of the rule of law. For an unelected foreign ambassador to impose an edict on BiH without any legal authority makes a mockery of the rule of law in BiH. Mr. Inzko's edict also undermines BiH's sovereignty, badly setting back BiH's prospects for EU membership.

The gag decree violates the BiH Constitution and international human rights law.

Mr. Inzko's gag decree is a gross violation of BiH citizens' right to freedom of expression, which is guaranteed by the Article II(3)(h) of the BiH Constitution agreed at Dayton, as well as the European Convention on Human Rights. The European Court of Human Rights has made clear that states may not adopt laws that severely restrict and criminalize free speech even when that speech amounts to a denial of a historical genocide. The Grand Chamber of the European Court of Human Rights held in 2015, for example, that Switzerland's prosecution of a politician for denying the occurrence of the Armenian genocide violated the politician's freedom of expression because the restriction was not necessary in a democratic society.¹

If the right to free expression under the BiH Constitution and the European Convention on Human Rights means anything, it must include the right to criticize a public authority. That right

¹ *Perinçek v Switzerland*, European Court of Human Rights, App no 27510/08, 15 October 2015.

would be an empty fraud if it permitted an individual to be imprisoned for disagreeing with a decision of a court or other public organ. Yet that is what Mr. Inzko's ill-conceived decree tries to do.

In addition to violating BiH citizens' right to free expression, the gag decree violates BiH citizens' democratic rights. For an unelected foreign diplomat to decree a law violates the right to free elections guaranteed under Protocol No. 1 of the European Convention and the International Covenant on Civil and Political Rights (ICCPR), which also applies directly under the BiH Constitution.

The gag decree is so poorly drafted that it ensures unfairness in enforcement.

Mr. Inzko's decree is so poorly drafted and so focused on targeting Serbs that it does not even criminalize all genocide denial. For example, Mr. Inzko's measure allows certain Bosniak "analysts" and "historians" to continue denying that the Nazi regime committed genocide against Jews (because that genocide did not result in international convictions for genocide). Also, under Mr. Inzko's decree, one can still name a street after Osama bin Laden or Adolf Hitler, because they were never convicted of war crimes.

The decree is already throwing judicial processes into disarray, making it impossible for war crimes defendants to receive a fair trial. Immediately after Mr. Inzko's decree was announced, a war crimes trial at the Court of BiH was postponed because attorneys announced that they are unsure whether they would incriminate themselves by defending their clients.²

Mr. Inzko's measure is also nakedly one-sided when it comes to genocide allegations. For example, it does not include any sanction for patently false and malicious allegations of genocide, such as the head of the SDA's recent reference to the entire Serb community as "genocidals."³

What makes Mr. Inzko's decree even more inexplicable is that it was totally unnecessary. The BiH Criminal Code already had a provision establishing criminal penalties for anyone who "publicly provokes or inflames national, racial or religious hatred, conflicts or intolerance among the constituent peoples and others."⁴ The fact that the decree was so gratuitous demonstrates that the act was not designed to accomplish anything useful, but was primarily an exercise in political grandstanding by Mr. Inzko.

The gag decree undermines reconciliation and unnecessarily stifles historical inquiry.

Reconciliation comes with justice, dialogue, and free historical inquiry in the search for truth. The RS strongly supports investigating all wartime atrocities and bringing all war criminals to justice, regardless of their ethnicity or that of their victims. Imprisoning those who express

² *War crimes trial postponed due to High Rep's new law in BiH*, Detektor.ba, 28 Jul. 2021.

³ *Bakir Izetbegović: Ako bude rata, spreman sam stati ispred ljudi*, N1, 20 Apr. 2021.

⁴ BiH Criminal Code, art. 145a.

certain historical opinions, far from promoting reconciliation, serves only to deepen resentment and inflame inter-ethnic tensions in BiH.

It is clear, as RS leaders have often stated, that terrible war crimes were committed at Srebrenica. The operational objectives of the actions in Srebrenica, however, and whether the resulting massacre should be labeled a genocide, are subjects of legitimate historical inquiry, debated not only in BiH but also among international scholars and experts on the region. For example, Prof. William A. Schabas, former president of the International Association of Genocide Scholars, has written that categorizing the Srebrenica atrocities “as ‘genocide’ seems to distort the definition unreasonably.”⁵

The gag decree is impossible to enforce in any fair manner.

Polls show that the vast majority of Serbs in the RS do not consider the massacre in Srebrenica to be a genocide. When the expression of an opinion so widely held is criminalized, the prohibition must be enforced—if at all—only very sporadically, which typically means that enforcement becomes selective, unjust, and politically-motivated. The only alternative to such selective prosecution is the mass imprisonment of ordinary citizens.

The gag decree's cold reception

The RS's governing and opposition parties—normally bitter rivals—united in resistance to Mr. Inzko's attack on the Dayton Accords. On 30 July, the RS National Assembly, with the votes of all members of RS-based parties, voted to make clear that the RS will not cooperate in the enforcement of Mr. Inzko's illegal decree. The National Assembly, with the same virtual unanimity, also affirmed a set of conclusions under which, with limited exceptions, RS political representatives in BiH-level institutions will not take part in the decision making processes until the issue of Mr. Inzko's decree is resolved.

It is only natural that a decree criminalizing the expression of opinions widely held by Serbs drew a united rebuke from Serbs in the RS. Equally significant, however, has been the cool—and sometimes hostile—reception the decree has received from Western countries and other Western observers. Indeed, not a single country has endorsed Mr. Inzko's decree. The United States had publicly opposed the idea of criminalizing “genocide denial” before Mr. Inzko handed down his edict.

Leading Western experts on BiH have denounced Inzko's decree for its violation of BiH citizens' rights. Former High Representative Carl Bildt wrote on Twitter, “The outgoing High Representative in [BiH] has caused a profound political crisis. He will leave his position within days, so it will be up to others to try to pick up the pieces.” Gerald Knaus, co-founder of the European Stability Initiative, tweeted, “In a [Council of Europe] member imposing ANY law by a foreign official like this should not be possible. It is against the [European Convention on Human Rights] & it is an irresponsible way for Valentin Inzko to leave [BiH].” In one of Germany's most

⁵ William A. Schabas, *Was Genocide Committed in Bosnia and Herzegovina? First Judgments of the International Criminal Tribunal for the Former Yugoslavia*, 25 *Fordham International Law Journal* 23, 47 (2001).

prestigious newspapers, *Frankfurter Allgemeine Zeitung*, journalist Michael Martens wrote, "A quarter of a century after the end of the war, the continued existence of the OHR is . . . not only no longer useful, but even harmful."⁶

Mr. Inzko's decree has also been met with opprobrium in the Federation of BiH. For example, the president of the Federation, Marinko Čavara, said that Mr. Inzko's decree completely disrupted relations. Instead of referring domestic actors to dialogue, Čavara said, Mr. Inzko put himself on one side and completely destroyed the institutions of BiH.⁷ The deputy president of BiH's largest Croat party, Borjana Krišto, also criticized Mr. Inzko's decree, saying that imposed decisions are not good for BiH or its security and stability.⁸

The full repercussions of the political crisis instigated by Mr. Inzko's lawless decree are not yet clear, but the decree has again made manifest that the OHR does nothing to facilitate peace in BiH, but instead only provokes serious political tensions. By doing so, it has further weakened international support for the OHR and its fictitious dictatorial powers.

⁶ Michael Martens, *Ohne demokratische Kontrolle*, *Frankfurter Allgemeine Zeitung*, 25 Jul. 2021.

⁷ Čavara: *Инџко отворено радио на деструкцији БиХ*, RTRS, 21 Aug. 2021.

⁸ Кришто: *За БиХ није добро да ОХР намеће одлуке*, RTRS, 23 Jul. 2021.

Political Sarajevo's Intensified Assault on BiH's Constitutional Order

Political Sarajevo is causing increasing instability by intensifying its provocative efforts to dismantle the constitutional system established in the Dayton Accords in order to achieve total Bosniak domination.

That domination has been the goal of BiH's main Bosniak party, the SDA, since its founding. In 1990, the SDA's principal founder, Alija Izetbegović, published his *Islamic Declaration*, which states, "There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions."¹

The SDA's manifesto, published in 1993, lays out the party's vision of a Muslim state, emphasizing, "The Muslim ideology will be the basis for the complete state and legal system of the future Muslim state, from the state and national symbols, over the ruling national policy, to educational system, social and economic institutions, and of course, the Muslim family as the unit on which the whole state is based."² Political Sarajevo has been working doggedly to make this vision a reality.

Sarajevo politicians have unconstitutionally usurped control over BiH's international relations apparatus.

The BiH Constitution provides, "The Presidency shall have responsibility for . . . Conducting the foreign policy of Bosnia and Herzegovina." Unfortunately, Sarajevo politicians have increasingly disregarded the Constitution's assignment of competence for foreign policy to the BiH Presidency, abusing BiH institutions to pursue their own agenda.

In September of 2021, for example, BiH Presidency Member Željko Komšić, falsely claiming to speak on behalf of BiH, gave an address at the UN General Assembly that was not authorized by the BiH Presidency but was, instead, a strident expression of his personal views. Far from representing the BiH foreign policy duly approved by the Presidency, Mr. Komšić lashed out undiplomatically at BiH's neighbors and denounced BiH's own Constitution.

Similarly, in June, BiH's UN Ambassador, Sven Alkalaj, made an unauthorized speech to the UN Security Council, violating the rule against BiH representatives speaking without consent of all three members of the Presidency. In the speech, Mr. Alkalaj called for the controversial gag law that outgoing High Representative Valentin Inzko was to decree later in the summer.

BiH Foreign Minister Bisera Turković, not surprisingly, has continued her pattern of acting as foreign minister from the SDA rather than representing the foreign policy approved by the BiH Presidency. In one of her particularly appalling moves, Ms. Turković—acting without authorization, of course—condemned the RS's plans to build, with help from Serbia, a memorial

¹ Alija Izetbegovic, *Islamic Declaration*, p. 30.

² Adnan Jahic, *Virtuous Muslim State*, translation published by Centre for Peace in the Balkans, available at balkanpeace.org/index.php?index=/content/balkans/bosnia/bos01.incl.

to the many thousands of Serbs, Roma, Jews, and others murdered by the fascist Ustaše regime at the Jasenovac concentration and extermination camp during the Second World War.

In August, Ms. Turković, again acting without authorization, met in Tehran with Iran's hardline Islamist president despite widespread denunciations regarding his role in mass executions of political prisoners in during the 1980s.³

In October, BiH Defense Minister Safet Podzic abruptly called off a long-planned joint military exercise between the armed forces of BiH and Serbia that had been approved by the BiH Presidency. According to Deputy Defense Minister Mijo Kresic, a Croat, Mr. Podzic's decision was not approved by the Defense Ministry as a whole but was a decision made unilaterally by Mr. Podzic.⁴ Mr. Kresic rejected Mr. Podzic's claim that the reason for his move was epidemiological, saying, "I am afraid that all this has some political background."⁵

Also in October, Bosniak politicians Denis Zvizdic and Bakir Izetbegović, who currently hold the rotating speakership of the House of Representatives and House of Peoples of the Parliamentary Assembly, sent a joint letter to hundreds of addresses, including top EU and US officials, demanding foreign intervention against the RS. Without authorization, Mr. Zvizdic and Mr. Izetbegović wrote the letter on official parliamentary letterhead, thus fraudulently misrepresenting their personal positions as the position of the Parliamentary Assembly and violating the constitutional principles of power sharing and equality of the constituent peoples. The letter misrepresented the RS's policies and fraudulently and libelously accused the RS of maintaining "apartheid in relations to Croats and Bosniaks in the RS," thus not only insulting the RS but also trivializing the evil of South Africa's apartheid regime. The letter is consistent with the Bosniak leadership's habit of raising BiH's internal political issues to foreign governments for resolution, while refusing to engage in good faith with the other constituent peoples of BiH.

Political Sarajevo's threatening rhetoric

RS leaders have consistently and categorically ruled out any resort to violence and made clear their openness to talks with their partners in BiH. On 25 October 2021, for example, RS President Željka Cvijanović emphasized the importance of dialogue and said, "We invited partners in BiH for talks in order to solve problems, but also arrive at a domestic solution to resolve BiH's problems."⁶ Sarajevo politicians, by contrast, have been making menacing statements threatening a war against the RS. On the same day as Ms. Cvijanović's comments calling for dialogue, SDA

³ *Тришић: Додиков кабинет се оградњује од неовлашћеног дјеловања Турковићеве у Техерану*, SRNA, 5 Aug. 2021.

⁴ *Krešić on the cancellation of the military exercise: I am afraid that everything has a political background*, Dnevnik.ba, 6 Oct. 2021.

⁵ *Id.*

⁶ *Srpska Open to Dialogue in BiH*, SRNA, 25 Oct. 2021.

leader Bakir Izetbegović said, “We must be ready for [war],” adding, “If you want to live, you have to be ready to die, if you want peace, you have to be ready for war.”⁷

BiH Presidency member Šefik Džaferović warned “there are BiH patriots who defended BiH even when BiH was in a much more difficult position.”⁸ Mr. Džaferović's comments are particularly concerning because evidence submitted to the BiH Prosecutor's Office by former Federation of BiH Vice President and former SDA member Mirsad Kebo indicates that Mr. Džaferović was complicit in wartime atrocities committed by the notorious El Mujahid Detachment. During the war, Mr. Džaferović was head of State Security Center in Zenica, which was the El Mujahid's headquarters.

The evidence submitted by Mr. Kebo, for example, indicates that Džaferović stood just ten meters away when El Mujahid members beheaded a Serb civilian in Vozuća.⁹ Documents show that SSC Zenica was responsible for monitoring the activities of the El Mujahid in the area. Mr. Džaferović was thus well informed about the El Mujahid's activities, including its numerous, well-documented war crimes. Yet far from trying to stop the El Mujahid's crimes, Mr. Džaferović actively aided El Mujahid members, even assisting them in becoming permanent citizens of BiH.¹⁰

Other calls for war against the RS have been even more explicit. Admir Atović, BiH's Bosniak consul in Frankfurt, on 14 October wrote on Twitter: “One hundred thousand Bosnians with war experience currently live in Bosnia! Ammunition in Konjic and Gorazde! Howitzers in Travnik! RPGs in Hadžići! Etc. Trust yourself and your hooves! They know that this is not a joke and that Bosnian strength is not a small cat! Eph. Velic .. Allahu Akbar.”¹¹ Mr. Atović's statement, apart from being alarming to Serbs, is further evidence of the extreme politicization of BiH's foreign affairs apparatus.

Political Sarajevo's bellicose rhetoric is, of course, nothing new. In April, for example, Mr. Izetbegović said he could not say there would be no war in BiH and added, “I would rather die today than allow genocidals to rule part of Bosnia and Herzegovina.”¹²

⁷ Изетбеговић: Ако хоћете мир, морате бити спремни на рат, SRNA, 25 Oct. 2021.

⁸ *Džaferovic: BiH will be defended, who is Dodik to endanger the defense sector*, N1, 18 Oct. 2021.

⁹ *Kebo: Džaferović i Mahmuljin bili 10 metara od mjesta likvidacije srpskog civila*, DNEVNI AVAZ, 22 Dec. 2014.

¹⁰ An SSC intelligence report noted “a large number of applications for [BiH] citizenship” by members of the El Mujahid and said, “authorities are concerned that they are using BiH citizenship to hide their true identities” Knowing this, Mr. Džaferović wrote letters on behalf of El Mujahid members requesting that they be given BiH citizenship.

¹¹ *Admir Atović za "Avaz" o skandalu koji je izazvao: Nemojte, ljudi, po onome što hiljadu godina postoji*, Dnevni Avaz, 16 Oct. 2021.

¹² *Bakir Izetbegović: Ako bude rata, spreman sam stati ispred ljudi*, N1, 20 Apr. 2021.

Mr. Komsic's push to abolish constituent peoples

BiH Presidency member Željko Komšić has continued his drive to make BiH into a strictly majoritarian “civic state,” which he falsely claims is a requirement of European Court of Human Rights decisions. Speaking at the Bled Strategic Forum on 1 September 2021, Mr. Komšić called for the abolition of BiH's constituent peoples.¹³ The protections the BiH Constitution guarantees for the constituent peoples, of course, are an indispensable element of the Dayton Accords and a key to the preservation of peace and stability in BiH. Yet Sarajevo politicians wish to weaken or do away with these protections because they get in the way of total Bosniak domination of BiH. Pushing for the abolition of constituent peoples is an outrageous attack on the Dayton formula that has kept the peace for more than 25 years.

Mr. Džaferović's call for the extraconstitutional ouster of Mr. Dodik

On 1 September, Mr. Džaferović urged German diplomat Christian Schmidt, who claims the title of High Representative (HR), to oust BiH Presidency member Milorad Dodik from office.¹⁴ Of course, neither the BiH Constitution nor any other part of the Dayton Accords, nor any other source of law, grants any HR—even one validly appointed—the authority to remove elected officials. Serbian President Aleksandar Vučić said of Mr. Džaferović's proposal, “It is so dangerous that I have no words.”¹⁵ Mr. Džaferović's call for the removal of a co-equal colleague on the Presidency through extraconstitutional means is another assault by political Sarajevo against the Dayton Accords.

The SDA's ouster of the BiH Chief Prosecutor

The SDA has been taking control of one BiH-level institution after another in its drive to dominate all important levers of power. In 2020, as explained in the RS's 24th Report to the Security Council, the SDA illegally took control of the Central Election Commission and immediately began misusing it for political purposes.

In February 2021, the SDA and its allies were successful in installing Halil Lagumdžija, a Bosniak, as the new head of the High Judicial and Prosecutorial Council (HJPC). In a March 2021 interview, SDA head Bakir Izetbegović bragged about the SDA's influence on the selection of the new HJPC head, saying, “[Y]ou see the changes in the Central Election Commission, the High Judicial and Prosecutorial Council, we know how to find a way for things to move forward.”¹⁶

In October of 2021, the Bosniak members of the HJPC ousted BiH Chief Prosecutor Gordana Tadić, a Croat, based on specious allegations of “negligence” after Mr. Izetbegović had complained that Ms. Tadić was prosecuting too many Bosniaks. Every Serb and Croat on the HJPC

¹³ *Bosnia Presidency member: Great majority of Bosnians in favour of EU membership*, N1 1 Sep. 2021.

¹⁴ *Džaferovic expects the HR to dismiss Dodik: He must leave the Political Scene*, Sarajevo Times, 1 Sep. 2021.

¹⁵ *Vučić: “It would be disastrous. That will not happen”*, Sep. 2021.

¹⁶ *Izetbegović: SDA Brani Gradanski Princip, a Gradanske Stranke Napadaju SDA I Nude Ruku HDZ-U*, Hayat.ba, 3 Mar. 2021.

voted against Ms. Tadić's removal, but they were outvoted by the HJPC's Bosniak members. Former BiH Justice Minister Bariša Čolak, a Croat, called Tadić's ouster a political move to give the SDA full control over the BiH judiciary. "They established control over the [HJPC], and even that was not enough for them, so, in addition to the control of the Court of BiH and the [HJPC], they also took control over the Prosecutor's Office of BiH," Čolak said.

Attacks on the leadership in Croatia due to its support for Dayton

As a party to the Dayton Accords, Croatia has been vocal in their defense, especially the BiH Constitution's protections of constituent peoples, which are a crucial element of the treaty. In August, Croatian President Zoran Milanović said, "We do not need a new Dayton Agreement, we just need to respect the existing one. The Dayton Agreement has not failed, it is not respected and is violated. If it were respected, everything would be all right."¹⁷

Mr. Milanovic observed in July that Bosniak politicians "are the cause of political instability, nervousness and misfortune in BiH." He recognized that they "are doing exactly what [former Bosniak Presidency Member] Haris Silajdzic warned about 15 years ago when he said 'if you continue like that, you will make the Croats abhor this country that is their homeland.'"¹⁸ In September, Milanovic said that the "violent, rude, direct threat" by Mr. Komsic and Mr. Džaferović "that BiH will be what it was not imagined to be, is not good. Such things lead to serious conflicts."¹⁹

Croatian Foreign Minister Gordan Grlic-Radman said that the Dayton Accords is the most important peace agreement since World War II and warned that changes to it would be "catastrophic for peace throughout Europe."²⁰

Sarajevo politicians have responded to Croatia's call to uphold the Dayton Accords with insults and vitriol. While claiming to represent BiH in New York, Mr. Komsic called Mr. Milanovic a "charlatan with dangerous intentions."²¹ During a visit by Mr. Milanovic to BiH, Mr. Džaferović said Mr. Milanovic "behaves like an indecent guest in someone else's house."²² Mr.

¹⁷ *Croatian President: Dodik's initiative 'well-intentioned but unrealistic'*, HINA, 30 Aug. 2021.

¹⁸ *Milanovic says outvoting Croats in BiH will "come to an end"*, HINA, 13 Jul. 2021.

¹⁹ *Milanović: Džaferović i Komšić nisu ljudi poštenih namera*, Beta, 1 Sep. 2021.

²⁰ *"Changes to Dayton Accords would be catastrophic for peace in Europe"*, N1, 1 Jul. 2021.

²¹ *Komsic for N1: I don't need Dodik's approval to do my job*, N1, 22 Sep. 2021.

²² *Bedrudin Brljavac, Džaferović: Milanović nema nikakve ovlasti, niti je pozvan da se bavi unutrašnjim pitanjima BiH*, Anadolu, 12 Jul. 2021.

Dodik defended Mr. Milanovic, saying that “Bosniak politicians’ attacks against him were unfounded and inappropriate.”²³

Sarajevo politicians are blocking the legitimate representation of Croats.

As the RS has explained in earlier reports to the Security Council, a key reason politics in BiH's Federation Entity are in crisis is the 2018 election of Mr. Komšić as the “Croat” member of the BiH Presidency. Mr. Komšić, who was elected almost entirely with Bosniak votes, is a nominally Croat politician who advocates the SDA and Bosniak political agenda and has almost no support among Croats. Bosniak politicians disenfranchised Croat voters by encouraging Bosniaks to vote for Mr. Komšić instead of voting for a candidate for the Bosniak seat in the Presidency. This manipulative tactic effectively gave the Bosniaks two seats on the Presidency and the Croats none.

Similarly, the means by which members of the Federation House of Peoples are chosen allows Bosniak-dominated areas to choose most “Serb” members and at least one-third of the “Croat” members. In its 2016 decision in the *Ljubic* case, the BiH Constitutional Court held that this violates the Croats’ rights as a constituent people.²⁴ The court wrote:

The Constitutional Court reminds that according to the general principles of democracy the right to democratic representation is realized through legitimate political representation which must be based on *the democratic choice of those whose interests are represented*. In this sense the connection between those who are represented and their political representatives at all administrative political levels is that which makes possible the legitimacy of the community representatives.²⁵

Nonetheless, the SDA has ignored the Constitutional Court and the principles recited in the *Ljubic* decision in an effort to disenfranchise Croats and consolidate the SDA's dominance.

Changes to the BiH election law are necessary to implement the principles of the *Ljubic* decision and prevent one people from electing another people's representatives. The SDA purported to agree to such changes as part of a 17 June 2020 agreement the SDA reached in Mostar with BiH's main Croat party, the HDZ. Under the agreement “On the Principles of Changing and Amending the Electoral Law of Bosnia & Herzegovina,” the parties agreed to “implement all the decisions of the Constitutional Court of BiH,” including the *Ljubic* decision. The agreement also called for

²³ Milorad Dodik defends Croatian President who was visiting BiH, N1, 14 Jul. 2021.

²⁴ BiH Constitutional Court, Case No. U-23/14.

²⁵ Emphasis added.

changes and amendments to the electoral law of BiH, so as to *guarantee the legitimate election and legitimate political representation of the constituent peoples and citizens at all administrative-political levels, in the Presidency of BiH and the Houses of Peoples*, as well as guaranteeing the active and passive electoral rights of citizens on the entire territory of Bosnia & Herzegovina.²⁶

The SDA, however, soon began backing away from the Mostar agreement, and on 2 August 2021, the party's presidency fully disavowed it.²⁷ The SDA has made clear that it has no intention of implementing Croats' right to legitimate representation under the *Ljubic* decision or otherwise honoring the rights of the Croats in the Federation.²⁸ Political Sarajevo's clear goal is eliminating the entire concept of constituent peoples from the Constitution.

Sarajevo's politicians' attacks on the powers of the Federation's cantons

In July, the predominantly Bosniak SDA and SDP parties made a joint proposal to completely eradicate the powers allocated to the Federation of BiH's ten cantons.²⁹ The aim of the proposal is to deprive Croats of the political power they hold at the level of canton governments. It is another example of Sarajevo politicians' drive to destroy the Dayton system of power-sharing and bring about unchallenged Bosniak domination of all governmental institutions and levels in BiH.

²⁶ A Political Agreement On the Principles of Changing and Amending the Electoral Law of Bosnia & Herzegovina, 17 Jun. 2020 (emphasis added).

²⁷ *Read the 18 conclusions of the SDA Presidency*, FENA, 2 Aug. 2021.

²⁸ Izetbegović said, "The legitimate representation of citizens is an axiom of democracy. [HDZ leader Dragan] Covic reduces this to an ethnic group. We signed [an agreement] that everyone will have the right to be a candidate for every position. That is what Covic signed." *Bosniak leader: SDA will do everything to break up Covic and Dodik's cooperation*, N1, 9 Sep. 2020.

²⁹ *Bosnian Croat political reps suggest abolishing Federation entity*, HINA, 10 Jul. 2021.