



**REPUBLIC OF SRPSKA
GOVERNMENT**

OFFICE OF THE PRIME MINISTER

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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 27th Report to the UN Security Council. The Report reaffirms the RS's dedication to the Dayton Accords and emphasizes its belief that BiH can be successful if all key parties inside and outside BiH respect the Accords as written.

Part I of the Report explains why respect by all for the Dayton Accords is essential for BiH's stability and success. The RS fully respects and upholds the Dayton Accords, including BiH's sovereignty and territorial integrity, and it insists that others in BiH and in the international community respect and uphold them as well. In part II, the Report emphasizes that there is no threat to the peace that BiH has enjoyed for more than 26 years. Finally, in part III, the Report lays out a vision for the future, which includes BiH advancing on the road to EU membership, the resolution of disagreements within BiH through good-faith dialogue, and a more constructive approach by the international community.

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 27th Report to the UN Security Council

May 2022

Republika Srpska’s 27th Report to the UN Security Council

Table of Contents

- I. Respect for the Dayton Accords is essential for BiH’s stability and success.2
 - A. The RS fully respects and complies with the Dayton Accords.2
 - B. Members of the international community must uphold and vigorously defend the Dayton Accords and the rule of law in BiH.3
 - 1. The BiH Constitution, and the principles incorporated into the Constitution, have succeeded in keeping the peace in BiH for more than 26 years by reserving all but a few competences to the Entities and incorporating important protections for the constituent peoples.3
 - 2. There is no inconsistency between EU membership and the Dayton Accords’ guarantee of highly autonomous, ethnically associated regions and other constitutional protections for peoples.4
 - 3. BiH’s political dysfunction is not caused by the Dayton formula, but rather by those who do violence to that formula.4
 - 4. The OHR and its supporters have flagrantly and repeatedly violated the Dayton Accords and caused considerable harm in the process—harm that is in need of correction.5
 - 5. Some in the international community fail to respect BiH’s democratic procedures and the results of its free elections.6
 - C. For BiH to succeed, Bosniak political leaders and their international supporters must finally accept the Dayton Accords and the rule of law—there is no alternative.6
- II. There is no threat to the peace in BiH.7
 - A. The RS has consistently and forcefully ruled out any resort to violence.7
 - B. Foreign officials and diplomats knowledgeable about the situation in BiH confirm that there is no threat to peace.8
 - C. The situation in Ukraine has nothing to do with BiH’s security.9
- III. The way forward.10
 - A. The RS is committed to BiH’s EU path.10
 - B. The RS has persistently called for good faith dialogue with its partners in BiH.10
 - C. Instead of attacking RS and Croat leaders for their response to provocations from the OHR and political Sarajevo, the international community must finally begin to address the provocations themselves.11

Attachment 1: The RS’s Resumption of Its Own Constitutional Competences Is Fully Consistent with the BiH Constitution

Attachment 2: Ethnic Decentralization and Power-Sharing in Europe

Attachment 3: The OHR's Unlawful and Destructive Role

Attachment 4: Political Sarajevo's Drive for Complete Domination of BiH

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 27th Report to the UN Security Council.

Part I of this Report emphasizes that the RS is—and will remain—fully committed to the Dayton Accords, which includes a commitment to BiH's sovereignty, territorial integrity, and constitutional order. Claims by the RS's opponents that the RS is planning *de jure* or *de facto* secession from BiH are false propaganda intended to attract support for the anti-Dayton agenda of centralizing BiH under the sole authority of one ethnicity.

In part I, the RS also insists that members of the international community respect the Dayton Accords and the rule of law. The decentralized BiH structure and ethnic protections through which the Dayton Accords have preserved peace are not in any way inconsistent with European values, as similar examples around Europe demonstrate. The source of dysfunction in BiH is not the Dayton Accords, but the illegal subversion of the Accords, especially by the Office of the High Representative (OHR). It is also unhelpful to BiH that some in the international community fail to respect BiH's democratic order and the results of its free elections.

Part I of this Report, lastly, explains that BiH cannot succeed until Bosniak political leaders accept the Dayton compromise and the rule of law.

In Part II, the RS emphasizes that there is no threat to the peace that has prevailed in BiH since the Dayton Accords were signed. The RS has consistently and categorically ruled out any resort to violence, insists on resolving BiH's political disagreements solely through peaceful dialogue. The most knowledgeable foreign officials and diplomats, including EUFOR officials, have made clear that there is no threat of war in BiH. Finally, despite opportunistic efforts by the RS's opponents to tie the conflict in Ukraine to BiH's security, one has nothing at all to do with the other.

Part III of this Report lays out the RS's vision for a way forward for BiH. The RS remains committed to BiH's path toward EU integration. The RS, moreover, continues to seek good faith dialogue to resolve BiH's current political crisis. The RS stands ready for such dialogue as soon as its Bosniak partners in BiH's other Entity, the Federation, are ready. Finally, the RS urges members of the international community to understand that the RS's moves to resume exercising its own constitutional competences are merely an issue of domestic politics and an effort to address the political dysfunction and provocations from political Sarajevo and the OHR that are the actual source of instability in BiH.

The RS believes that BiH can succeed if all key actors—both foreign and domestic—finally respect and abide by the Dayton Accords.

Republika Srpska's 27th Report to the UN Security Council

I. Respect for the Dayton Accords is essential for BiH's stability and success.

A. The RS fully respects and complies with the Dayton Accords.

1. The 1995 Dayton Peace Accords have ensured peace and stability in Bosnia and Herzegovina (BiH) for more than 26 years. The RS is—and will remain—fully committed to the Dayton Accords. This includes a commitment to BiH's sovereignty, territorial integrity, and constitutional order. It also includes, of course, a categorical rejection of violence as a way of solving political disagreements—the RS is inalterably committed to peace.

2. The RS fully embraces the European values of democracy and rule of law, which are incorporated into the Dayton Accords. The RS does not believe that democracy and the rule of law can take root and flourish in BiH except upon a foundation of respect for the BiH Constitution. Indeed, this ought to be self-evident. The RS is not proposing to take away a single power or competence assigned to BiH-level institutions in the Constitution, and seeks only to strengthen, not weaken, the BiH envisioned by the Dayton Accords.

3. As discussed in Attachment 1, the legislation that has been under discussion in the RS Government and National Assembly is entirely consistent with the terms of the Dayton Accords and is simply intended to ensure that those terms are actually implemented. The legislation is also entirely consistent with European values and European integration.

4. The RS in no way seeks to challenge BiH's sovereignty or territorial integrity. Nor does it seek to take away any of the powers and competences assigned to BiH-level institutions as agreed at Dayton or violate any amendment to the BiH Constitution duly adopted since the signing at Dayton. The RS has absolutely no plan to pursue secession from BiH, either *de jure* or *de facto*. Far from pursuing secession, the RS is insisting that the letter of the Dayton Accords be respected by all. Claims by BiH's Bosniak (Muslim) parties led by Islamist SDA and their supporters that the RS is planning secession are merely provocative propaganda intended to attract support for the Bosniak parties' anti-Dayton project of centralizing all authority under their control.

5. The RS has every right to insist that the constitutional structure established under the Dayton 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 protect its rights under the BiH Constitution through political and legal means, with the understanding that it is only by protecting the rights of the Entities and the constituent peoples that BiH can succeed and prosper.

6. Irresponsible officials in Sarajevo and in certain foreign capitals continually launch absurd, inflammatory accusations that any effort by the RS to exercise its legitimate constitutional rights must be seen as a step toward secession—as if regulating medical devices in Banja Luka instead of Sarajevo, as was done for many years, is somehow destined to tear BiH apart. Those who make such incendiary accusations can only have bad information or bad intentions.

B. Members of the international community must uphold and vigorously defend the Dayton Accords and the rule of law in BiH.

7. It is vital for all parties to the Dayton Accords, and members of the international community, to respect the Accords and adhere to the principles that underlie them. Despite ill-informed accusations to the contrary from its detractors in the international community, 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 others do likewise, respecting not just the sovereignty and 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.

8. The RS insists that the Dayton formula for decentralized power-sharing is the only legitimate and viable basis upon which to build a successful BiH. There is simply no other alternative; Serb and Croat citizens in BiH will not allow the rights guaranteed to them under the Dayton Accords to be disregarded in a manner that will allow the Islamist SDA party to achieve its goal of dominating a strong centralized government in Sarajevo.

9. Those who assert that the RS’s exercise of its rights under the Dayton Accords threatens the stability and future of BiH have it exactly backwards—the real source of instability in BiH is those parties inside and outside of BiH that have relentlessly undermined the Dayton principles.

10. The persistent failure of many in the international community to recognize that fact, and the assertions that the centralization of power into the hands of the Bosniak parties led by Islamist SDA is somehow more consistent with European integration, are not just wrong, but potentially raise the risk of increased instability in BiH, which can never succeed as a country dominated by one ethnic group that ignores and even abuses the rights of the Serbs and the Croats.

11. Pressure from foreign powers may further alienate the citizens of RS, and may even threaten to cause instability in BiH, but no amount of foreign pressure from any source will ever cause the RS leadership, no matter who is elected by the citizens of the RS, to abandon the defense of the RS’s rights under the BiH Constitution, or to abandon the Dayton compromise in favor of domination by one ethnic group over all others.

1. The BiH Constitution, and the principles incorporated into the Constitution, have succeeded in keeping the peace in BiH for more than 26 years by reserving all but a few competences to the Entities and incorporating important protections for the constituent peoples.

12. Under the Dayton formula, the BiH Constitution assigns only a select few responsibilities, such as foreign policy, foreign trade, and monetary policy to BiH-level institutions and 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.”¹ The considerable autonomy

¹ BiH Constitution, art. III (3)(a).

of the Entities is designed, in part, to improve BiH's functionality by minimizing the number of contentious issues requiring decisions at the BiH level.

13. In addition to BiH's decentralized structure, the BiH Constitution also guarantees several protections for each of BiH's constituent peoples – Serbs, Croats and Bosniaks. The protections are designed to give members of each formerly warring constituent people confidence that they will not come under the domination of one or more of the other constituent peoples. Preserving this confidence is essential to BiH's future as a stable multinational country.

2. There is no inconsistency between EU membership and the Dayton Accords' guarantee of highly autonomous, ethnically associated regions and other constitutional protections for peoples.

14. Political Sarajevo and some of its supporters in the international community have begun asserting that the Dayton principles need to be abandoned in order for BiH to be a candidate for EU membership. These opportunistic assertions are completely unfounded.

15. Throughout the world, many countries with more than one strongly held national or religious identity have ensured peace and stability by providing broad autonomy to ethnic regions and other protections for specific ethnic groups. Indeed, those who assert that the Dayton formula for decentralization and sharing of power is somehow contrary to European values are ignorant of how many countries in Europe itself similarly recognize the special rights of certain regional ethnic groupings.

16. As explained in Attachment 2, countries like Belgium, Switzerland, Spain, the UK, and Italy use different mechanisms to give autonomy to ethnic regions or otherwise protect the interests of certain ethnic groups. Nothing about such mechanisms and protections, whether in BiH or elsewhere in Europe, conflicts with European principles or membership in the EU.

3. BiH's political dysfunction is not caused by the Dayton formula, but rather by those who do violence to that formula.

17. In the years since the Dayton Accords were agreed, successive foreign High Representatives (HRs) have acted illegally as colonial viceroys and worked aggressively, though issuing anti-democratic and legally preposterous diktats, in an effort to replace the highly decentralized BiH mandated by the BiH Constitution with the unitary "civic" state that was the Bosniak army's wartime goal.

18. The unconstitutional centralization of competences, resulting from illegal decrees and coercion by the HR, and the constant pressure from certain Bosniak political elements to seize control of all state-level institutions, have sabotaged the decentralized Dayton design. Many competences that were supposed to belong to the Entities, where decision-making is easier, have been unconstitutionally transferred to the BiH level, where decision-making is most contentious.

19. Not satisfied with the unconstitutional centralization of BiH that has taken place over the years, some in the international community want to go even further, destroying the Dayton compromise entirely by eliminating Entity autonomy and the BiH Constitution's protections for constituent peoples. These foreign parties not only disregard the rule of law by asserting that a

binding international treaty can be cast aside by non-party states simply because they are more powerful, but they are also blind to the crucial importance of the Dayton formula for maintaining stability in BiH, proposing reckless, uninformed schemes formulated in ignorance of the history and current political realities in BiH.

20. Comments calling for the disregard or revision of the Dayton system, such as by establishing a “civic” (i.e., Bosniak-dominated) state, are not just irresponsible and uninformed, but destabilizing, causing groups that are guaranteed a measure of protection and autonomy under Dayton to feel threatened, and to react accordingly. Such comments, moreover, embolden political Sarajevo in its destabilizing drive to break the Dayton compromise entirely.

21. It is not the BiH Constitution that has caused dysfunction in BiH, but rather the violence done to that Constitution. The RS believes that only by honoring BiH’s decentralized constitutional structure and protections for constituent peoples will BiH become functional, thus promoting BiH’s integration into the EU.

4. The OHR and its supporters have flagrantly and repeatedly violated the Dayton Accords and caused considerable harm in the process—harm that is in need of correction.

22. As explained in more detail in Attachment 3 to this report, the Office of the High Representative (OHR) has demonstrated contempt for limits of the High Representative’s power under the Dayton Accords and contempt for the rule of law, and OHR interventions have undermined BiH’s stability and progress.

23. The dictatorial authorities the OHR claims have no basis in law and flagrantly violate the BiH constitutional order. They constitute a total rejection of the rule of law and are widely recognized as such by the citizens of the RS. Even leaving aside the unlawful nature of the OHR’s authorities, the OHR has long been the main source of political instability and dysfunction in BiH.

24. As EU officials have recognized, the blame for BiH’s present political crisis lies with former High Representative Valentin Inzko, who, as he was leaving office last year, illegally handed down a decree criminalizing the expression of certain opinions about BiH’s 1990s war. The decree, which was nakedly targeted at Serbs, seems almost to have been designed to destabilize BiH.

25. The decidedly unhelpful role German politician Christian Schmidt has played in recent months shows that he has learned no lessons from the turmoil caused by Mr. Inzko. Mr. Schmidt hypocritically lectures the citizens of the RS about the rule of law, even as he recognizes no limits on his presumed authority to rule BiH by decree, which is obviously contrary to the Dayton Accords and BiH’s entire democratic constitutional system. Most recently, Mr. Schmidt has tried to demonstrate his relevance, and has pressed his illegal and absurd claim to possess so-called “executive powers,” by assuming the mantle of a constitutional scholar, and indeed a ruling judge, deciding for himself what governmental acts are to be considered constitutional in BiH. Mr. Schmidt’s decrees purporting to undo RS legislation in connection with state property make a mockery of the rule of law in BiH, which, in Mr. Schmidt’s mind, apparently has no need for courts or legal procedure, as the he can rule without regard for either.

26. What is even worse, when faced with an actual serious threat to the future of BiH—namely, the intransigence of the Bosniak parties in refusing to agree to needed reforms to the election law, even in defiance of the efforts of the international community—Mr. Schmidt has been completely ineffectual, and indeed has hindered rather than helped the parties reach needed compromises.

27. More and more key observers—including former High Representatives—have come to see the destructiveness of the OHR’s role in BiH. As Carl Bildt, who served as the first High Representative, recently wrote, the OHR “has gone from being part of the solution to part of the problem.”² More chest beating by Mr. Schmidt and certain members of the international community does nothing to change the reality that the OHR is now nothing but a source of conflict, rather than a facilitator of dialogue as envisioned under the Dayton Accords.

28. Remarkably, even as former HRs acknowledge the problems caused by the continued existence of the OHR, too many influential foreign powers are doubling down and prescribing stronger doses of the medicine that has already so sickened the patient.

5. Some in the international community fail to respect BiH’s democratic procedures and the results of its free elections.

29. Some foreign commentators have called for Christian Schmidt, a German politician who claims to be High Representative in BiH notwithstanding his illegitimate appointment, to “remove” Serb members of BiH’s leadership. Mr. Schmidt, even if he were the High Representative, would not have the legal authority to oust any official from their position. Beyond that, calling for the ouster of democratically elected officials shows a striking contempt for BiH’s democratic system and its voters, and, indeed, a contempt for the rule of law.

30. It is outrageous to suggest that the citizens of BiH should be denied the right to elect their own leaders—a position that goes against the most firmly established rules of human rights and democratic rights; anyone advancing such a position should be decried as offending the most basic principles of international law and European values.

C. For BiH to succeed, Bosniak political leaders and their international supporters must finally accept the Dayton Accords and the rule of law—there is no alternative.

31. The main cause of BiH’s intractable dysfunction is the persistent refusal by the SDA and other Bosniak parties 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 2021, “The Dayton Agreement has not failed, it is not respected and is violated. If it were respected, everything would be all right.”³

32. The explicitly adopted platform of the Islamist SDA demands the complete abolition of the Dayton structure—including the Entities and the protections for constituent peoples—in favor of

² Carl Bildt, *Bosnia’s Next Crisis*, Project Syndicate, 14 Jan. 2022.

³ *Croatian President: Dodik’s initiative ‘well-intentioned but unrealistic’*, HINA, 30 Aug. 2021.

a unitary state that would be utterly dominated by a single constituent people, the Bosniaks. SDA officials, throughout all BiH institutions, have aggressively sought to achieve this 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.

33. As explained in Attachment 4 to this report, the islamist SDA and other Bosniak 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.

34. Total Bosniak domination of BiH has been the SDA's goal since its founding. The SDA has never repudiated or even backed away from the key principles articulated in founder Alija Izetbegović's *Islamic Declaration*, published in 1990, which states openly, "There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions."

35. Serbs have been falsely accused of obstructing decision-making processes in BiH. In reality, Serbs participate in the daily activities of every BiH-level institution. The fact that they do not always vote the way some Bosniak parties and their allies would like does not mean that they are blocking the work of BiH institutions. On the other hand, as explained in attachment 4, the SDA has recently, through a boycott of the BiH House of Peoples, blocked the consideration of legislation on the most important issue currently facing BiH, electoral reform. The SDA is also blocking important economic development measures, such as infrastructure projects in the RS and BiH participation in the Open Balkan Initiative to promote regional economic connectivity.

36. The constant assaults on the constitutional structure crafted and agreed at Dayton are the biggest threat facing BiH and preventing progress. For BiH to succeed, all major parties in BiH must at last accept the Dayton compromise, and the international community much encourage that process.

II. There is no threat to the peace in BiH.

37. There is a concerted campaign to promote increased foreign intervention in BiH, with alarmist warnings that BiH is on the brink of being plunged into war. In reality, anyone who understands the situation in BiH knows there is no risk of such a catastrophe.

A. The RS has consistently and forcefully ruled out any resort to violence.

38. The RS believes strongly that the way for BiH to overcome its current challenges is through intensified political dialogue among domestic parties, aimed at finding solutions in the interests of all constituent peoples and BiH citizens. Despite threatening rhetoric from certain Sarajevo politicians, the RS and Serb leaders have consistently and categorically rejected any resort to violence. The Serb member of the BiH Presidency, Milorad Dodik recently said, "peace has no price, no alternative." The RS Government, likewise, is inalterably dedicated to peace.

39. Moreover, the RS is dedicated to the preservation of the BiH Constitution and has no plans for any form of secession. No legislation under consideration in the RS in any way threatens BiH's sovereignty or territorial integrity.

40. The RS's commitment to peace in BiH and the region is also demonstrated through its quiet but steadfast cooperation on regional security initiatives. The RS has shown itself to be a reliable partner with NATO member states on counterterrorism, cyber security, and other security issues, and it cooperates closely with major NATO members' security and intelligence services, including through regular training exercises.

41. The RS is dedicated to full compliance with the Dayton Accords, including the BiH Constitution, and insists on resolving BiH's internal disagreements only through peaceful dialogue with its domestic partners.

B. Foreign officials and diplomats knowledgeable about the situation in BiH confirm that there is no threat to peace.

42. In recent months EUFOR officials have consistently said that there is no threat to the peace that has prevailed in BiH for 26 years. For example, in February 2022, EUFOR's spokesman said, "There is currently no threat to the safe and secure environment" in BiH.⁴ In November 2021, the then-commander of EUFOR, General Alexander Platzer, said he sees "basically no classic military threat" in BiH and that the "general security situation in the country is stable."⁵

43. In March 2022, General Platzer's successor, Major General Anton Wessely, said, regarding the recent addition of forces to EUFOR's contingent, "As commander, I activated the reserve forces, but not because of the deteriorating security situation in Bosnia and Herzegovina. On the contrary, our indicators of threats and changes in a safe and stable environment have not changed in recent weeks. My decision to activate the reserve forces stemmed from the soldiers' obligation to be ready for any situation."⁶

44. In January of 2022, EUFOR's operational commander, Lieutenant General Brice Houdet told the Brcko District Assembly that he believes the security situation in BiH has not worsened and that there is no need for additional NATO troops in Brčko, adding that the situation is not as it has been presented by some in the media.⁷ The RS has never objected to EUFOR's presence in BIH, the number of soldiers or the Althea operation under the UNSC-authorized mandate, although officials from the RS have recently raised concerns about EUFOR troops and vehicles presenting

⁴ Srečko Latal, *EU Doubles Bosnia Peacekeepers as Global Security 'Deteriorates'*, BIRN, 24 Feb. 2022.

⁵ Adelheid Wölfl, *Eufor-Kommandeur Platzer sieht stabile Sicherheitslage in Bosnien-Herzegowina*, Der Standard, 3 Nov. 2022.

⁶ *EUFOR commander lines up multinational battalion including reserve forces*, N1, 11 Mar. 2022.

⁷ *Lieutenant General Brice Houdet: No need for additional troops in Brcko*, N1, 20 Jan. 2022.

themselves in unnecessary and inappropriate ways off-base in a manner that caused anxiety among school children and other citizens in the RS.

45. The most knowledgeable senior diplomats active in BiH have also confirmed that there is no serious risk to the peace. For example, in his February congressional testimony, US envoy Gabriel Escobar said, “The situation is not analogous to 1991.” He noted, “Neither Croatia nor Serbia are interested in seeing a war on their borders,” and emphasized, “there are a lot of checks and balances to prevent conflict” and that “we don’t see the situation as destabilizing as some of the most drastic commentators see it.”⁸

C. The situation in Ukraine has nothing to do with BiH’s security.

46. BiH’s Bosniak parties led by islamist SDA and their foreign supporters are cynically trying to exploit the tragic situation in Ukraine to promote their agenda in BiH by portraying the RS’s recent steps to reclaim its constitutional competences as being influenced by Russia’s president. This is pure fantasy; the RS and its leadership do not serve Russia or any other foreign power. They serve only the citizens of the RS.

47. By claiming that the fighting in Ukraine portends danger for BiH, the Bosniak parties and their supporters are stoking alarm and fear for political gain. They are fearmongering to instill a distrust of the RS and promote more foreign interference in BiH. When warning of the war in Ukraine spreading to BiH, they never explain how a conflict that has nothing to do with BiH or its peoples could spread to BiH, which is more than 1,000 km away from the fighting. At the same time, the RS and its leadership have ruled out the use of violence and, far from seeking independence, are merely seeking to exercise certain competences to which the RS is entitled under the BiH Constitution in hopes of building a more functional and prosperous BiH.

48. Given the longstanding cultural ties and friendship between the Russian and Serb peoples, it is understandable that the most RS citizens oppose sanctions against Russia. Thus, like most countries in the world, including at least one NATO member, the RS has not supported the imposition of sanctions against Russia. Even major European countries have stopped short of imposing sanctions on Russia that would have a material detrimental impact on their own economies.

49. The RS has nonetheless insisted unequivocally that Ukraine’s territorial integrity must be respected. The RS has also called for the perpetrators of any war crimes in Ukraine to be brought to justice. The RS, moreover, is providing financial assistance to the people of Ukraine.⁹

⁸ Testimony of Gabriel Escobar before the US Senate Foreign Relations Committee, 16 Feb. 2022.

⁹ *We are at the Ukrainian People’s Disposal for Help*, SRNA, 3 Mar. 2022.

III. The way forward

A. The RS is committed to BiH's EU path.

50. The RS is committed not just to honoring, abiding by, and implementing the Dayton Accords, but is also committed to BiH's integration into the European Union. Indeed, the RS views those two objectives as not only compatible, but mutually reinforcing. The RS has demonstrated its commitment to the European path by making significant progress in harmonizing RS legislation with the EU *acquis* and otherwise implementing reforms aimed at advancing EU integration.

51. BiH's progress toward the EU is continuing to be hindered, however, by infringements on BiH's sovereignty in the form of the illegal interventions by the OHR, and the continued presence of the foreign judges on the BiH Constitutional Court. The EU has rightly identified the continued presence of the High Representative in BiH as "incompatible" with EU membership and has said that BiH must address the issue of foreign judges.

B. The RS has persistently called for good faith dialogue with its partners in BiH.

52. The RS believes that dialogue, in good faith and mutual understanding, and within the Dayton framework, is the key to BiH's long-term success, and indeed the only means for ensuring the stability and progress of the country.

53. A February 2022 EU discussion paper rightly emphasizes dialogue as the way to resolve BiH's political problems and points out that "other options would make the implementation of the EU agenda more challenging."

54. RS leaders have made clear that they are ready for open dialogue with their partners in BiH. As RS President Željka Cvijanović said in January 2022, with sincere dialogue, "Serbs, Croats, Bosniaks and other citizens can have a good life together."¹⁰ President Cvijanović has even appointed a team to participate in that dialogue, and Croat leaders have expressed willingness to take part. Bosniak leaders, unfortunately, but not surprisingly, have been unwilling to engage.

55. In February 2022, the BiH House of Peoples approved a resolution expressing support for initiating a dialogue between authorities in BiH's two Entities and political representatives of the three major ethnic groups on possible solutions for the future of the country.¹¹ While Serb and Croat members of the House of Peoples supported the resolution, Bosniak members voted against it.

56. Regional leaders have also seen the importance of dialogue to BiH's future. Croatia, Turkey, and Serbia recently offered to facilitate such a dialogue among the leaders of BiH's

¹⁰ *Cvijanović: BiH's Destiny Depends on Bosniak's Politics*, SRNA, 11 Jan. 2022.

¹¹ *HoP supports dialogue between entities and constituent peoples on future of BiH*, N1, 23 Feb. 2022.

constituent peoples in order to resolve BiH's political problems.¹² Serb and Croat leaders in BiH welcomed this initiative; however, yet again Bosniak leaders rejected the initiative, despite the efforts of Turkey's very SDA-friendly president.¹³

57. It should be no surprise that BiH's Serbs and Croats fear being ruled over by the Bosniaks when Bosniak leaders refuse to sit down and talk, even during a time of political crisis.

C. Instead of attacking RS and Croat leaders for their response to provocations from the OHR and political Sarajevo, the international community must finally begin to address the provocations themselves.

58. Some members of the international community are pursuing policies seemingly designed to deepen BiH's political crisis. Instead of confronting the true sources of BiH's problems—attacks by the OHR and political Sarajevo on the rule of law and the Dayton Accords' protections for Serbs and Croats—these parties are instead focusing their ire on the Serb political leadership's natural and justified reaction to those attacks. Instead of dousing the fire, some parties are assailing the firefighters.

59. The political leadership of only one of BiH's three constituent peoples, the Bosniaks, blames BiH's Serb leadership for the country's problems. The president of BiH's main Croat party, Dragan Čović, said in November 2021 regarding the Serb member of the BiH Presidency, Milorad Dodik, "if Mr. Dodik was the only problem in BiH, it would be easily solved. I think the problems are much more complex, multi-layered and that the source of the real problems is far away from Mr. Dodik."¹⁴ Similarly, Federation of Bosnia and Herzegovina President Marinko Čavara, another Croat, said, Mr. Dodik "made move after move as a reaction to the taking over of BiH institutions by the Bosniaks And then he made move after move to protect the RS from the decisions of these BiH institutions that have been taken over."¹⁵

60. As explained above, BiH has, for many years, been unconstitutionally centralized through illegal decrees, coercion, and judicial interference by the OHR. Now political Sarajevo has intensified its efforts to dismantle the Dayton constitutional system and has been taking over one BiH-level institution after another in order to control all key levers of power.

61. The RS firmly believes that BiH can succeed if BiH's domestic parties and the international community respect the Dayton Accords. The RS is working to build a BiH that faithfully implements the Dayton constitutional structure; governs itself according to the rule of law, without

¹² *Dodik welcomes idea of Erdogan, Vucic and Milanovic mediating talks in BiH*, N1, 19 Jan. 2022.

¹³ Igor Spaić, *Izetbegovic: No agreement on meeting between leaders of BiH's ethnic parties*, N1, 19 Jan. 2022.

¹⁴ *Čović nikad konkretniji: Izvješća OHR-a piše uvijek ista skupina ljudi iz ureda u Sarajevu i uvijek po istoj špranci*, Dnevnik, 3 Nov. 2021.

¹⁵ Čavara: Sankcije neće donijeti rezultate, Dodik ima podršku u RS-u, Dnevnik, 5 Jan. 2022.

illegal and destabilizing decrees from the OHR; and moves swiftly on the road toward EU membership.

62. The way for BiH's friends in the international community to be helpful to BiH at this time is to recognize that the current issues of BiH's domestic politics, such as the RS effort to exercise its own constitutional competences, in no way threaten the peace or stability of BiH or justify foreign interference. It is also necessary for BiH's friends to finally accept the Dayton compromise and encourage the Bosniak leadership to do the same and, instead of continuing to pursue unconstitutional centralization of the country and blocking projects of interest and importance for all BiH citizens, finally accept sincere internal dialogue with representatives of the other two constituent peoples on how to build a successful future for BiH.

The RS's Resumption of Its Own Constitutional Competences Is Fully Consistent with the BiH Constitution

Republika Srpska (RS) has for many years 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 Office of the High Representative (OHR) and in the BiH Constitutional Court have continued to hack away at Entity autonomy in defiance of the Constitution.

In response to years of erosion of its constitutional prerogatives, Republika Srpska (RS) has recently begun a lawful, democratic process of resuming the exercise of certain competences that are assigned to it under the BiH Constitution and that were formerly exercised by the RS for many years without controversy. Contrary to the hysterical allegations of some of the RS's critics, resuming the exercise of competences assigned to the RS in the BiH Constitution is not, in any way, a rollback of "reforms," much less a step toward *de jure* or *de facto* secession from BiH. The RS fully respects BiH's sovereignty, territorial integrity, and constitutional order. Indeed, the RS's moves to resume exercising some of its constitutional competences are designed to *restore* BiH's constitutional order.

Over the years, under heavy pressure from certain foreign powers and High Representatives acting as dictators, the two Entities gave political consent to allow BiH-level institutions in Sarajevo to exercise some of the competences that are constitutionally assigned to the Entities. These consent agreements were merely political accommodations, not binding treaties, constitutional amendments, or legal contracts of any sort. *In fact, the BiH Constitutional Court has confirmed that such consent agreements did not alter the BiH Constitution and cannot be given the legal effect of amendments, because these agreements did not undergo the proper procedures for amendments.*¹

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 Inter-Entity Consent Agreement ("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, if an IECAs were to be considered irrevocable, that 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."²

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

¹ Decision on Admissibility and Merits, Case U 17/05, BiH Constitutional Court, 24 May 2006, at para. 16.

² Matthew Parish, *A Free City in the Balkans* 144 (2010).

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.

The 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.”³ Any responsibilities that BiH assumes in accordance with a consent agreement of the Entities 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.”

Withdrawing from political agreements consenting to BiH to perform Entity competences does not in the slightest violate the Dayton Accords, and despite the tirades from the SDA and its supporters in the international community, *no one has ever offered a coherent, much less persuasive, legal argument to the contrary*. The RS has simply begun the process of resuming the exercise of selected competences undeniably granted to Entities in the BiH Constitution, because the BiH level has performed those competences poorly.

The legislation the RS is considering, far from threatening Dayton, is designed to faithfully implement it. For example, the RS National Assembly is considering legislation for the RS to resume appointing RS judges, as is provided for in the BiH Constitution, and as the RS did without objection for years after the Dayton Accords were signed.

Beginning in 2011, the RS worked in good faith for reforms of the justice system through the EU-sponsored Structured Dialogue on Justice. Unfortunately, all proposed reforms supported by the EU were blocked by the SDA. As European Commission reports on BiH clearly attest, the BiH High Judicial and Prosecutorial Council (HJPC), which manages judges and prosecutors, has long been in dire need of reform, yet reform at the BiH level—as proven by the failure of the Structured Dialogue—has proven impossible to achieve due to the SDA’s intransigence.

The HJPC legislation under consideration by RS National Assembly, which implements recommendations of the Venice Commission and European Commission, is designed to ensure the autonomy, independence, impartiality, expertise and efficiency of RS judges and prosecutors. Some of the RS’s critics have claimed that the proposed law somehow goes against the BiH constitutional order. In reality, it does the very opposite. The proposed law simply returns to the RS a competence that it inarguably holds under the BiH Constitution, a competence that the EU and all observers agree has been exercised poorly by the BiH-level HJPC.

The RS has also recently approved legislation to reestablish the RS Agency for Medicines and Medical Devices. The RS is moving to reestablish this RS agency because the BiH-level Agency for Medicinal Products and Medical Devices has been performing its duties poorly, and medicine and medical device regulation is undeniably an Entity competence under the BiH Constitution.

³ BiH Constitution, art. III(3)(a) (*emphasis added*).

RS's 27th Report to the UN Security Council
Attachment 1

The RS's activities to resume exercising some of its own constitutional competences is not a crisis by any stretch of the imagination, and it is misguided for the international community to be lured into treating it like one. BiH's current political crisis arises from the Office of the High Representative's (OHR) effort to establish dictatorial rule over BiH and the campaign of one constituent people to discard the Dayton compromise and dominate the other two constituent peoples throughout BiH. Attacks on RS efforts to exercise its own constitutional competences are designed to facilitate the continued power-grab by the OHR and the SDA.

The RS Government is the most functional government body in BiH, and the BiH level is the least functional. The RS seeking to resume exercising some of its own constitutional competences—competences the dysfunctional BiH-level bureaucracy has been mishandling—is a step toward good government and respect for constitutional requirements. Resumption of competences by Entities does not threaten stability, but on the contrary enhances it. Those who wish to strengthen BiH's stability should support the RS's call for the Dayton Agreement to be implemented as written.

Ethnic Decentralization and Power-Sharing in Europe

The Sarajevo political establishment and some of its international supporters have been claiming that Bosnia and Herzegovina's (BiH) constitutional structure as defined in the Dayton Accords must be abandoned in order for BiH to integrate into the European Union (EU). These opportunistic assertions are completely unfounded.

Throughout the world, democracies with more than one strongly held national or religious identity have ensured peace and stability by providing broad autonomy to ethnic regions and other protections for specific ethnic groups. Indeed, those who assert that the Dayton formula for decentralization and sharing of power is somehow contrary to European values are ignorant of how many countries in Europe itself similarly recognize the special rights of certain regional ethnic groupings.

Belgium, for example, is a federal state composed of three linguistic communities (the Flemish Community, the French Community, and the German-speaking Community) and three regions (Flanders, Wallonia, and Brussels). Each region and each community has its own parliament and government. Flanders and the Flemish Community have officially merged. Regions hold broad competences relating to the economy, employment, agriculture, water policy, housing, public works, utilities, energy, transport, environmental protection, urban and rural planning, local finance, and foreign trade.

Within their linguistically determined geographic boundaries, the communities exercise a number of competences oriented toward language, including culture (e.g., audiovisual media), education, and the use of language in the public sphere. They also have limited competences in health policy, and social welfare. On the federal level, there are 15 ministers who are equally divided between French-speaking and Dutch-speaking representatives. The seats in the Chamber of Representatives are also divided along linguistic lines. Belgian senators are elected by and from the community and regional parliaments

Switzerland, which is widely admired for the effectiveness of its government institutions, protects the interests of its diverse language and dialect groups in part by vesting broad autonomy in 26 cantons. The cantons retain all powers and competences not delegated to the Swiss Confederation by the Constitution. The cantons hold primary responsibility for healthcare, welfare, law enforcement, public education, and taxation. The autonomy of Swiss cantons is so broad that they are entitled to conclude international treaties. Each of the 26 Swiss cantons has its own constitution, legislature, government, and courts. At the confederation level, the Council of States (one of the two chambers of the Swiss Parliament) has 46 representatives, which are appointed by the cantons.

Similarly, Spain's Constitution explicitly "recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed."¹ The Constitution establishes that all competences not explicitly assumed by the central Spanish government in the constitution can be assumed by the autonomous communities. Each autonomous community has a legislative

¹ Constitution of Spain, art. 2.

assembly, council of government (with executive and administrative powers) and a high court of justice. The autonomous communities have significant control over spending, and two communities—Basque Country and Navarre—are authorized to collect taxes independently. At the state level, 58 senators are appointed by the legislative assemblies of the autonomous communities, one for each community and another one for every million inhabitants in their territory.

Scotland has substantial autonomy within the United Kingdom. The Scotland Act of 1998 sets forth the legislative competences of the Scottish Parliament by explicitly specifying the powers reserved to the UK Parliament and providing that all matters not specifically reserved are responsibilities of the Scottish Parliament. Matters for which the Scottish Government retains competence include health, education, justice and policing, rural affairs, economic development, equal opportunity, consumer advocacy, taxation, and transportation.

In Northern Ireland, the 1998 Good Friday Agreement established a power-sharing system of government based on a consociational model of democracy. Among its features are cross-community power sharing at the executive level, including the joint office of First Minister and deputy First Minister, and a multi-party executive. The First Deputy Ministers have equal powers. One is unionist (i.e., Protestant) and the other is nationalist (i.e., Catholic). The multi-party executive (cabinet), or coalition, is made of unionist and nationalist parties. Special voting arrangements give veto rights to the minority. Many important Assembly decisions require cross-community support, meaning a majority of both unionist and nationalist representatives must support the decision.

As a final example, Italy has 5 autonomous regions: Aosta Valley, Friuli-Venezia Giulia, Sardinia, Sicily, and Trentino-South Tyrol. Article 116 of the Italian Constitution grants these autonomous regions home rule, allowing legislative, administrative, and financial power to a varying extent, depending on their specific statute. The special statutes of the autonomous regions are adopted by constitutional law. Two provinces in Italy with large populations who speak German dialects are also vested with autonomous powers. For example, governance in South Tyrol rests on a consociational power-sharing structure among the main linguistic groups.

These examples do not even include the robust federal systems found in European countries like Germany and Austria.

As these examples amply demonstrate, there is no merit whatsoever in accusations by the SDA and its supporters that the Dayton formula must be jettisoned in order for BiH to progress in its efforts toward European integration.

The OHR's Unlawful and Destructive Role

The Office of the High Representative (OHR) is flagrantly exceeding the High Representative's legal authority, running roughshod over BiH's sovereignty and democratic constitutional system, demonstrating contempt for constitutional principles and the rule of law, and destabilizing BiH in the process. Now nothing more than a destabilizing source of "paralysis and distrust," in the words of the first HR, at this point the OHR is recognized to be a self-perpetuating tool of certain foreign powers who demand the right to rule BiH as their own fiefdom, and it is widely regarded as such not just by the citizens of the RS, but by regional leaders, knowledgeable members of the international community, and even by former OHR personnel. The OHR's continued existence and illegal decrees are, to put it charitably, extremely unhelpful.

Many of those who try to defend the OHR by claiming that the turmoil and dysfunction caused by the OHR are only a result of unhelpful rhetoric from RS leaders completely miss what is obvious to the most knowledgeable and experienced international experts on BiH history. For example, in a November 2021 op-ed in *Politico*, former UK Ambassador to Yugoslavia Ivor Roberts observed that the OHR has created "permanent conflict" in BiH. He wrote:

High Representatives, most notably the late Lord Ashdown, have tried to revise Dayton over the years by creating a stronger center, and over the years, the Bosnian Serbs have resisted on the basis that that is not what they signed up for. Thus, there has been, and is, permanent conflict between the centralizing urges of the High Representative and the Bosnian Serbs' insistence on decentralization.¹

The dictatorial authority claimed by the OHR is manifestly illegal, as acknowledged even by former HRs.

In violation of the Dayton Accords and BiH's sovereignty, as well as democracy and the rule of law, the OHR claims legally absurd dictatorial powers to decree laws, nullify decisions of the Constitutional Court, and oust elected officials from office—all contrary to constitutional procedures, and with no grant of authority in the Dayton Accords or any other international instrument or legal act.

As explained in detail in the attachment to [Republika Srpska's 22nd Report to the UN Security Council](#), entitled, *The Illegality of the Bonn Powers*, the HR's claimed authority to impose laws and punish public officials by simple edict is manifestly unlawful, as acknowledged by numerous legal experts and international scholars, and even by former HRs themselves. The HR is an institution authorized by the parties to Annex 10 of the Dayton Accords, including the RS, to be a coordinator of international activities involved in the civilian aspects of the Dayton Accords and a facilitator of the parties' efforts.

¹ Ivor Roberts, *Is this the end of the peace pact holding Bosnia together?*, *Politico*, 22 Nov. 2021.

Annex 10 defines a strictly limited mandate, authorizing the HR 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.”² The HR’s mandate does not include any authority, explicit or implicit, to decree laws or otherwise make decisions binding on governments and citizens of BiH.

Former Swedish Prime Minister Carl Bildt, who served as the first HR, pointed out in an article last year, “The legal basis for [the Bonn powers] was questionable in the extreme.”³

The HR who first claimed the Bonn powers, Carlos Westendorp, has admitted, “At the Bonn conference, we managed to introduce a method by which the High Representative can take these decisions, which is not exactly in legal terms with Dayton. . . . It was not very legal, I have to admit.”⁴

Former UK Ambassador to BiH Charles Crawford, who also helped invent the Bonn powers, has written, “[A]s far as I could see the Bonn powers had *no real legal basis at all*. They amounted to an international political power-play bluff which successive High Representatives wrapped up in legal language to make the whole thing look imposing and inevitable.”⁵

The dictatorial authority the OHR claims has no basis in law and flagrantly violates the BiH constitutional order. It constitutes a total rejection of the rule of law, a geopolitical power play to strip BiH of the authority to rule itself, and is widely recognized as such, even by officials at the OHR itself..

In November of 2021, former OHR attorney Matthew Parish wrote:

The Dayton Peace Accords anticipated the High Representative to be strictly a mediator, and that is the only role Bosnia’s first High Representative, Carl Bildt, exercised until he was ousted by US dissatisfaction with the non-muscular way in which he went about his duties. The transformation of the role into that of an international dictator was obtained by sleight-of-hand legal rewriting of one clause of the Dayton Accords; Bosnia’s domestic political actors had little presence in the Bonn Conference and no voting power, and hence did not agree to any of this.⁶

² Matthew Parish, *A Free City in the Balkans* 86 (2010).

³ Carl Bildt, *Bosnia to war, to Dayton, and to its slow peace*, *European Council on Foreign Relations*, 28 Jan. 2021.

⁴ Adis Merdzanovic, *Democracy by Decree, Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (2015), 256.

⁵ Charles Crawford, *Bosnia: the Bonn Powers Crawl Away to Die*, available at charlescrawford.biz/2011/07/05/bosnia-the-bonn-powers-crawl-away-to-die/ (emphasis added).

⁶ Matthew Parish, *The problem with Bosnia’s last High Representative*, *Transconflict*, 15 Nov. 2021.

It is widely recognized by international experts that the OHR undermines BiH's stability and progress.

Leaving aside the brazen lawlessness of the OHR's claimed authorities, the OHR has long been one of the most significant factors contributing to BiH's dysfunction and recurrent political crises. Far from being a facilitator of dialogue, as the Dayton Accords envisioned, the OHR is nothing but a source of conflict.

It is widely recognized that the blame for BiH's present political crisis lies with former High Representative Valentin Inzko, who, as he was leaving office last year, illegally handed down a gag decree criminalizing the expression of certain opinions about BiH's 1990s war. In a December 2021 report, EU Special Representative Johann Sattler wrote that European Enlargement and Neighbourhood Commissioner Sattler Olivér Várhelyi "shared his frank assessment that . . . HR Inzko was to blame for the current political crisis in BiH as well as the delegitimation of the OHR."⁷

Mr. Inzko's decree, which was nakedly targeted at Serbs, seems almost to have been designed to destabilize BiH. Former HR Bildt wrote at the time of Mr. Inzko's decree, "The outgoing High Representative in [BiH] has caused a profound political crisis."

Former UK Ambassador to Yugoslavia Ivor Roberts wrote that he finds it "hard to agree with" Inzko's view that "it was worth triggering Bosnia's biggest conflict since the war in order to get this law passed."⁸

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]."

Though neither Washington nor Brussels approved of the gag decree, they have done nothing to undo it, to repair the damage it caused, or to end the autocratic and legally preposterous "Bonn powers" under which it was issued, as they refuse to rein in the illegal instrument by which they pull levers in BiH.

This is despite the fact that many Western diplomats are now openly admitting the destructiveness of the OHR's illegal claims to dictatorial authority.

In testimony before a US Senate committee in February, Deputy Assistant Secretary of State Gabriel Escobar suggested that even the United States, traditionally a supporter of the OHR's dictatorial powers, has recognized that they are destructive to BiH's democratic functioning. Escobar told the committee, "We strongly support the High Representative and *his role as a mediator*. I understand the concern of people who would like to see imposed solutions, but imposed

⁷ *Bosnian media discloses details of alleged deal reached during Varhelyi's visit*, N1, 21 Dec. 2021.

⁸ Ivor Roberts, *Is this the end of the peace pact holding Bosnia together?*, Politico, 22 Nov. 2021.

solutions are not a democratic answer to democratic challenges.”⁹ Unfortunately, even having recognized the obvious, the United States remains unwilling to trim the OHR's role to that of a mediator.

Other key experts are also speaking out about the destructiveness of the OHR's role. In a January article, former HR Bildt called for the international community to “step back” from BiH in order to create the conditions for BiH's own leaders “to sit down and hash out the compromises needed to make the country work.” He explained:

In a sense, [the OHR] has gone from being part of the solution to part of the problem. On the Bosniak side, its presence invites constant demands for international action to be taken against reluctant Bosnian Serbs or Bosnian Croats, while for the latter groups, it instills fear that such action will indeed be taken. The result is paralysis and distrust, because neither side feels a need to sit down and hash out the hard compromises needed to make the country work.¹⁰

Mr. Bildt concluded, “Bosnia should no longer be treated as a protectorate. While the EU and the United States remain ready and willing to help, Bosnians ultimately must take responsibility for Bosnia.”¹¹

As Matthew Parish put it:

If you establish an international governing structure of foreign civil servants with the power to write and rewrite legislation and remove domestic governing officials, then you are responsible for the state of the country that you are running. Inevitably, given such a structure, Bosnia's democratic institutions corrode or, at the very least, remain deeply immature. That is because they know that they are not the institutions of last resort.

* * *

Once a country's population and politicians [become] so used to international officials managing all the country's important decisions for them, they find it impossible to shake off the habit and revert to being a proper democracy. That is the problem with being Bosnia's last High Representative. You have a country with a heroin-like addiction to international dictatorial rule, and that

⁹ Testimony of Gabriel Escobar before the US Senate Foreign Relations Committee, 16 Feb. 2022.

¹⁰ Carl Bildt, *Bosnia's Next Crisis*, Project Syndicate, 14 Jan. 2022.

¹¹ *Id.*

addiction has devastated your country's economic and political body
...¹²

Moreover, in a leading German newspaper, *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."¹³

The continued presence of the OHR is also incompatible with BiH's sovereignty and thus incompatible with BiH's EU integration. Regarding the OHR, the European Commission's 2019 Opinion on BiH's membership application says: "Such extensive international supervision is in principle incompatible with the sovereignty of Bosnia and Herzegovina and therefore with EU membership."¹⁴

The EU has repeatedly recognized that the continued operation of the OHR, especially with its self-asserted right to exercise so-called "Bonn powers," hinders BiH's progress toward EU integration. As former HR Bildt wrote in January 2021, "the continued existence of the OHR as the custodian of the push of Dayton has often tended to dilute the impact of the EU efforts."¹⁵ In an August 2021 piece, Mr. Bildt went to far as to say that the appointment of a new HR "effectively derail[s] the country's EU-accession agenda."¹⁶

Mr. Schmidt has continued OHR's destabilizing role.

German politician Christian Schmidt, who now claims to be HR despite never having been approved by the UN Security Council, has played a decidedly unhelpful role, showing that he learned no lessons from the turmoil caused by Mr. Inzko. Mr. Schmidt hypocritically lectures the citizens of the RS about the rule of law, even as he recognizes no limits on his presumed authority to rule BiH by decree. Mr. Schmidt is widely perceived by citizens in the region to be the voice of Germany, rather than a neutral facilitator, and he has done nothing to dispel that view.

Mr. Schmidt recently asserted his claim to be BiH's unelected foreign dictator by issuing two decrees purporting to undo RS legislation in connection with state property. The state property issue is a long-running dispute between Bosniak and Serb parties that would have been resolved years ago if Mr. Inzko had not scuttled a deal reached by the main Serb, Bosniak, and Croat political parties. Mr. Schmidt's decrees now place him firmly on the SDA's side of the long-

¹² Matthew Parish, *The problem with Bosnia's last High Representative*, Transconflict, 15 Nov. 2021.

¹³ Michael Martens, *Ohne demokratische Kontrolle*, Frankfurter Allgemeine Zeitung, 25 Jul. 2021.

¹⁴ Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 29 May 2019, at p. 7.

¹⁵ Carl Bildt, *Bosnia to war, to Dayton, and to its slow peace*, European Council on Foreign Relations, 28 Jan. 2021.

¹⁶ Carl Bildt, *The dangerous Balkan standstill*, The Strategist, 23 Aug. 2021.

running state property dispute, further clarifying that Mr. Schmidt is not a neutral mediator, but a member of the Bosniak faction in BiH politics.

With respect to the most serious crisis facing BiH, the potential boycott of upcoming elections by the Croats, Mr. Schmidt has aggravated the situation instead of helping. Mr. Schmidt undermined election reform negotiations between Croat and Bosniak parties by essentially assuring the SDA there would be no negative consequences for rejecting international efforts to fix BiH's election law. Thereafter, to no one's surprise, the SDA refused to agree to the US- and EU-sponsored resolution of the election law issue, at the last minute demanding new conditions to which they knew the Croats could never agree.

During the current difficult period in BiH and the Balkans generally, when clarity of communications between the leaders in BiH and regional and international leaders is of critical importance, Mr. Schmidt has acted as a kind of diplomatic wild card, and at times a kind of ambassador without portfolio. He visits regional leaders, and leaders in certain selected foreign capitals that he deems important to his continued functioning, but he represents no one (unless he is merely a tool of the German government).

He claims to speak on behalf of the Peace Implementation Council ("PIC"), an ad-hoc group of countries and organizations that also has no authority under, and was not even contemplated in, the Dayton Accords. But, of course, members of the PIC itself differ among themselves on approaches toward addressing issues within BiH, and they discovered when Mr. Inzko issued his ill-conceived diktat at the end of his tenure, HRs do not actually claim to need approval from anyone at the PIC or anywhere else to do anything they please. In fact, it is shocking that the EU and certain important interested foreign powers would even allow an office such as the OHR to exist, when the office can only interfere with or complicate, and never enhance, their own direct diplomatic dealings with BiH.

During Ms. Schmidt's time posing as the HR, tensions among the constituent peoples in BiH have only increased. That itself should be sufficient proof that, if Mr. Schmidt has any legitimate role at all in BiH, he has certainly failed at it. The only legitimate role for the HR under the Dayton Accords is to facilitate discussions toward the implementation of the Accords, but it is evident that Mr. Schmidt has done nothing of the sort; he has offered no ideas, no plan, no initiative, and no activities that actually facilitate any cooperation at all among the constituent peoples. He manifests poor appreciation for the root causes of political conflicts in BiH, and little desire to address them. Mr. Schmidt's focus has been to criticize the rhetoric of certain RS politicians—as if all would be sweetness and light in BiH, and the internal tensions would disappear tomorrow, if only people used nicer words in expressing their frustration with fundamental problems.

It is past time for the OHR to close, not just because the OHR illegally claims dictatorial powers, but also because of the OHR's baleful influence on BiH.

Political Sarajevo's Drive for Complete Domination of BiH

Political Sarajevo—especially Bosnia and Herzegovina's (BiH) main Bosniak party, the SDA—has intensified its efforts to dismantle the Dayton constitutional system in order to achieve total Bosniak domination of BiH.

The SDA's stated platform

There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions.

This statement in the *Islamic Declaration* by SDA founder Alija Izetbegović has never been repudiated or attenuated by the party he founded. Although the SDA tries to present a relatively moderate face to the US and Europe, it was founded as an Islamist party, it remains an Islamist party, and it counts the most fundamentalist and radical Islamist elements of BiH among its core supporters. The party's goal is complete Bosniak—and SDA—domination of every square kilometer of BiH.

Alija Izetbegović's son, Bakir, who is now the SDA's president, has inherited his father's extremist views, which are anything but pacifist. Last October, for example, 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."¹

The SDA's stated platform demands the complete abolition of the Dayton structure—including the 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. The party's 14 September 2019 declaration calls for a "regionalized" state "called the Republic of Bosnia and Herzegovina, with three levels of government: state, regional and local." This, of course, is nothing less than a call for elimination of the RS and the Federation—which are both a crucial part of BiH's constitutional structure that prevents BiH's domination by a single ethnic group—as well as the Federation's cantons, which are essential for ensuring that Croats have a voice in governance.

The "Republic of Bosnia and Herzegovina" was a Bosniak-dominated unitary regime that, like the RS, was a party to the agreements that make up the Dayton Accords, including the BiH Constitution. The BiH Constitution superseded the Constitution of the Republic of Bosnia and Herzegovina and made clear that the country's name is "Bosnia and Herzegovina." The SDA's call for revival of the "Republic of Bosnia and Herzegovina," then, makes clear that it wants to tear up the BiH Constitution, an essential element of the Dayton Accords.

Mr. Izetbegović recently highlighted the SDA's hostility for the Dayton Accords when he reacted angrily to US envoy Gabriel Escobar's comment that the "civic" concept for BiH can be discussed only after the country joins the EU and that the Dayton Accords remains the framework until then. Mr. Izetbegović said that Escobar's statements "have no basis" and are not in line with

¹ Изетбеговић: Ако хоћете мир, морате бити спремни на рат, SRNA, 25 Oct. 2021.

US policy.² Mr. Izetbegović went on to call the Dayton Accords “a straightjacket” that “hinders the main force in BiH,” i.e., the Bosniaks.

In comments on 8 April 2022, Mr. Izetbegović emphasized the central place of Islam in the SDA's vision for BiH, and seemingly eliminated any role for other constituent peoples, saying:

The connective tissue of Bosnia and Herzegovina is Bosniaks, . . . , and the connective tissue within Bosniaks is religion. . . . And as long as the mosques are full of young people and as long as hundreds of thousands of people fast voluntarily, they get up at night . . . I am not worried about this country.³

The SDA has made clear that it aims to achieve the wartime objectives of the Army of the Republic of Bosnia and Herzegovina (the Bosniak army) as if the Dayton Accords had never been signed. For example, BiH Presidency member Šefik Džaferović, an SDA member, lamented in April 2022 that BiH “is still not what [the Bosniak army] fought for.”⁴

SDA officials, throughout all BiH institutions, have aggressively sought to achieve the party's vision of Bosniak dominance by systematically eroding the rights of the Entities and the participation of the Croats and Serbs in the political and civil life of BiH. The constant assaults on the constitutional structure crafted and agreed at Dayton are the biggest threat facing BiH and preventing progress.

The SDA blocked a crucial compromise on electoral reform brokered by the US and EU.

As the RS has explained in prior reports to the Security Council, a key reason for the political crisis in BiH's Federation Entity is the 2018 election of Željko 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 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 electoral manipulation effectively gave the Bosniaks two seats on the Presidency and the Croats none, an outcome the SDA has been exploiting ever since as part of its efforts to minimize any Croat participation in BiH governance.

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

² *Izetbegovic: Escobar's statement on BiH reforms doesn't represent US policy*, N1, 7 Apr. 2022.

³ *Snažna poruka Bakira Izetbegovića: Dokle god su pune džamije ja se ne plašim za Bosnu*, SDA, 8 Apr. 2022.

⁴ *Melika Balihodzic, Džaferović: Ova država još uvijek nije ono za šta su se borili borci ARBiH*, N1, 14 Apr. 2022.

“Croat” members. In its 2016 decision in the *Ljubić* case, the BiH Constitutional Court held that this violates the Croats’ rights as a constituent people.⁵ 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.⁶

Nonetheless, the SDA has disregarded the Constitutional Court and the principles recited in the *Ljubić* decision in an effort to further disenfranchise Croats and consolidate the SDA’s dominance.

Changes to the BiH election law are necessary to implement the principles of the *Ljubić* decision and prevent one people from electing another people’s representatives. Officials from the US and EU have been helping to mediate talks between Bosniak and Croat party officials on the necessary electoral reforms. The SDA, however, has been intransigent against implementing the *Ljubić* principles and permitting the Croats the legitimate political representation to which they are constitutionally entitled.

With the help of US and EU mediators, the negotiations produced a proposed compromise in March of 2022 that would have conformed to European standards while resolving all of the issues at hand. The proposed compromise included an implementation of the *Ljubic* principles of legitimate representation, improvements in the integrity of the election process, and Croat concessions regarding the functionality of Federation institutions. Five of the six political parties represented at the talks supported the compromise.⁷ At the eleventh hour, however, the SDA demanded impossible new Croat concessions, thus intentionally torpedoing the agreement and deepening the Federation’s crisis.⁸ The SDA’s blocking of the proposed compromise is a typical example of the party’s refusal to cooperate, even with its biggest supporters in the international community.

On 26 April 2022, when electoral reform was on the agenda of the House of Peoples of the BiH Parliamentary Assembly, the SDA, rather than simply voting against the proposed legislation, blockaded the House’s work by boycotting the session, preventing a quorum.⁹ The speaker of the

⁵ BiH Constitutional Court, Case No. U-23/14.

⁶ Emphasis added.

⁷ *HDZ BiH leader: No conditions to hold elections in Bosnia*, N1, 20 Mar. 2022.

⁸ *Id.*

⁹ *Sessions Postponed to Tomorrow Due To Lack of Quorum*, SRNA, 26 Apr. 2022.

House of Peoples (and the leader of BiH's main Croat party, the HDZ), Dragan Čović, called the boycott "an unprecedented blockade."¹⁰ This is just the latest attempt by the SDA to use blockades of BiH institutions in order to get its way. For example, the SDA blocked the formation of the BiH Council of Ministers for a year after BiH's most recent national elections—a blockade that did not, notably, result in foreign sanctions or even condemnation. The SDA's blockades expose the hypocrisy of the party's condemnations of alleged Serb blockades of BiH institutions.

The party's rejection of all electoral reform efforts is an intentional disenfranchisement of the Croats, and an intentional rejection by the SDA of the very principles that underlie the Dayton Accords.

The intransigence of the SDA, too often abetted by members of the international community, has brought BiH to a very difficult and precarious situation. The SDA's refusal to share governmental powers as required by the BiH Constitution threatens to disrupt elections and cause a total breakdown of the legislative process. The SDA's intransigence has driven the Croat parties to consider boycotting the upcoming elections. After the SDA caused the failure of electoral reform talks in March 2022, Mr. Čović, said that there are now no conditions to hold elections in BiH. Croatian President Zoran Milanović, similarly, said in February 2022 that if an agreement on amendments to the BiH Election Law is not reached, BiH's 2022 general elections should not be held and that he "will do everything to prevent them from happening."¹¹

The SDA's intransigence has also prompted calls for the creation of an autonomous Croat region. In February 2022, the Croatian National Council (HNS), an umbrella organization of major Croat parties and groups, said it could launch a political process to form a Croat region unless electoral reform is completed.¹²

The justified frustration of the Croats and the Serbs could also result in additional walkouts in the Parliamentary Assembly, preventing a quorum and blocking all legislative activity. A prominent Croat journalist wrote in February 2022 that reforming the Election Law is necessary in order to stop BiH's practical disintegration.¹³

Political Sarajevo's illegal takeover of BiH foreign policy

Sarajevo politicians led by the SDA have been continuing to defy the BiH Constitution's clear command that the "Presidency shall have responsibility for . . . [c]onducting the foreign policy of Bosnia and Herzegovina." The Presidency is the sole BiH institution constitutionally entrusted with foreign policy.

¹⁰ Čović: *SDA – Source of Crisis in BiH*, SRNA, 26 Apr. 2022.

¹¹ *Croatian President to try and prevent BiH elections if agreement is not reached*, N1, 18 Feb. 2022.

¹² *Bosnian Croats say may push for own region unless election law changes*, Reuters, 19 Feb. 2022.

¹³ Jurica Gudelj, *The BiH future depends on Croat-Bosniak relations: Does Sarajevo want to „Palestinize“ its own people?*, Dnevnik, 23 Feb. 2022.

Yet instead of representing the foreign policy approved by the Presidency, BiH Foreign Minister Bisera Turković has acted as the foreign minister of the SDA. Recently, for example, Ms. Turković and other Bosniak officials in the Foreign Ministry have flagrantly violated the BiH Constitution by announcing various positions on behalf of BiH in spite of the fact that the BiH Presidency has not taken any position.

Examples of Ms. Turković's unauthorized actions abound. Last year, Ms. Turković—without authorization from the Presidency—condemned the RS's plans to build, with help from Serbia, a memorial 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.

Also last year, 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.¹⁴

Ms. Turković has also been trying, spitefully, to block important economic development projects in Republika Srpska, including the Buk Bijela Hydro Power Plant, which will provide 93 MW of carbon-free and inexpensive electricity, and the Trebinje Airport, which will promote economic development in the southern part of BiH. Ms. Turković recently dealt the airport project a blow by withdrawing her consent from a draft memorandum on the project between Serbia and BiH.

Lately, Ms. Turković has been visiting foreign countries for official meetings without even notifying the BiH ambassador, whenever the ambassador is a Serb. This enables Ms. Turković to peddle SDA propaganda at the meetings while keeping Serbs in the dark about what she said. This effort to lock Serbs out of high-level diplomatic activities is emblematic of the SDA's agenda of creating a BiH for Bosniaks and only for Bosniaks.

BiH Presidency member Željko Komšić has also frequently disregarded the Constitution's assignment of foreign policy to the full Presidency. In September of 2021, for example, Mr. 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.

Mr. Komšić recently emphasized his extreme hostility to the Dayton Accords with he said in April 2022 that “constitutivity,” i.e., the concept of constituent peoples, “is a genocidal determinant.”¹⁵

¹⁴ Тришић: Додиков кабинет се ограђује од неовлашћеног дјеловања Турковићеве у Техерану, SRNA, 5 Aug. 2021.

¹⁵ ŽELJKO KOMŠIĆ: *Bosna i Hercegovina i Ukrajina moraju istovremeno dobiti kandidatski status za članstvo u EU*, Autonomija, 23 Apr. 2022.

In an extreme example of the politicization of BiH's foreign policy apparatus, last October, Admir Atović, BiH's Bosniak consul in Frankfurt, 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."¹⁶

Remarkably, these flagrant violations of the Constitution and indeed the very principles agreed at Dayton are not condemned by the international community, but too often applauded, or, at best, met with a shrug, further encouraging the SDA in its goal of usurping all authorities in BiH what were intended to be shared among the constituent peoples.

The SDA's illegal takeover and misuse of the Central Election Commission

Not content to merely manipulate voting in BiH, the SDA has also plotted to usurp and manipulate the very mechanisms of the electoral processes in BiH. In March of 2020, the SDA illegally took control of the Central Election Commission, and it has misused the commission for political purposes ever since. The BiH House of Representatives, led by the SDA and Željko Komšić's DF party, removed two of the seven members of the BiH Central Election Commission (CEC) and replaced them with their own preferred candidates, while also reappointing the two SDA members of the CEC. The two Serb members that were appointed are RS opposition political figures rather than election law experts. The illegal moves violated the rules of procedure for election of CEC members, because the legally required public competition for members was never held.

The chairwoman of the commission for election and appointment of members of CEC, Borjana Kristo, warned that the illegitimate appointments would not lead to the rule of law.¹⁷ The Croat National Council (HNS), an umbrella organization of major Croat parties and groups, rightly called the SDA's maneuvers unconstitutional and illegal, resulting in a "crude destruction of the functioning of a legal state in BiH."

The SDA's moves to gain control of the CEC brought condemnation not just from the largest Serb and Croat parties, but even from a major Bosniak party, the SBB. SBB President and then-BiH Security Minister Fahrudin Radoncic said, "While we are expending our health and the last atom of our strength to help citizens in the migrant crisis, and corona pandemic, and in other ways, [the SDA] is already planning how to again compromise the electoral process and manipulate the will of the citizens." Radoncic added that if the SDA's grave abuses are allowed to stand, the upcoming elections will have no validity.

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

¹⁷ Кришто: Незаконит избор чланова ЦИК-а не води владавину права, ВНРТ, 16 Jul. 2020.

Since it took control of the CEC, the SDA has been abusing the commission for political ends. For example, it illegally postponed the 2020 elections and banned the United Srpska party from taking part in those elections.

The SDA's unlawful takeover of key judicial positions

As part of its drive for unquestioned dominance of BiH, the SDA has been taking control of judicial and prosecutorial positions. In February 2021, the SDA and its allies were successful in installing Halil Lagumdžija 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.”¹⁸

In October 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 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.

Bosniak domination of the judiciary is evident in the Court of BiH's persistent lenient treatment of war crimes committed by Bosniaks. To cite a recent example, on 28 April 2022, the Court of BiH reduced the prison sentence of General Sakib Mahmuljin, the wartime commander of the Third Corps of the Bosniak army, to just eight years, despite the fact that the El Mujahidin Detachment under his command murdered many Serb prisoners, not in a fit of rage after a heated battle, but by sadistic ritual beheadings. To this day, General Mahmuljin has never been incarcerated for his war crimes, as the SDA has endeavored to shield him from justice. In fact, after General Mahmuljin's original conviction, Ms. Turković took to Facebook to praise him and condemn the verdict,¹⁹ a provocative and utterly disgraceful act that alone should disqualify Ms. Turković from public office, and indeed cause her to be shunned by the international diplomatic community.

Given the SDA's persistent and aggressive actions to dismantle the Dayton constitutional structure in order to give the SDA domination over all governmental functions in BiH, the effort of the RS to retrieve some of its constitutional competences that were previously agreed to be exercised at the BiH level is merely an act of survival, and not remotely an act of secession.

¹⁸ *Izetbegović: SDA Brani Gradanski Princip, a Gradanske Stranke Napadaju SDA I Nude Ruku HDZ-U*, Hayat.ba, 3 Mar. 2021.

¹⁹ Sandra Veljkovic, *Ministrica vanjskih poslova BiH brani osuđenog zapovjednika mudžahedina koji su ubijali Srbe i Hrvate*, Večernji list, 25 Jan. 2021.