

Republika Srpska's 33rd Report to the UN Security Council

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Executive Summary

Republika Srpska (RS), a party to the treaties that constitute the 1995 Dayton Agreement and one of the two Entities that make up Bosnia and Herzegovina (BiH), is pleased to submit its 33rd Report to the UN Security Council. In March, the members of the Security Council issued a unanimous statement emphasizing their support for the Dayton Agreement and calling for "a sincere, open, and constructive dialogue to preserve the country's unity and political stability." The RS wholeheartedly welcomes the Security Council members' entire statement, and it will work in the coming months to implement it.

The RS staunchly supports the Dayton Agreement, including BiH's constitutional order. The Dayton Agreement established a democratic constitutional structure designed to give each of BiH's three formerly warring constituent peoples (predominantly Muslim Bosniaks, predominantly Orthodox Christian Serbs, and predominantly Roman Catholic Croats) confidence that they would not come under the domination of one or more of the other constituent peoples. The BiH Constitution, an integral part of the Dayton Agreement, did this by reserving all but a few specifically enumerated governmental functions to the two Entities and establishing consociational mechanisms to protect the interests of each of BiH's three constituent peoples.

The staunch support of the RS for the Dayton Agreement means the RS fully respects BiH's sovereignty and territorial integrity and has no plan to secede. It also means that the RS insists that the BiH Constitution be adhered to as written, and it means the RS absolutely rejects BiH being ruled by a foreign autocrat. Above all, the RS's support for Dayton means it is unshakably committed to peace. The RS stands ready to engage in serious negotiations with its partners to end BiH's political crisis and help ensure the country's future success.

The cause of BiH's political crisis is Christian Schmidt's attack on BiH's constitutional order and his outrageous attempt to overturn democracy in the RS. The reckless autocratic German bureaucrat Christian Schmidt rules BiH by edict without any limit to his powers. His rule by personal edict is a shocking offense against BiH's democratic constitution and a flagrant violation of the civil and political rights of BiH citizens.

Because Mr. Schmidt was never appointed by the UN Security Council, he is not even a legitimate High Representative (HR), but even if he were, nothing in the Dayton Agreement or any other source of law gives the HR any authority to issue edicts that are binding on the citizens of BiH. Mr. Schmidt's edicts are not even subject to review by any court or other body inside or outside BiH. He answers to no one. He has issued many destabilizing edicts, but his most egregious decree makes it a crime to disrespect his illegal edicts.

Under pressure from Mr. Schmidt, the BiH Prosecutor's Office charged the RS's democratically elected President, Milorad Dodik, with a violation of Mr. Schmidt's criminal edict, and following a sham trial President Dodik was given a first-instance sentence of a year in prison and a six-year ban on holding public office. BiH's partners in the international community should condemn Mr. Schmidt's effort to depose and imprison President Dodik, which is an outrageous attack on the rule of law and BiH's constitutional order.

The Office of the High Representative (OHR) has unconstitutionally transformed and deformed BiH from what was promised in the Dayton Agreement. The OHR has radically subverted BiH's Dayton constitutional order and destabilized the country. Absolutely nothing in the Dayton Agreement or any other source of law authorizes the HR to make decisions that are binding on BiH. Annex 10 of the Dayton Agreement, the sole source of the HR's legal mandate, strictly limits the HR to activities such as monitoring and facilitating. Yet successive HRs reigned as absolute dictators over BiH, imposing hundreds of laws, constitutional amendments, and extrajudicial punishments.

It is sometimes claimed that the HR was given despotic "Bonn powers" by the Peace Implementation Council (PIC). But the PIC is merely an informal group of countries and organizations that has no legal authority at all, let alone authority to empower the HR as an autocrat. In any event, the PIC never even purported to give the HR new powers, but merely "welcomed" the HR's intention to make certain binding decisions. Every scholarly examination of the HR's claimed dictatorial powers has found that they are illegal, and even former HRs have agreed.

The BiH Constitution explicitly assigns all functions and powers to BiH's two Entities except for competences "expressly assigned" in the Constitution to BiH institutions. But through edicts and coercion, HRs have centralized governance in flagrant violation of this clear constitutional command. HRs also created flagrantly unconstitutional judicial institutions like the Court of BiH and the BiH Prosecutor's office, which have been weaponized against those officials daring to question the power of the OHR. Even the BiH Constitutional Court, under the domination of its foreign judges and interference from the OHR, has been utterly servile to the OHR, reliably endorsing illegal edicts and BiH's unconstitutional centralization. The result of the HRs' misrule of BiH has been a warped political culture and frequent political crises. *Even former HRs have called for the end of the HR's illegal, dictatorial rule.*

Mr. Schmidt's lawless and destabilizing reign has been especially damaging and repressive. Lacking any diplomatic experience and with a checkered political career behind him, Mr. Schmidt is supremely unqualified to hold an entire country's fate in his hands. He is a controversial figure even in his own country, partly due to his publicly expressed sympathies for Nazi wartime "heroes." Ever since he was unlawfully foisted upon BiH in violation of the Dayton Agreement, Mr. Schmidt has triggered one crisis after another with his reckless edicts.

Schmidt's latest attack on democracy in BiH is his brazenly lawless attempt to destroy two of the RS's governing parties by starving them of funding. His new edict would be a blatant assault on BiH's constitutional order even if it had been enacted by the BiH Parliamentary Assembly. It is long past time for Security Council Members to condemn such acts of naked tyranny. Mr. Schmidt's lack of legitimacy and his uncurbed abuse of powers flagrantly violate the very agreement he claims to enforce. If the Dayton Agreement is to be respected—indeed, if it is to have any relevance at all—it must also apply to the position of the HR, who must not egregiously abuse its proscribed mandate, and who must be properly appointed by the Security Council to have any legitimacy at all.

The RS is acting to uphold the Dayton Agreement. In response to Mr. Schmidt's lawless attempt to overthrow and imprison President Dodik, the RS's governing authorities are moving to restore Entity

competences that have been unconstitutionally taken away. The RS is only seeking to recover competences that clearly belong to it under the explicit words of the BiH Constitution. Restoring the division of competences under the BiH Constitution does not, in any way, challenge BiH's sovereignty, territorial integrity, or constitutional order. On the contrary, it upholds the BiH Constitution's clear terms. The RS is hopeful that BiH's crisis will be resolved soon with the support of BiH's partners in the international community.

The RS is committed to BiH's EU path. The RS remains committed to BiH's path to EU membership. That path, unfortunately, is currently blocked by the oppressive presence of the OHR. The European Commission has made clear that OHR's "supervision" of BiH is incompatible with BiH's sovereignty "and therefore with EU membership." Moreover, former HRs have explained how OHR undermines BiH's EU integration. BiH's EU path is also obstructed by the continued presence of foreign judges on the BiH Constitutional Court and by BiH's largest Bosniak party, which is obstructing the adoption of the Reform Agenda necessary for the disbursement of funds under the EU Growth Plan for the Western Balkans.

Bosniak political parties refuse to respect the Dayton Agreement and reject internal dialogue, disregarding the Security Council's stances. BiH can only succeed when its leading Bosniak political parties begin respecting BiH's federal and consociational structure. The Bosniak parties, unfortunately, have long assisted HRs in subverting BiH's constitutional order and continue to do so today. The Bosniak parties have enthusiastically cooperated with the OHR and the BiH Constitutional Court to centralize BiH in violation of its constitutional structure. Moreover, the Bosniak parties have shown contempt for the Constitution's power-sharing mechanisms.

For example, despite the Constitution entrusting foreign policy solely to the three-member BiH Presidency, BiH's Bosniak foreign minister has conducted his own freelance foreign policy representing solely the Bosniaks. It is also regrettable that Bosniak parties have rejected RS leaders' invitation for negotiations to resolve BiH's current crisis. If Bosniak political parties want BiH to succeed, they should begin respecting the BiH constitutional structure and enter good-faith talks with RS officials, in line with the Security Council's recent statement.

BiH's federal and consociational structure is vital for European security. BiH's constitutional structure is vital for European security because its disbursement of authority and its power-sharing arrangements prevent the total dominance of Islamism, which is a major presence in Bosniak politics. In accordance with BiH's federal structure, the RS has cooperated closely with European and US security agencies, and it hopes that the new US administration will reverse the previous administration's counterproductive policies regarding BiH.

Despite current tensions, the RS believes BiH can still succeed if the Dayton Agreement is respected by actors inside and outside the country. The RS stands ready to engage in serious talks aimed at ending BiH's political crisis and renewing its progress toward EU membership. It asks that BiH's partners in the international community support the Dayton Agreement and promote dialogue to resolve the current crisis.

I. The RS staunchly supports the Dayton Agreement, including BiH's constitutional order.

1. The 1995 Dayton Agreement both ended the war in BiH and established a democratic constitutional structure designed to give each of BiH's three formerly warring constituent peoples (predominantly Muslim Bosniaks, predominantly Orthodox Christian Serbs, and predominantly Roman Catholic Croats) confidence that they would not come under the domination of one or more of the other constituent peoples.

2. During the war in BiH, Bosniaks sought to establish a centralized state without Entities or institutional safeguards for the constituent peoples, while Serbs fought for independence. The Dayton compromise, while falling short of fully meeting the aspirations of any one people, succeeded in establishing—through Annex 4, which established the Constitution of BiH—a federal and consociational structure that enabled a sustainable peace and a functional union of three peoples, among whom there remains deep mutual mistrust. The Constitution did this by reserving all but a few specifically enumerated governmental functions to the Entities and establishing consociational mechanisms, such as a three-member presidency intended to protect the interests of each of BiH's three constituent peoples.

3. In the decades since the Dayton Agreement was signed, however, there has been an unrelenting campaign by successive High Representatives (HR), supported by the Bosniak political parties, to dismantle the Dayton compromise and achieve the wartime Bosniak goal of a unitary state dominated from Sarajevo by the Bosniaks. To accomplish these goals, successive HRs have, without a trace of legal authority, and in contravention of the most fundamental international laws, cast aside BiH's democratic constitutional order, and have instead ruled BiH by autocratic decree with no oversight whatsoever. Judicial authorities in BiH, the supposed guardians of the rule of law, have been influenced by external parties and have consistently turned a blind eye to the flagrant illegality of HRs' rule by decree and the unconstitutional centralization of competences in Sarajevo.

4. The RS continues to support the Dayton Agreement and insist on its faithful implementation as written. This includes support for BiH's sovereignty and territorial integrity, as well as the BiH Constitution. The RS has absolutely no plan to secede from BiH. It merely seeks to resume exercising governmental competences to which it is entitled under the clear terms of the BiH Constitution, and the RS rightly demands that other parties in BiH, as well as foreign governments, also respect the binding international obligations set out in the Dayton Agreement and work toward the treaty's implementation.

5. The RS's continued support for the Dayton Agreement also includes an inalterable commitment to resolve BiH's political problems solely through peaceful means. The RS and its leaders have steadfastly called for peace and ruled out all use of violence. The RS also cooperates

closely with the European Union's EUFOR Althea mission in BiH and has even supported increasing the size of the mission to give BiH citizens comfort that peace will not be threatened.

6. The RS believes that the only means to solve BiH's current political crisis is through good-faith negotiations among the leading parties representing each of BiH's constituent peoples, with the basis of the negotiations being all sides' acceptance of the Dayton Agreement, including the BiH Constitution. The RS stands ready to begin negotiations immediately, and it welcomes the help of BiH's partners in the international community in bringing them about.

II. The cause of BiH's political crisis is Christian Schmidt's attack on BiH's constitutional order and his outrageous attempt to overturn democracy in the RS.

7. BiH is in crisis today because of the illegal and reckless actions of a retired German bureaucrat named Christian Schmidt, who lawlessly claims dictatorial authority over BiH. His heedless actions culminated in Mr. Schmidt's attempt to overthrow and imprison the democratically elected president of the RS, Milorad Dodik, using a criminal "law" invented and decreed by Mr. Schmidt himself. Mr. Schmidt's actions were dangerously provocative, destabilizing, and completely unnecessary. Quite simply, they are a shocking attack on democracy in BiH and a cynical rejection of the rule of law. Mr. Schmidt's illegal usurpations of authority in BiH are flagrant violations of principles enshrined in the UN Charter, and any UN member state that has any concern for democracy or for the rule of law should be shocked and disgusted by his actions. To allow Mr. Schmidt to continue his ruinous reign over BiH is an outrage.

8. Mr. Schmidt claims to hold the title of HR, a position authorized under the 1995 Dayton Agreement, which ended the 1992-1995 war in BiH. The scope of this role was expressly confined by the signatory parties of the Agreement to that of a facilitator and coordinator. Amazingly, Mr. Schmidt also claims that as HR, he has the authority to declare his will to be law throughout BiH, without the consent of the signatories to Annex 10 and with no oversight from any authority inside or outside of BiH.

9. Because Mr. Schmidt's appointment was never approved by the UN Security Council as required by the Dayton Agreement, he is not a legitimate HR and has no authority to act as such in any capacity. As explained in part IV(B) of this report, Mr. Schmidt was simply foisted upon BiH by a small, informal, and self-appointed group of countries with no legal authority calling itself the Steering Board of the "Peace Implementation Council." But even if Mr. Schmidt were a legitimate HR, absolutely nothing in the Dayton Agreement or any other source of law has ever given the HR authority to impose laws or otherwise issue binding decisions. Mr. Schmidt's usurpation of the lawmaking authority of BiH's democratic legislatures is anathema to BiH's sovereignty as a UN member, its democratic constitution, and to the rule of law.

10. Yet in brazen defiance of BiH's constitutional order and the strict limits placed upon his claimed office by the Dayton Agreement, Mr. Schmidt has intentionally sabotaged the BiH Constitution by repeatedly issuing provocative edicts that he claims are laws binding on the citizens of BiH.

11. Mr. Schmidt's most audacious and reckless act of repression is a counterfeit "law" he imposed in July 2023 that establishes prison sentences for officials who refuse to treat the HR's illegal edicts as if they were approved by BiH's democratic legislature. The obvious target of Mr. Schmidt's new criminal "law" was President Dodik, who, like the RS National Assembly and other RS leaders, has resolutely rejected Mr. Schmidt's authority to rule BiH as an absolute despot.

12. In a natural response to Mr. Schmidt's lawless and unconstitutional efforts to rule BiH by edict, the RS National Assembly in June 2023 approved a statute ending the publication of such illegal edicts in the RS's Official Gazette. When President Dodik formalized the statute, as he was required to do by the RS Constitution, the BiH Prosecutor's Office indicted President Dodik on the basis of Mr. Schmidt's bogus new "law."

13. President Dodik then underwent a sham trial presided over by a former wartime Bosniak army judge. President Dodik stood accused of violating not a democratically enacted criminal statute but, instead, a German bureaucrat's whim. The trial was literally lawless, given that it was entirely based on the alleged violation of a fictitious "law" that was never approved by either house of the BiH Parliamentary Assembly. Yet the BiH Court and Prosecutor's Office, under pressure from Mr. Schmidt and certain foreign embassies, treated Mr. Schmidt's bogus criminal "law" as if it were duly enacted in accordance with the BiH Constitution.

14. After going through the motions of a trial, the judge found President Dodik guilty of violating Mr. Schmidt's illegal edict and sentenced him to one year in prison and a six-year ban on holding public office. The judicial opinion announcing the verdict was so replete with absurdities that, regardless of the legalistic trappings, no neutral informed observer could consider this trial as anything other than a show trial.

15. Mr. Schmidt's attempted overthrow of President Dodik using an illegal, unconstitutional edict is an outrageous attack on the rule of law and BiH's democracy. The effort by Mr. Schmidt to imprison President Dodik and overturn his free and fair election to the RS Presidency is a flagrant violation of international law, EU norms, the Dayton Agreement, and the values that Western nations claim to champion. Mr. Schmidt is clearly trying to oust President Dodik, but he can never oust the people of the RS, who overwhelmingly support President Dodik's defense of the Dayton Agreement and his rejection of Mr. Schmidt's dictatorial actions. (The party and broader coalition that President Dodik leads won a sweeping victory in the October 2024 general

and local elections.) Indeed, the attempted overthrow of President Dodik has galvanized citizens of the RS against Mr. Schmidt's illegal and destabilizing dictatorship.

16. Since the verdict against President Dodik, the Court of BiH has gone on to issue a warrant for the arrest of President Dodik, RS Prime Minister Radovan Višković, and RS National Assembly Speaker Nenad Stevandić. The court even asked Interpol to issue an international arrest warrant for the three RS leaders. Interpol correctly denied the court's request, adhering to its rule against undertaking activities of a political character. Some Bosniak politicians have also asked EUFOR to assist with President Dodik's arrest, but the EU, like Interpol understanding the political nature of the arrest warrant, has wisely rejected this request. On 23 April, SIPA made a failed attempt to arrest President Dodik in East Sarajevo. Further attempts to arrest President Dodik or other RS leaders would be dangerous moves that would only deepen BiH's crisis, thus jeopardizing its future.

III. The Office of the High Representative (OHR) has unconstitutionally transformed and deformed BiH from what was promised in the Dayton Agreement.

A. The OHR's rule of BiH by decree is an illegal, destructive attack on BiH's constitutional order and the rule of law.

17. The OHR's attempt to impose its designs on BiH by decree is a manifestly unlawful attack on BiH's democratic constitutional order. HRs have decreed hundreds of statutes and constitutional amendments. But the Dayton Agreement, which is the sole source of the HR's lawful authority, simply cannot reasonably be interpreted to give the HR anything resembling such dictatorial powers.

18. Annex 10 of the Dayton Agreement, which is the sole source of the HR's legal authority, 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." The HR's legal mandate does not include any authority, explicit or implicit, to decree laws or otherwise make decisions binding on governments and citizens of BiH. As international relations scholar and former OHR attorney Matthew Parish has written, the HR's "functions were limited to coordinating other international organisations' work and monitoring and exhorting domestic officials to comply with their Dayton obligations."¹

19. Beginning in 1997, however, HRs began claiming for themselves, with no legal justification whatsoever, so-called "Bonn powers" to rule and punish by decree, with no oversight

¹ Matthew Parish, *A Free City in the Balkans* 86 (2010).

or due process whatsoever, vastly exceeding any mandate under the Dayton Agreement and casting aside the entire democratic system established by the BiH Constitution. The “Bonn powers” are allegedly based on a political statement of the Peace Implementation Council (PIC), an informal group with no legal authority that is neither part of the Dayton Agreement nor recognized under international law. The PIC’s Bonn statement merely “welcomed the intention” of the HR without purporting to grant the HR any actual authority. HRs’ manifestly illegal usurpation of sovereignty in BiH has been widely acknowledged as such by scholars and even former HRs.

20. The first HR to assert the alleged Bonn powers, Carlos Westendorp, has admitted about the alleged Bonn powers, “It was not very legal, I have to admit.”² Moreover, Swedish Prime Minister Carl Bildt, who served as the first HR, has said, “The legal basis for [the HR’s alleged Bonn powers] was questionable in the extreme.”³ And former UK Ambassador to BiH Charles Crawford, who helped invent the Bonn power, 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.”⁴

21. The few detailed scholarly analyses of the possible legal bases for the Bonn powers have uniformly concluded that the Bonn powers are flagrantly unlawful. For example, Mr. Parish has written, “It is hard to escape the conclusion that the extent of the legal fiction involved in creating the Bonn powers was breathtaking. . . . There was no justification in international law for the way the Bosnia and Herzegovina was, almost overnight, transformed into a colony jointly administered by the international powers.”⁵ Moreover, in a thorough legal analysis of the Bonn powers appearing in the *Goettingen Journal of International Law*, Tim Banning concluded, “[The Bonn powers] do not qualify as a legal power. Their existence is a powerful, but delusive legal fiction.”⁶

² Adis Merdzanovic, *Democracy by Decree, Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (2015), 256.

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

⁴ 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).

⁵ Parish at 91-91.

⁶ Tim Banning, *The ‘Bonn Powers’ of the High Representative in Bosnia Herzegovina: Tracing a Legal Figment*, *Goettingen Journal of International Law* 6 (2014) 2, 259-302, at 302.

22. This year, the Croatian-language news outlet *Poskok* surveyed 20 highly respected European experts in legal semantics, international law, and constitutional law, asking them whether the so-called Bonn powers gave the HR the right to enact laws in BiH. Ten experts from ten different EU member states responded; *every single one of them* answered the question in the negative.⁷ For those who have seriously examined the question of whether the HR has any legal authority whatsoever to enact laws by decree, there is simply no debate that the answer is “no.” Indeed, no one with any respect for democratic principles or the rule of law can possibly argue otherwise.

B. High Representatives have radically and aggressively subverted BiH’s constitutional structure.

23. HRs have, over the years, aggressively and thoroughly subverted BiH’s constitutional structure by establishing, using illegal edicts and pressure tactics, many BiH-level institutions that defy the BiH Constitution’s division of competences between the two Entities and the BiH level.

24. The BiH Constitution explicitly 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.”⁸ Despite this clear constitutional instruction, the BiH level now holds many governmental functions and powers that are neither expressly assigned, nor even implicitly assigned, to the institutions of BiH. This unconstitutional centralization of BiH is due almost entirely to the illegal interventions of HRs.

25. 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 is inconsistent with the division of competences set out in the BiH Constitution is superseded by the Constitution and should be considered null and void. Laws that purport to give BiH institutions competence over matters that are not “expressly assigned in [the] Constitution to the institutions of Bosnia and Herzegovina” are not legitimate laws at all, but usurpations. Institutions created in defiance of the clear terms of the BiH Constitution are illegal institutions, and the RS is under no obligation to recognize them.

26. It is Orwellian to suggest that the RS is acting “contrary to Dayton” by demanding that the BiH Constitution agreed at Dayton must be followed. The true assault on Dayton has come from the OHR’s autocratic imposition of hundreds of diktats upon the citizens of BiH.

⁷ *Anketirali smo pravne autoritete s istim pitanjem: Daju li Bonske ovlasti pravo Visokom predstavniku da zadire u Zakone? Odgovor je za sada zapanjujući!*, Poskok, 10 Apr. 2025.

⁸ BiH Constitution, art. III(3)(a) (emphasis added).

C. The OHR weaponized BiH judicial institutions against BiH's constitutional order and those who try to defend it.

27. Some of the most important examples of the OHR's unconstitutional centralization of BiH are the BiH-level judicial and law enforcement institutions that it created. The BiH Constitution authorizes only one judicial institution, the BiH Constitutional Court. As explained below, however, the OHR, through edicts and coercion, created the Court of BiH, the BiH Prosecutor's Office, the High Judicial and Prosecutorial Council. Having created these institutions, the OHR has gone on to exercise a high degree of control over them.

28. A prime example is the Court of BiH. As the International Crisis Group has confirmed, the BiH Constitution "allotted judicial matters to the Entities, apart from a state Constitutional Court."⁹ Disregarding this, in 2000 HR Wolfgang Petritsch rashly imposed an edict providing for the Court of BiH's establishment. Mr. Petritsch's order said it would "enter into force with immediate effect on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendments and with no conditions attached."¹⁰

29. In 2002, the BiH Parliamentary Assembly, as directly ordered by Mr. Petritsch, adopted the Law on Court of BiH unchanged from the one he imposed. The Parliamentary Assembly acceded to the OHR's demands at a time when the OHR was routinely imposing extrajudicial punishments on office holders, removing and banning them from public employment for failing to implement OHR's instructions—in effect, acting as prosecutor, judge, jury, and executioner, with not even the most rudimentary due process and no possibility of appeal.

30. It is an axiom of all law that any law enacted under such duress is not a valid law at all. Indeed, a law enacted upon the order of an extraconstitutional actor is no more legitimate than a law passed by a dictator's rubber-stamp parliament. The HR's coercion of members of the BiH Parliamentary Assembly violated Article I (2) of the BiH Constitution, which provides that BiH "shall be a democratic state, which shall operate under the rule of law and with free and democratic elections."¹¹ The enactment of laws either by an HR's edict, or as a result of such coercion from the OHR, also violates the rights of BiH citizens under fundamental principles of international law

⁹ International Crisis Group, *Bosnia's Future*, 10 July 2014, p. 27.

¹⁰ Office of the High Representative, Decision establishing the BiH State Court, 12 Nov. 2000.

¹¹ See *Morrissey v. State*, 951 P. 2d 911, 916 (Colo. Sup. Ct. 1998) ("This coercion of legislators is itself inconsistent with Article IV, Section 4 (the Guarantee Clause), which guarantees to every state a republican form of government.") (footnote omitted).

guaranteeing citizens the right to representative democratic government, including those recognized in Protocol No. 1 of the European Convention¹² and the International Covenant on Civil and Political Rights (ICCPR),¹³ which apply directly under the BiH Constitution.¹⁴

31. But even if the Law on Court of BiH had been legitimately enacted, it is still patently unconstitutional because the existence of the Court of BiH violates the Constitution's division of competences between the Entities and BiH institutions.

32. Other BiH-level judicial institutions imposed on BiH through decrees and coercion that flagrantly violate the BiH Constitution include the BiH Prosecutor's Office and the High Judicial and Prosecutorial Council (HJPC). It bears repeating that 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."¹⁵ The BiH Prosecutor's Office is manifestly unconstitutional because the Constitution does not expressly, or even implicitly, assign criminal prosecutions to the institutions of BiH. Similarly, the HJPC, a centralized body for the selection and discipline of judges and prosecutors, is unquestionably unconstitutional because the Constitution does not expressly, or even implicitly, assign BiH institutions any role in the selection or discipline of judges and prosecutors.

33. Having unconstitutionally created the judicial institutions described above, the OHR has gone on to exercise a high degree of control over them. Most notably, the OHR under Mr. Schmidt has weaponized the judiciary against President Dodik because of his rejection of Mr. Schmidt's lawless claim to unlimited power. Mr. Schmidt pressured the BiH Prosecutor's Office to promptly prosecute President Dodik under Mr. Schmidt's newly invented criminal prohibition, then pressured the Court to quickly convict him. The Prosecutor's Office and the Court acted in accordance with the OHR's orders and with unusual speed for two institutions known to move very slowly.

34. The sole BiH-level judicial institution authorized by the Constitution, the BiH Constitutional Court, has also long been dominated by the OHR. As explained in the attachment to this report, the OHR has used the Constitutional Court, with the controlling votes of its foreign

¹² Protocol no. 1, European Convention on Human Rights, art. 3.

¹³ International Covenant on Civil and Political Rights, art. 25.

¹⁴ BiH Constitution, art. II (4) and (7), Annex I.

¹⁵ BiH Constitution, art. III(3)(a) (emphasis added).

judges, to assist in the radical subversion of BiH's constitutional order. The Constitutional Court majority has been weaponized to strip the Entities of their constitutionally guaranteed competences, in an effort to leave them as empty shells.

35. The Constitutional Court majority has been utterly subservient to the OHR. A former foreign judge even admitted that there was a "tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation"¹⁶ The OHR's control of the Constitutional Court is so complete that when the court once issued a decision not to the HR's liking, the HR nullified the decision and issued a decree banning any proceeding before the Constitutional Court or any other court that "takes issue in any way whatsoever with one or more decisions of the High Representative."¹⁷

36. In an astonishing abdication of its responsibility to uphold BiH's democratic constitutional order, the Constitutional Court has bizarrely pretended that the OHR is a legitimate lawmaking institution, even though the HR has no lawmaking role whatsoever in the BiH Constitution or any other part of the Dayton Agreement. The Constitutional Court has also accepted the creation of many new BiH institutions that are manifestly contrary to the Constitution's division of competences between the Entities and the BiH level.

D. The OHR, which has long been a destabilizing force, must be closed.

37. For many years it has been abundantly clear—even to former HRs—that the OHR is a force for destabilization that severely undermines BiH's political development. The presence in BiH of a foreigner with dictatorial powers has badly warped BiH's political culture for many years, undermining the spirit of give-and-take necessary for the development of a mature democracy.

38. BiH's Bosniak political parties, knowing that they have a staunch centralizing ally at the OHR, refuse to negotiate in good faith with Serb and Croat political parties, instead adopting maximalist positions in hopes that the OHR will bypass democratic procedures to give them what they want—which it too often does.

¹⁶ Joseph Marko, Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina, European Diversity and Autonomy Papers (July 2004) at 17 and 18 (emphasis added).

¹⁷ Office of the High Representative (OHR), Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, March 23, 2007 (emphasis added).

39. Carl Bildt, who served as the first HR, has long called for the OHR to be abolished. As he said in 2023, “For at least a decade [the OHR] has been part of the problem in Bosnia.”¹⁸ He also pointed out that no one at the end of the war in BiH would have expected the OHR to remain in existence a quarter century later.¹⁹

40. Former HR Wolfgang Petritsch has also long urged the closure of the OHR, saying that the HR today is “part of the problem in every respect, not the solution.”²⁰ He blasted the HR’s “deeply undemocratic” powers.²¹ In an interview with N1, Mr. Petritsch warned that the continued use of the so-called Bonn powers was “a blueprint for disaster.”²² He said that “because of the continued existence of the OHR,” the democratic process in BiH “doesn’t work.”²³

41. Yet another former HR, Miroslav Lajčak, has similarly advised that the international community should only be in BiH to advise and mediate rather than make decisions.²⁴

42. Regional leaders have also recognized the OHR’s pernicious role in BiH. This month, for example, Croatian President Zoran Milanovic said regarding BiH, “The more time passes, the more senseless outside interference becomes.”²⁵

IV. Mr. Schmidt’s lawless and destabilizing reign

A. The reckless bumbling of Mr. Schmidt has been especially damaging to BiH, and the RS is right not to treat his illegal diktats as if they were law.

¹⁸ Michael Martens, *Der König von Bosnien-Herzegovina*, Frankfurter Allgemeine Zeitung, 26 Feb. 2023.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Esmir Milavić, *Wolfgang Petritsch: Bosnia and Herzegovina needs a radical turning point*, N1, 28 Mar. 2023.

²³ *Id.*

²⁴ Лажчак: Један народ не може бити прегласан, RTRS, 16 Sep. 2019.

²⁵ *Croatia’s Milanovic in Livno: Peace in BiH must come without foreign tutelage*, N1, 23 Apr. 2025.

43. The current, illegitimate, occupant of the OHR has been especially harmful to BiH's political development, triggering one crisis after another with his reckless edicts. Mr. Schmidt was an inexplicable choice to be HR, having no diplomatic experience and having left behind him a checkered political career. Mr. Schmidt is a controversial figure in his own country, in large part because of his sympathies for Nazi wartime "heroes." Mr. Schmidt is an unapologetic member of *Kameradenkreises der Gebirgstruppe* (Circle of Comrades of the Mountain Troops), an organization that has frequently honored Nazi "heroes" of World War II. The organization was long led by Wehrmacht General Hubert Lanz, who was sentenced in the Nuremberg trials to 12 years in prison for war crimes committed in the Balkans. Neither *Kameradenkreises der Gebirgstruppe* nor Mr. Schmidt have ever distanced themselves from the group's longtime leader.

44. At a *Kameradenkreises der Gebirgstruppe* event in 2007, Mr. Schmidt, standing alongside Nazi war criminal Josef Scheungraber and other veterans of the Nazi Wehrmacht, paid tribute to fallen mountain troop soldiers,²⁶ including troops who committed massacres in Yugoslavia. Moreover, in the 2000s, Mr. Schmidt took great efforts to rehabilitate Werner Molders, a Nazi fighter pilot who had close ties with Hermann Göring and was awarded as a "hero of National Socialism."²⁷

45. Mr. Schmidt's expressed sympathies for the exploits of Germany's wartime military units should alone be sufficient to disqualify him for any position dealing with a country that suffered so much from the Nazis. Moreover, his improprieties as Germany's Food and Agriculture Minister, which earned him a public scolding from Chancellor Merkel,²⁸ should have made it abundantly clear that his lack of prudence, judgment, and discretion rendered him totally unfit for any challenging diplomatic mission.

46. During his tumultuous time at OHR, Mr. Schmidt has more than lived down to low expectations. As Michael Martens of the leading German daily *Frankfurter Allgemeine Zeitung* wrote, "Christian Schmidt is the wrong man in the wrong place at the wrong time," adding that "a colonialist structure like the Office of the High Representative has no place in modern Europe."

47. Similarly, in Europe's largest news weekly, *Der Spiegel*, columnist Maximilian Popp observed, after a rage-filled outburst by Mr. Schmidt at reporters:

²⁶ *Alle Jahre wieder in Mittenwald*, AG Friedensforschung (from Neues Deutschland, 3 May 2008).

²⁷ Deutscher Bundestag Drucksache 16/6724, 10 Oct 2007.

²⁸ *Merkel scolds ally to shield coalition talks from weedkiller row*, Reuters, 28 Nov. 2017.

[Mr. Schmidt's] choleric appearance once again raises the question of whether Schmidt is the right man for the job as a top diplomat. In truth, the office of High Representative should be abolished. It's undemocratic, neocolonial. It is an impertinence for the people of Bosnia and Herzegovina."²⁹

48. The OHR, Mr. Popp wrote, is "now an anachronism," and many BiH citizens "perceive [Mr. Schmidt] as a dangerous interference in the affairs of the country."³⁰

49. Regional political leaders have also recognized Mr. Schmidt's pernicious role. For example, Croatian President Zoran Milanovic characterized BiH under Mr. Schmidt as "a clumsy, sloppy, incompetently managed colony." Mr. Milanovic said that "in order to protect his backside and his reputation, [Mr. Schmidt] changed the criminal law according to which what Dodik did is a criminal offense. That's called colonial administration and it's destroying that country."³¹

50. Mr. Schmidt has created one crisis after another since he took upon himself the title of HR. After each such crisis he then claims that the existence of these crises is evidence that his role is critical to stability in BiH. He claims to be the solution to problems and hopes that no one will notice that he is really the cause. In short, Mr. Schmidt is not merely a blundering diplomatic oaf; rather, he is a political arsonist.

51. Mr. Schmidt's latest escalation is his shocking new edict to suppress two of Republika Srpska's governing parties. In an act of naked political repression, Mr. Schmidt on 24 April 2025 issued an edict purporting to halt all disbursements of budgetary funds to the Alliance of Independent Social Democrats (SNSD) and United Srpska. It is an unconscionable attack on BiH's democracy to politically discriminate by cutting off funding from two parties while continuing to fund all others. Because public funding is the main source of party revenues in BiH, Mr. Schmidt's new edict is nothing less than a move to snuff out two parties completely.

52. Public funding of political parties in BiH is regulated by the Law on Financing of Political Parties of BiH. Mr. Schmidt's edict, of course, violates that law, but it states, "This Decision shall have precedence over any inconsistent provisions of any law, regulation or act, existing or

²⁹ Maximilian Popp, *Wie ein Kolonialherr*, Der Spiegel, 18 Aug. 2022.

³⁰ *Id.*

³¹ *Milanović nazvao BiH 'trapavom, traljavom, nesposobno vođenom kolonijom'*, Al Jazeera, 12 Aug. 2023.

future.”³² The edict also makes clear that Mr. Schmidt puts himself above all law, stating that its provisions are not “justiciable by the Courts of Bosnia and Herzegovina or its Entities or elsewhere, and no proceedings may be brought in respect of duties carried out thereunder before any court whatsoever at any time hereafter.”³³ The edict imposes onerous reporting and other requirements and even threatens private banks and bank employees with “sanctions.”

53. Using his claimed dictatorial authority, Mr. Schmidt is openly trying to destroy two major political parties because they refuse to recognize his self-proclaimed authority to rule BiH as an unrestrained despot. The suppression of rival political parties has long been a hallmark of dictatorial regimes, so it should not be surprising that Mr. Schmidt has taken this repressive action. But Mr. Schmidt’s new attack on BiH’s democracy will only strengthen Republika Srpska’s determination to stand up for BiH’s democratic constitutional order and resist Mr. Schmidt’s autocratic rule.

54. It is a disgrace to continue the ongoing charade of pretending that Mr. Schmidt is a legitimate High Representative; it is even worse to pretend that the current political crisis in BiH is a result of the actions of President Dodik, who has long been one of the most important political figures in BiH, rather than the recent provocative and reckless buffoonery of Schmidt, who has sought to put President Dodik in prison.

B. Mr. Schmidt’s claim to be High Representative mocks the rule of law.

55. Mr. Schmidt’s assertion that he holds the position of HR makes a mockery of international law. He was not proposed by any signatory as commanded by Annex 10 nor appointed as HR by any international instrument or by any act of any international institution. There simply is no basis whatsoever for his claim to the position.

56. Mr. Schmidt claims that he was validly appointed to the position by the Peace Implementation Council (PIC) Steering Board, but the PIC is merely an ad-hoc, self-appointed group of countries and organizations with no charter, no basis in any treaty, no grant of authority from any international institution, no formal bylaws or rules of procedure, and no legal existence

³² Office of the High Representative, Decision Suspending All Disbursements of Budgetary Funds for Party Funding to Savez Nezavisnih Socijaldemokrata (SNSD) and Ujedinjena Srpska, 24 Apr. 2025.

³³ *Id.*

or power at all. As the European Court of Human Rights has confirmed, the PIC is merely an “informal group of states.”³⁴

57. A collection of countries like the PIC cannot bestow legal authority on itself. The self-appointed PIC Steering Board cannot summon the legal authority to appoint the HR out of thin air—such authority must come from somewhere and must be based in law. The only conceivable sources of authority to appoint an HR are the Dayton Agreement and the UN Security Council. Neither the Dayton Agreement nor the UN Security Council granted the PIC any such authority. In addition, the PIC effectively dissolved itself, as it has not convened since May 2000. Consequently, its Steering Board can no longer be deemed to exist.

58. Indeed, far from giving the PIC any authority to appoint the HR, the Dayton Agreement does not even mention the PIC or contemplate its existence. Annex 10 of the Dayton Agreement, the only legitimate 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 . . .*”³⁵ Neither the Parties who agreed upon the position of the HR, nor the Security Council, ever authorized the PIC Steering Board to appoint Mr. Schmidt, nor has the Security Council approved Mr. Schmidt’s appointment.

59. The BiH Constitutional Court has confirmed that a High Representative’s appointment must be approved by the UN Security Council. In a 2006 decision, the Constitutional Court wrote, “The High Representative is nominated by the Peace Implementation Council and his/her appointment is confirmed by the Security Council of the United Nations, which also ratified the Dayton Peace Agreement and deployment of the international troops in Bosnia and Herzegovina.”³⁶

60. The purported appointment of Mr. Schmidt by the PIC Steering Board was an exercise of raw, geopolitical power, contrary to law. Members of the PIC Steering Board at the level of ambassadors in BiH, interfering in the internal affairs of Bosnia and Herzegovina, contrary to the Vienna Convention on Diplomatic Relations, determined not that they had the legal authority to appoint a new HR, but simply that no one could stop them from doing so. Their statements and actions are backed up only by threats of force, not by reasoned legal arguments.

³⁴ *Berić v. Bosnia and Herzegovina*, Eur. Ct. H.R., decision of 16 Oct. 2007, at para. 26.

³⁵ Agreement on the Civilian Implementation of the Peace Settlement, Annex 10, art. I(2).

³⁶ BiH Constitutional Court, Decision AP-935/05 (2006), para 46.

61. Unless and until the UN Security Council approves the appointment of a new HR, the position will remain vacant. Moreover, even if Mr. Schmidt were legitimately appointed, the rule of law would demand that he observe the limits of his office's legal mandate under Dayton, which does not include any authority to make binding decisions. Dictatorial actions issuing from Mr. Schmidt have not the slightest basis in legitimacy and therefore are not entitled to any respect or adherence at all.

V. The RS is acting to uphold the Dayton Agreement.

62. The RS's governing authorities have responded to the lawless effort to imprison and oust President Dodik by acting to restore competences that have been stolen from the RS in violation of the BiH Constitution, largely through illegal decrees and coercion by HRs. The RS fully respects the Dayton Agreement and the BiH Constitution that is an integral part of it, and it is only seeking to restore its jurisdiction in areas that the BiH Constitution clearly assigns to BiH's two Entities rather than to BiH-level institutions. Restoring the division of competences under the BiH Constitution does not, in any way, challenge BiH's sovereignty, territorial integrity, or constitutional order. On the contrary, it upholds the BiH Constitution's clear terms.

63. The RS stands ready to enter good-faith negotiations with partners in BiH to end the crisis triggered by Mr. Schmidt's oppressive acts. We believe that the only viable resolution to the current crisis requires the revocation of Mr. Schmidt's unlawful impositions and the full nullification of their legal consequences and adverse impacts. By nullifying Mr. Schmidt's illegal decrees and the criminal proceedings based on them, the conditions would be created for a meaningful dialogue on resolving all key issues with the aim of re-establishing the country's sovereignty and functionality, in full compliance with the Constitution of BiH.

64. The RS is firmly committed to peace, supports the Dayton Agreement and, indeed, demands that it be respected. It is hopeful that BiH's crisis will be resolved soon with the support of BiH's partners in the international community.

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

65. The RS remains committed to BiH's EU integration path. This commitment is best evidenced by the fact that the RS is the only level of government in BiH that has, since 2009, systematically aligned its legislation with the EU's legal framework (acquis).

66. BiH's EU integration, unfortunately, is blocked by the continued presence of an international overlord who rules by edict, a presence that the EU has acknowledged is incompatible with BiH's sovereignty, and thus its road to EU membership. In its Opinion on BiH's application for EU membership, the EU recognized that the continued operation of the HR with sweeping autocratic powers hinders BiH's progress toward EU integration. Regarding the HR, the EU

Opinion said: “Such extensive international supervision is in principle incompatible with the sovereignty of Bosnia and Herzegovina and therefore with EU membership.”³⁷

67. Former HRs have made clear that the continued existence of the OHR undermines BiH’s EU progress. Former HR Wolfgang Petritsch said regarding the OHR, “It’s not going to work, and you cannot enter the European Union with such an overlord who will take these decisions.”³⁸ Every decision Mr. Schmidt makes, Mr. Petritsch said, “brings Bosnia and Herzegovina farther away—pushes it away from the European Union.”³⁹ He emphasized in a 2023 interview, “This is really my message: unless all of the external interventions stop, there is not going to be a European future for Bosnia and Herzegovina.”⁴⁰

68. Similarly, former HR Carl Bildt has written, “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.”⁴¹ He noted that the OHR “has gone from being part of the solution to part of the problem.”⁴²

69. BiH’s EU integration is also blocked by the Bosniak political parties’ obstruction of a reform to replace the foreign judges on the BiH Constitutional Court with BiH citizens, a reform the EU has included among the 14 “key priorities” for BiH. BiH’s main Serb and Croat parties strongly favor replacing the Constitutional Court’s foreign judges with BiH citizens and have introduced legislation to do so, but Bosniak parties have refused consider the legislation, thus standing in the way of BiH’s full sovereignty and its progress toward EU membership.

70. BiH’s EU integration, moreover, is being undermined by the Bosniak SDA party, which is obstructing BiH’s adoption of the Reform Agenda required to disburse funds under the EU Growth Plan for the Western Balkans. The BiH level, both Entities, and six of the ten cantons of the

³⁷ Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union, 29 May 2019, at p. 7.

³⁸ *Petritsch tells N1 – BiH can’t go on if High Rep will make all decisions*, N1, 9 May 2023.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Carl Bildt, *Bosnia to war, to Dayton, and to its slow peace*, European Council on Foreign Relations, 28 Jan. 2021.

Federation of BiH have agreed to the Reform Agenda, but the four cantons under SDA control are blocking it.

71. The RS will continue to advocate BiH advancing toward EU membership while respecting BiH's Dayton structure.

VII. Bosniak political parties refuse to respect the Dayton Agreement and reject internal dialogue, disregarding the Security Council's stances.

72. The federal and consociational structure of BiH guaranteed in the Dayton Agreement has been crucial in ensuring BiH's uninterrupted peace since the agreement was signed. But BiH cannot succeed when the major political parties representing the largest of BiH's constituent peoples, the Bosniaks, show utter disrespect for BiH's constitutional order and actively subvert it. These parties' Bosniak supremacist policies disregard the fact that BiH is home to three constituent peoples who have equal rights under the Constitution.

73. The major Bosniak political parties have eagerly cooperated with the OHR and the BiH Constitutional Court to subvert BiH's federal structure. Even though the Entities have, as explained above, already lost many of their constitutionally guaranteed competences, the Bosniak parties are still not satisfied. Some of the parties even openly advocate abolishing the Entities altogether.

74. The Bosniak parties have also shown complete contempt for Constitution's consociational mechanisms, such as the explicit provision entrusting BiH's foreign policy exclusively to the BiH Presidency, which is composed of a Bosniak, a Serb, and a Croat. BiH's Bosniak Foreign Minister, Elmedin Konakovic, has shamelessly disregarded this provision, conducting a foreign policy solely representing perceived Bosniak interests. In April 2025, Mr. Konakovic even asked EUFOR to assist in the arrest of RS President Milorad Dodik, knowing that the BiH Presidency would never support such a move. Mr. Konakovic even unilaterally attempted to cause the BiH Foreign Ministry to hire a firm to lobby the US Government from the Bosniak perspective, without even telling the Presidency or the chairperson of the Council of Ministers about the contract.

75. The Bosniak and Croat members of the Presidency, both of whom represent Bosniak parties, have openly pursued a Bosniak supremacist foreign policy, ignoring the Constitution's command that foreign policy is determined by the Presidency as a whole.

76. The Bosniak political parties have also so far completely rejected RS officials' invitation for talks to resolve BiH's current crisis. If Bosniak political parties truly want BiH to succeed, they should start respecting BiH's federal and consociational structure as agreed at Dayton and enter good-faith talks with RS officials, in line with the Security Council's recent statement.

VIII. BiH's federal and consociational structure is vital for European security.

77. As the RS has explained in earlier reports to the UN Security Council, there are powerful political forces in BiH that are sympathetic to jihadism. BiH's largest Bosniak political party SDA, for example, is Islamist in orientation. The party's manifesto, entitled *Islamic Declaration*, written by its founder Alija Izetbegović, states, "There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions."⁴³ It further says that "the Islamic movement should and can start to take over power as soon as it is morally and numerically strong enough to be able to overturn not only the existing non-Islamic government, but also to build up a new Islamic one."⁴⁴

78. BiH's federal and consociational order, described above, bolsters European and global security by helping prevent the total dominance of the Islamist strain of politics in BiH. The Constitution incorporates provisions designed to defuse power and ensure the representation of the interests of the country's two autonomous Entities and its three constituent peoples. This system, in addition to maintaining peace and stability among BiH's peoples, protects the security of BiH and Europe by helping prevent the concentration of all power in the hands of radical parties, whether Islamist or otherwise. Because Bosniaks constitute a majority of BiH's population, the unconstitutional centralization of BiH concentrates power in the hands of Bosniak parties, including Islamist ones.

79. The RS enjoys strong relationships with European security agencies, cooperating closely with European agencies through EUROJUST. This month, for example, the RS Ministry of Interior took part in a successful international operation through EUROJUST that resulted in the dismantlement of a major arms trafficking group.⁴⁵

80. The RS also enjoys close cooperation with the US military and other US agencies on security, intelligence, cybercrime, and anti-terrorism efforts—a level of cooperation that it does not have with any other major power. For many years there has been a regular presence of US military personnel in the RS training RS police forces and engaging in joint exercises on counter-terrorism initiatives; the Pentagon can attest to the high level of cooperation between RS and US personnel on these initiatives. Similarly, the US intelligence team can attest to the strong,

⁴³ ALIJA IZETBEGOVIC, *ISLAMIC DECLARATION*, p. 30.

⁴⁴ *Id.* at p. 56.

⁴⁵ *Arms traffickers arrested in international operation*, EUROJUST, 11 Apr. 2025.

continuing cooperation between the RS and the US Central Intelligence Agency. The RS has engaged in similar cooperation with numerous other NATO and EU members as well.

81. Despite this close cooperation, the administration of US President Joe Biden did everything it could to transform the RS into an adversary, pursuing the extremely counterproductive policy of sanctioning any RS leader who dared to stand up for the RS's rights under BiH's constitutional structure and BiH citizens' right to govern themselves. The Biden Administration also did its best to cut the RS off from vital international financing, bringing economic hardship in the Entity.

82. The Biden Administration, moreover, failed to recognize the crucial importance of BiH's constitutional structure. Inexplicably, it adopted a policy of trying to further undermine BiH's constitutional structure in favor of a centralized and strictly majoritarian system in which Serbs and Croats would be further marginalized, so that Bosniak parties—and potentially Islamist parties—would hold all power. The RS is hopeful that the Trump Administration will abandon the Biden Administration's counterproductive policies regarding BiH and support the Dayton Agreement. The RS, similarly, hopes that other countries also realize how counterproductive sanctions have been.

83. The RS welcomes this opportunity to renew its relationship with the United States as well as improving its ties with other members of the international community.

IX. Conclusion

84. BiH's partners in the international community should support the faithful implementation of the Dayton Agreement, including the strict limits on the HR's mandate and BiH's federal and consociational structure. BiH's partners, moreover, should support constructive dialogue among BiH's leading parties to resolve the current crisis.

85. Despite BiH's political crisis, the RS still believes BiH can succeed and become an EU member if the Dayton Agreement is respected by major actors inside and outside BiH. The first step is for leading politicians in BiH to sit down and communicate directly with one another rather than trading volleys of escalating rhetoric. The RS is ready for serious negotiations with its partners in BiH, and it hopes they will soon engage in these talks for the good of BiH and all its citizens.

Attachment to Republika Srpska's 33rd Report to the UN Security Council

The BiH Constitutional Court's Subversion of the Constitution

Instead of doing its duty to uphold the BiH Constitution, the BiH Constitutional Court majority has rubber stamped the OHR's lawless rule by edict and endorsed the flagrantly unconstitutional centralization of BiH.

The BiH Constitution has a unique provision, meant as a transitional measure lasting five years, that reserves three of the nine positions on the BiH Constitutional Court to foreign judges. These foreign members of the Constitutional Court are chosen by the President of the European Court of Human Rights without any required approval by any BiH institution.

The main rationale for temporarily reserving seats on the BiH Constitutional Court for foreigners was to give the court three neutral members who would stand apart from BiH's ethnic politics. In practice, however, the three foreign judges have formed a bloc with the two Bosniak judges, often outvoting the majority of BiH citizens on the Court. As *Balkan Insight* reported, "The three votes wielded by the foreign judges, together with the two Bosniak judges on the court, have often proved to be decisive, outvoting the two Serb and two Croat judges."¹

In a 2019 article reporting on his study of the foreign judges' role on the BiH Constitutional Court, Dr. Alex Schwartz concluded, "[T]he foreign judges cannot be depended on to provide a moderating counterbalance to ethno-national divisions on the Court. Indeed, their positioning relative to the domestic justices implies that *they are more likely than not to tip the balance in favor of the Bosniak wing of the Court.*"²

The Constitution permits the foreign judges to be replaced with BiH citizens through passage of an ordinary law, but the Bosniak political parties, knowing that the foreign judges are their staunch allies, have blocked all such initiatives. The EU has listed the replacement of the foreign judges among its key priorities for BiH's EU integration, but the Bosniak parties have refused to even consider such a reform.

The foreign judges, instead of using independent judgment, have been utterly subservient to the OHR. A former foreign judge even admitted that there was a "tacit consensus between the

¹ Rodolfo Toe, *Bosnian Croats, Serbs Unite Against Foreign Judges*, *Balkan Insight*, 2 Dec. 2015.

² Alex Schwartz, *International Judges on Constitutional Courts: Cautionary Evidence from Post-Conflict Bosnia*, 44 *Law & Social Inquiry* 1, 16 (Feb. 2019) (emphasis added).

Court and the High Representative that the Court . . . will always confirm the merits of his legislation.”

Dr. Schwartz’s analysis of BiH Constitutional Court decisions in which the foreign judges were pivotal found that the foreign judges’ review of laws decreed by the OHR was so deferential that the judges used “questionable legal reasoning” in order to uphold them.³

The OHR has ensured the subservience of the BiH Constitutional Court in a number of ways. For example, an HR once unilaterally ousted two RS appointees to the Constitutional Court,⁴ sending an unmistakable message to the other judges. However, the OHR’s most overt interference with the Constitutional Court is the 2006 decree, which remains in effect, that nullified a decision of the court and banned any proceeding before the Constitutional Court or any other court that “*takes issue in any way whatsoever with one or more decisions of the High Representative.*”⁵ The court meekly accepted the OHR’s lawless decree without complaint, thus acquiescing in the OHR’s dominion over it and the obviously unconstitutional status of OHR as the Constitution’s ultimate interpreter.

The Constitutional Court majority has subordinated constitutional text to the political goal of centralizing BiH. One former foreign judge of the court admitted that constitutional text is “a source of inspiration rather than a determining factor” in deciding cases.⁶

The court regularly acts lawlessly by mangling the plain meaning of the Constitution, as has been admitted proudly by its staff. Nedim Ademović, former chief of staff of the BiH Constitutional Court’s president, said, “[C]onstitutional-law development has been exclusively a consequence of international interventionism.”⁷ He boasted, “The BiH Constitutional Court is one of the most successful institutions and projects in BiH. The BiH Constitutional Court has granted legitimacy to a host of imposed laws and introduced a balance between BiH sovereignty and

³ *Schwartz*, at 21.

⁴ Decision Annuling the Appointment of Two Judges from the RS to the BiH Constitutional Court, 16 Sep. 2002.

⁵ Office of the High Representative (OHR), Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, March 23, 2007 (emphasis added).

⁶ Nedim Kulenović, [*Court as a Policy-Maker?: The Role and Effects of the Constitutional Court of Bosnia and Herzegovina in Democratic Transition and Consolidation*](#), Analitika Center for Social Research (2016) (“Analitika Study”) at 26.

⁷ *Oslobodjenje* interview with Nadim Ademović, 24 Apr. 2010.

international governance.”⁸ Mr. Ademović is wrong. The lawless decisions of the Court have not given legitimacy to the actions of the HR but rather have badly corroded the court’s own legitimacy.

The foreign-dominated Constitutional Court majority has completely abdicated its responsibility to enforce BiH’s democratic constitutional processes for the approval of laws, treating HRs’ edicts as if they were statutes duly enacted by the BiH Parliamentary Assembly. The Constitution establishes a democratic system in which “[a]ll legislation shall require the approval of both chambers” of the Parliamentary Assembly.⁹ Thus, when the HR’s imposition of a law by edict was challenged in the Constitutional Court, it should have been easy for the court to declare that a BiH “law” not approved by both chambers of the Parliamentary Assembly was invalid. However, without explaining its reasoning in any meaningful way, the court majority simply wrote that the HR’s exercise of its “powers” is “not subject to review by the Constitutional Court.”¹⁰ As a study by Sarajevo-based Analitika observed, “The Court did not scrutinize the legal basis given by the [HR] for its actions but uncritically accepted them.”¹¹

Nor did the Constitutional Court even consider whether the HR’s imposition of laws by decree violates the human rights of BiH citizens under binding international treaties that are directly applicable under the BiH Constitution. It does. The HR’s dictatorial rule, for example, violates the right to free elections guaranteed under Protocol No. 1 of the European Convention¹² and the International Covenant on Civil and Political Rights (ICCPR),¹³ both of which are incorporated into the BiH Constitution.¹⁴ Commenting on the HR’s asserted authority to enact laws by decree, the Venice Commission observed, “Art. 3 of the (first) Protocol to the [European Convention on Human Rights] requires the election of the legislature by the people, and this right is deprived of its content if legislation is adopted by another body.”¹⁵

⁸ *Id.*

⁹ BiH Constitution, art. IV(3)(c)

¹⁰ BiH Constitutional Court, Case U-9/00, Decision, at para. 5.

¹¹ Analitika Study at 36.

¹² Protocol no. 1, European Convention on Human Rights, art. 3.

¹³ International Covenant on Civil and Political Rights, art. 25.

¹⁴ BiH Constitution, art. II (4) and (7), Annex I.

¹⁵ 2005 Venice Commission Opinion at para. 88.

The foreign judges, along with the Bosniak members, have also reliably approved the OHR's unconstitutional centralization of BiH. Dr. Schwartz's study demonstrated a clear bias by the foreign judges toward the centralization of BiH. He found that the three foreign members of the court fall on the court's "centralist wing" with the two Bosniak judges. He rejected the possibility that the text of the BiH Constitution explains the foreign judges' "centralist tendencies," writing:

[I] cannot be denied that the constitutional text suggests a highly decentralized structure. The division of powers is such that most legislative and administrative competencies are the exclusive province of the entities (see Art. III). Furthermore, several of the Court's landmark decisions develop or rely on doctrines that find *little explicit support in the actual text*¹⁶

A key example of such a landmark decision is the Constitutional Court's 5-4 decision upholding the HR's creation of the Court of BiH in spite of that court's manifest unconstitutionality. When the law creating the court was challenged before the BiH Constitutional Court, four out of the six judges from BiH rightly found the law unconstitutional. The law was only upheld because the three foreign judges voted as a bloc, along with the two Bosniak judges, to protect the HR's creation. As explained above, the Court of BiH's existence plainly violates the Constitution's division of responsibilities between BiH institutions and the Entities.

Article III(3)(a) of 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."¹⁷ The decision of the court majority did not even pretend that the Constitution expressly assigned the BiH level the authority to create a Court of BiH, admitting that the Court of BiH is not "provided in the Constitution of Bosnia and Herzegovina."¹⁸ In order to nonetheless uphold the Court of BiH's creation, the court majority disregarded the Constitution's unambiguous requirement that a BiH-level power be expressly assigned and went searching for an *implicit* BiH-level power to create the court. The court's conclusion that there was an implicit power to create the Court of BiH rested, essentially, on its view that the BiH Constitution *should have* provided for the creation of Court of BiH, even though it did not.

¹⁶ *Id.* at 17 (emphasis added).

¹⁷ Emphasis added.

¹⁸ BiH Constitutional Court, Case U-26/01, Decision, at para. 26.

Referring to the Constitutional Court's decision upholding the creation of the Court of BiH, along with other decisions accepting the HR's creations, Dr. Schwartz wrote:

These cases were highly salient ones for the OHR since they threatened a core element of the international community's agenda in Bosnia: the consolidation of central state power . . . Had the Court obstructed this agenda, the High Representative might very well have overruled the relevant decisions, thereby impairing the Court's authority for other more winnable fights.¹⁹

Whatever the court majority's reasons for upholding the HR's obviously unconstitutional acts, the effect was to subvert the BiH Constitution and delegitimize the court itself.

The Constitutional Court has further degraded the rule of law and its own legitimacy by violating the BiH Constitution's provisions governing the court itself. The Constitution requires that there be consultation with the BiH Presidency before the foreign judges are selected, but this consultation did not take place with respect to the three foreign judges currently serving.

Moreover, the Constitutional Court's current composition of just seven members violates the Constitution's explicit requirement that the court "shall have nine members" a requirement that does not make any exceptions. All decisions adopted without fulfilling the requirement of a nine-member composition are null and legally non-binding.

The Constitutional Court has also been allowing a judge whose term had ended to take part in decisions of the court. The BiH Constitution provides that the court's judges "shall serve until age 70, unless they resign or are removed for cause by consensus of the other judges."²⁰ The Constitution does not permit any exceptions to its explicit provision that the term of a Constitutional Court judge ends when the judge turns 70. Despite this clear constitutional rule, last year the Constitutional Court majority approved an amendment to the court's rules that lets judges remain on the court past age 70, thus explicitly violating the Constitution's clear terms.²¹

On 10 November, Seada Palavrić, who had been a judge on the Constitutional Court, turned 70, thus ending her judicial term according to the BiH Constitution. Yet since she turned 70, Ms.

¹⁹ Schwartz at 21-22.

²⁰ BiH Constitution, art. VI(1)(c).

²¹ Decision on Amendments to the Rules of the Constitutional Court of Bosnia and Herzegovina, signed by Valerija Galić, President of the Constitutional Court, 30 May 2024.

Palavrić, now a private citizen in the eyes of the Constitution, has nonetheless been taking part in the Constitutional Court's decisions, acting as if she were still a judge. No member of the Court objected to this flagrant violation of the Constitution, thus continuing the Court's habit of ignoring breaches of the Constitution's clear terms.

For BiH to succeed, all key actors must respect the actual text of the BiH Constitution, including its requirements for the democratic adoption of laws and BiH's federal and consociational structure. This is especially true of the court whose responsibility it is to uphold it.