

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

### 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.

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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.