

Republika Srpska's 32nd Report to the UN Security Council

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Executive Summary

Republika Srpska (RS), a party to the treaties that make up the 1995 Dayton Agreement and one of the two autonomous Entities that make up Bosnia and Herzegovina (BiH), is pleased to submit this 32nd Report to the UN Security Council.

Part I of the Report reaffirms the RS's dedication to the Dayton Agreement, which includes commitments to respect the sovereignty and territorial integrity of BiH and to resolve disagreements solely through peaceful means. It also includes an insistence on faithful adherence to the BiH constitutional structure and to the constitutional protections for the interests of BiH's three constituent peoples.

Part II of the Report emphasizes the need for all domestic and foreign actors to likewise respect the Dayton Agreement. The BiH Constitution's consociational mechanisms and federal structure are vital to ensuring peace and stability in a polity formed by three formerly warring peoples. Consociational mechanisms are used in countries with deep ethnic or other divisions to ensure that each community's interests are protected and to prevent domination by a single community. Despite the success of consociational mechanisms in BiH and elsewhere in Europe, some domestic and foreign actors have been working to undermine them in BiH. For BiH to succeed, all actors must respect the Constitution's consociational mechanisms, which are an essential element of the Dayton compromise.

Some actors have also been attacking another lynchpin of the Dayton compromise, BiH's constitutional structure as a federal state that leaves all but a limited set of enumerated powers to BiH's two Entities. Largely due to illegal decrees issued by the Office of the High Representative (OHR), the BiH level of administration has seized many powers that are plainly assigned to the Entities under the Constitution. Yet Bosniak parties and their foreign allies are still not satisfied; they want the BiH level to seize all public property from the Entities, and some major Bosniak parties are seeking to abolish the RS altogether. For BiH to succeed, all domestic stakeholders and interested international parties must respect BiH's federal structure.

Part II also examines the role of Christian Schmidt, a German who claims to be the High Representative and, without any legal basis, exercises unrestrained authority to enact laws in BiH by decree. Such edicts plainly violate the human rights of BiH citizens. Moreover, Mr. Schmidt's rule by edict ravages the rule of law in BiH, because no one—not even a legitimate High Representative—has legal authority to enact laws in BiH by edict. The Dayton Agreement, which is the only source of the High Representative's legal authority, does not give the High Representative anything remotely resembling the power to rule by decree. Part II also explains how Mr. Schmidt and the High Representatives who preceded him have been harmful and destabilizing to BiH.

Part II, lastly, condemns illegal foreign interference in BiH's domestic affairs in response to RS leaders' defense of the BiH constitutional order, in particular, the economic war against the RS being waged by certain elements of the United States government. This counterproductive campaign of bullying will not work and only serves to cause needless pain and resentment among RS residents.

Part III of the Report reiterates the RS's commitment to advancing BiH's EU path while preserving BiH's constitutional order. It explains how BiH's rapid progress on EU integration was derailed by Mr. Schmidt's edict purporting to enact sweeping changes to the BiH electoral law and is further undermined by Bosniak politicians' unconstitutional takeover of BiH foreign policy from the BiH Presidency. It also explains how Mr. Schmidt and the OHR sabotage BiH's EU integration and how the EU has recognized that the OHR must not continue ruling BiH. Part III also emphasizes that BiH's constitutional structure must be respected during the EU integration process.

The RS believes BiH can succeed and advance to EU membership if the Dayton constitutional order is respected by all domestic and foreign parties with a stake in the country's future.

I. The RS is committed to the Dayton Agreement.

1. The RS stands resolutely by the Dayton Agreement. This means, above all, that the RS respects and supports BiH's sovereignty and territorial integrity. Contrary to some misinformation, the RS does not have a secessionist policy. It has no plan to secede from BiH, either de facto or de jure. The RS's semiannual reports to the UN Security Council have consistently reaffirmed RS support for the Dayton Accords. Moreover, RS President Milorad Dodik confirmed again recently that the RS has "never contested the sovereignty and territorial integrity of BiH in accordance with the Dayton Agreement" and that "secession has never been our policy."¹

2. On 8 June 2024, the All-Serb Assembly, a gathering of Serb representatives from around the world, adopted, with the support of the RS, a Declaration that affirms unreservedly the Assembly's support for the Dayton Agreement and the BiH constitutional order that it established. The Declaration "accepts and supports the legal order established by the Dayton Peace Agreement." It states, "[T]he Republika Srpska is satisfied with the high degree of autonomy defined by the Dayton Peace Agreement, therefore we insist on the essential and formal implementation of the Dayton Peace Agreement, as an international treaty that cannot be changed unilaterally or through interventionism." The Declaration, moreover, "condemns any disrespect and violation of the Dayton Peace Agreement and democratic procedures in Bosnia and Herzegovina."

3. Nothing in the Declaration suggests that the RS should secede from BiH or in any way questions the Dayton Agreement or BiH's sovereignty and territorial integrity. The Declaration's expressions of support for Serb unity refer to the community of ethnic Serbs around the world, whether in Europe, North America, Australia, or anywhere else, not to some scheme to bring all the world's Serbs under a single state.

4. Standing by the Dayton Agreement also means that the RS has an unshakable dedication to resolving disputes only through peaceful means. The RS has consistently ruled out any resort to violence to pursue its political objectives. The RS supports and cooperates fully with the EU's Operation Althea in its mission of helping ensure that BiH's peace remains undisturbed.

5. Standing by the Dayton Agreement, moreover, means the RS, as a party to all the annexes that make up the agreement's substance, insists that the agreement be implemented as written, including BiH's constitutional structure consisting of two highly autonomous Entities and the constitutional protections for BiH's three constituent peoples. As examined below, certain foreign and domestic actors do not respect the Dayton Agreement, but the RS is committed to defending it using peaceful and legal means.

¹ Milorad Dodik post on X, Aug. 21, 2024.

6. The overwhelming victory of the parties of the RS governing coalition in the October 2024 local elections shows that the RS Government continues to enjoy robust public support for its defense of the Dayton order. The main party of the RS governing coalition, the SNSD, won more votes than any party in BiH, secured a majority in most municipalities, and elected 80% of the mayors in the RS. Moreover, half of the female mayors elected throughout BiH are SNSD members.

7. Public support for the respect for Entity autonomy as guaranteed by the Dayton Accords in no way signals any hostility toward any other group within BiH. This month, the RS has stood in solidarity with BiH's other Entity, the Federation of BiH, in the aftermath of catastrophic floods there. The RS immediately declared a day of mourning, sent emergency funds, and deployed civil protection teams to the area of the Federation hit by the disaster. The RS is proud that many of its citizen volunteers also helped with relief efforts.

II. The Dayton Agreement must be respected by all domestic and foreign actors.

A. BiH's constitutional order is essential to the stability and progress of BiH.

8. The Dayton Agreement established a mechanism—the BiH Constitution—to ensure lasting peace, stability, and democratic government in BiH. During the 1992-1995 war in BiH, Bosniaks fought for a centralized BiH state without Entities or protections for constituent peoples, while Serbs fought for independence. None of BiH's peoples got everything it wanted in the Dayton compromise. But the Dayton Agreement, through the BiH Constitution, provided a structure to enable a sustainable peace and a functioning union of three peoples with great distrust of each other. In order for this structure to function properly, however, foreign and domestic actors must respect this basic compromise.

9. The BiH Constitution is carefully designed to instill in each of the three constituent peoples confidence that they will not come under the domination of one or more other peoples. It does this partly through consociational mechanisms protecting the interests of the constituent peoples and partly through a federal structure.

10. The consociational and federal features of BiH's constitutional order were indispensable to ending BiH's 1992-1995 war, and respect for this constitutional order is essential today for preserving peace and stability among BiH's peoples. The Speaker of the Assembly of Herzegovina-Neretva Canton, Džafer Alić, a member of BiH's largest Bosniak party, exemplified many Bosniak politicians' attitude to Croats and Serbs when he stated recently that Bosniaks "are the owners of this land" and that "we have unpleasant tenants."² Attitudes like this among Bosniak leaders highlight the

² Скандалозна изјава Џафера Алића из СДА изазвала забринутост међу Србима и Хрватима у Мостару, RTRS, 12 Sep. 2024.

vital importance of the consociational mechanisms and federal structure guaranteed in the BiH Constitution.

11. Faithful implementation of these mechanisms and structure is vital for ensuring that BiH's three formerly warring peoples feel safe and secure. That feeling of security is the key to the inter-ethnic dialog and cooperation that is essential to BiH's political progress. This system also helps ensure the security of BiH and Europe by helping prevent the concentration of power in the hands of any radical political movement, Islamist or otherwise.

12. The Dayton constitutional design has been a tremendous success. Contrary to many predictions, BiH has never come close to returning to war. Citizens in BiH live in peace and freedom. City streets are safe, and there has not been any significant ethnic violence since the Dayton Agreement was signed. Though political differences run deep, they are resolved peacefully. BiH's per capita GDP more than quintupled between 2001 and 2024 and rose 38 percent just since 2019.³ And in March, the EU decided to begin accession negotiations with BiH.

13. BiH, to be sure, has deep political problems, but these are not caused by BiH's consociational and federal system; indeed, they are principally the result of certain foreign and domestic actors' failure to respect that system.

B. It is critical that domestic and international actors stop undermining the BiH Constitution's consociational mechanisms.

14. One of the fundamental elements of the BiH Constitution is its consociational features. Consociational democracy is a system of power-sharing that has been successful in ensuring peace, stability, and democratic governance in European and other countries with deep divisions between their ethnic, linguistic, or religious communities. In a consociational system, mechanisms are built into the constitutional order to ensure that each community's interests are protected and to prevent domination by any single community.

15. The consociational features of BiH's constitutional order are essential for preserving BiH's peace and stability. As the International Crisis Group observed in a report on BiH, "A purely civic state is inconceivable to Serbs and Croats."⁴

16. In their landmark study of consociational democracies, University of Pennsylvania professors Christopher McCrudden and Brendan O'Leary explain:

³ World Bank data available at data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=BA.

⁴ International Crisis Group, *Bosnia's Future*, 10 July 2014, at ii.

Consociational arrangements were part of the price for the recognition of Bosnia. Peter W. Galbraith, former US ambassador to Croatia when the Dayton Agreement was made, emphasized that “absent explicitly ethnic power-sharing assurances to the three main groups the negotiations would neither have begun nor concluded.”

* * *

Differently put, not only were these institutional aspects of the Agreement necessary to the making of the Dayton settlement, but they were also already a compromise for Bosnian Croats and Serbs.⁵

17. European Court of Human Rights Judge Giovanni Bonello wrote in 2009 that BiH’s Dayton architecture “was based on a distribution of powers, tinkered to its finest details, regulating how the three ethnicities were to exercise power-sharing in the various representative organs of the State. The Dayton Agreement dosed with a chemist’s fastidiousness the exact ethnic proportions of the peace recipe.”⁶

18. Consociational democracy is an integral part of Europe’s political tradition. One of the EU’s founding members, Belgium, has been operating under consociational systems for more than 100 years. Belgium is a federal state composed of three linguistic communities and three regions, two of which are ethnically defined. Among the many consociational features of Belgium’s system are the equal division of state-level ministers between French-speaking and Dutch-speaking representatives, the division of legislative seats along linguistic lines, and the requirement that major legislative decisions receive a majority in both of the two main language groups.

19. Belgium’s consociational arrangements ensuring that no one ethnic group can dominate any other are a large part of the country’s success, and there has been no demand by the EU or by respected scholars, diplomats, or political leaders that these arrangements should be abolished. The European Court of Human Rights has rejected challenges to key consociational mechanisms in Belgium’s system. The European Court of Human Rights was consistent in its support for consociational mechanisms until the court’s 2009 decision in *Sejdic and Finci v. Bosnia and Herzegovina*, which is discussed below.

20. Another highly successful European country with features of a consociational democracy is Switzerland, which, like Belgium, has long combined consociational and federal elements.

⁵ Christopher McCrudden and Brendan O’Leary, *Courts and Consociations* 24-25 (2013).

⁶ *Sejdić and Finci v. BiH* [GC], nos. 27996/06 and 34836/06), ECHR 2009, Diss. Op. of Judge Bonello, at p. 53

21. The 2004 Annan Plan for Cyprus would have ended the decades-long frozen conflict between Greek Cypriots and Turkish Cypriots by establishing a consociational United Cyprus Republic. The Annan Plan, which, provided for a thoroughly consociational system, received strong support from the EU, the Council of Europe, and the United States.

22. North Macedonia's system also has significant consociational elements, which were negotiated as part of the 2001 Ohrid Framework Agreement, which the EU and the United States signed as witnesses.

23. Another consociational system of governance in Europe is Northern Ireland's system established under the 1998 Good Friday Agreement. The Good Friday Agreement's consociational solution was warmly embraced by the EU and the United States. Moreover, the Council of Europe's Venice Commission "identified 'power-sharing political arrangements' based on the Northern Ireland model as one method of facilitating the settlement of ethno-political conflicts in Europe."⁷

24. Still another consociational system in Europe is South Tyrol's system, which rests on a power-sharing structure among South Tyrol's main linguistic groups.

25. In a judgment ruling against a challenge to consociational arrangements in Belgium, the European Court of Human Rights emphasized that "any electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the 'free expression of the opinion of the people in the choice of the legislature.'"⁸

26. The European Court, however, has shown no such flexibility with respect to BiH's electoral system. In a major departure from its earlier jurisprudence accepting consociational mechanisms, the European Court in the *Sejdic-Finci* line of decisions, beginning in 2009, found human rights violations in the BiH Constitution's method for the election to the Presidency and the House of Peoples. Although the RS supports implementing *Sejdic-Finci* and its related decisions, it must be observed that the decisions have been highly disruptive to the Dayton compromise. The decisions triggered a long and ongoing crisis in relations between the BiH's Bosniak and Croat political parties, which have been deadlocked for more than 14 years over how to implement the decisions in the Federation of BiH, one of the two Entities of BiH.

⁷ McCrudden and O'Leary at 5.

⁸ McCrudden and O'Leary at 16.

27. Judge Bonello predicted a crisis like this in his *Sejdić-Finci* dissent, which emphasized the “clear and present danger of destabilising the national equilibrium”⁹ that BiH’s Dayton Constitution established. Yet some actors want to push even further to dismantle BiH’s consociational democracy.

28. Bosniak political parties’ contempt for the Constitution’s consociational mechanisms is exemplified by those parties’ systematic defiance of the Constitution’s provision giving the three-member BiH Presidency exclusive authority to set BiH’s foreign policy. This year, to name one example of that defiance, BiH’s Bosniak-controlled Foreign Ministry spearheaded the passage of a highly divisive resolution on the Srebrenica war crime in the UN General Assembly, knowing that the Presidency had not authorized—and would never authorize—such an initiative. The Foreign Ministry’s advocacy for the resolution, which was intended to delegitimize the RS, was a brazen usurpation of the Presidency’s exclusive competence to set BiH’s foreign policy. There were denials that the resolution was about delegitimizing the RS, but Bosniak politicians have used the resolution to do just that. BiH Defense Minister Zukan Helez, for example, called dissolving the RS “the logical consequence” of the General Assembly’s adoption of the resolution.¹⁰

29. Domestic and international actors must stop “destabilizing the national equilibrium” of BiH and respect the consociational mechanisms that are such an important part of the Dayton compromise. BiH’s friends in the international community should make clear to Bosniak parties that BiH’s consociational mechanisms are here to stay and that the Serbs and Croats are not “unpleasant tenants,” but partners in governing BiH.

C. Domestic and international actors must stop their dangerous subverting of BiH’s federal constitutional structure.

30. Another essential element of the BiH Constitution is BiH’s structure as a federal state that leaves all but a select few powers to the two Entities that make up BiH. There would have been no Dayton Agreement without the BiH Constitution providing for such a federal structure. As Richard Holbrooke, the chief US negotiator of the Dayton Agreement, said in 2007, “Bosnia is a federal state. It has to be structured as a federal state. You cannot have a unitary government, because then the country would go back into fighting.”¹¹

31. In perhaps its most important clause, the BiH Constitution provides, at Article III (3)(a), “All governmental functions and powers not *expressly assigned* in this Constitution to the institutions of

⁹ *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06), ECHR 2009, Dissenting Opinion of Judge Bonello, at p. 56.

¹⁰ *Helez ponovo prijeti i poziva na ukidanje Republike Srpske*, RTRS, 13 Jun. 2024.

¹¹ Holbrooke: Kosovo Independence Declaration Could Spark Crisis, Council on Foreign Relations, 5 Dec. 2007 (available at [cfr.org/kosovo/holbrooke-kosovo-independence-declaration-could-spark-crisis/p14968](https://www.cfr.org/kosovo/holbrooke-kosovo-independence-declaration-could-spark-crisis/p14968)).

Bosnia and Herzegovina shall be those of the Entities.” BiH’s assumption of additional responsibilities is strictly limited by Article III (5), which provides:

Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina.

32. Yet through the aggressive and illegal actions of the OHR and the foreign governments that support it, the BiH level has seized control of scores of key functions and powers that are not expressly (or even implicitly) assigned in the Constitution to the institutions of BiH and were not assumed by BiH in accordance with Article III (5). The OHR, using the legally preposterous so-called “Bonn powers,” centralized authority in Sarajevo in brazen defiance of the BiH Constitution. Sometimes the OHR acted directly by giving BiH institutions new powers by simple edict. At other times the OHR pressured and coerced domestic politicians into giving BiH institutions new powers using the ever-present threat of removal from office. (The OHR has removed from office and banned from public employment nearly 200 BiH citizens with no due process whatsoever.)

33. The BiH Constitutional Court, which is duty bound to uphold the Constitution, should have ended such lawlessness by nullifying the OHR’s unambiguously unconstitutional measures. OHR’s edicts were obviously unconstitutional as a procedural matter because they failed to follow the Constitution’s democratic procedures for enacting laws. Moreover, the OHR’s centralizing laws brazenly defied the federal structure described above. Unfortunately, instead of doing its duty, the Constitutional Court majority has been a reliable rubber stamp to approve OHR edicts and other unconstitutional initiatives. This is because there has always been a court majority consisting of two Bosniak judges who support centralization by any means and three foreign judges who vote according to the OHR’s wishes.

34. The creation of the Court of BiH is a good example of how the Constitutional Court has been a party to BiH’s unconstitutional centralization. The BiH Constitution, as the International Crisis Group has stated, “allotted judicial matters to the Entities, apart from a state Constitutional Court.”¹² Disregarding this fact, in 2000 the OHR issued an edict creating the Court of BiH. In spite of the law’s patent unconstitutionality, both procedural and substantive, the Constitutional Court upheld it in a 5-4 decision because the three foreign judges and two Bosniak judges voted to protect the OHR’s creation. One of those foreign judges later admitted that there was a “tacit consensus between the

¹² Bosnia’s Future, International Crisis Group, 10 Jul. 2024, at 27 (footnotes omitted).

Court and the High Representative that the Court . . . will always confirm the merits of his legislation”¹³

35. When the Constitutional Court once, in 2006, dared to take issue with a decision of the High Representative, the then-High Representative responded by overruling the court and issuing an astonishing edict banning any judicial review that “takes issue in any way whatsoever”¹⁴ with any OHR decision, thus declaring the OHR to be completely immune from any checks on its unlimited power.

36. Despite BiH already usurping scores of competences that belong to the Entities under the clear terms of the Constitution, the OHR and the Bosniak political parties are still not satisfied. For example, BiH’s largest Bosniak party calls in its official platform for the Entities to be abolished altogether. Even the supposedly more “moderate” Bosniak parties, far from respecting the RS’s competences, do not even respect even the RS’s very existence. In June, BiH Defense Minister Zukan Helez of the Social Democratic Party called for the abolition of the RS and its dismemberment into two disempowered cantons.¹⁵

37. Bosniak parties want the BiH level of administration to seize all public property from the Entities, even though the BiH Constitution makes clear that public property belongs to the Entities. The fact that the BiH Constitution leaves public property to the Entities was the understanding of everyone, including the Peace Implementation Council, until illegal and uninvited OHR meddling turned it into an issue of controversy. The OHR thereafter scuttled compromise agreements reached by local politicians to resolve the issue. Most recently, on 21 October, the two members of the BiH Presidency from Bosniak parties voted to approve a draft law declaring all public property throughout BiH to be under the ownership of the BiH level of administration. The Presidency has no constitutional role whatsoever in addressing any issue of property; this was merely a provocative and divisive stunt, and it is unfortunate that members of the international community did not condemn it as such.

38. It is long past time for Bosniak political parties and members of the international community to stop their dangerous and destabilizing undermining of BiH’s federal structure, which is critically essential to BiH’s future stability and success.

¹³ Joseph Marko, *Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina*, *European Diversity and Autonomy Papers* (July 2004) at 17 and 18 (emphasis added).

¹⁴ Office of the High Representative, *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, 23 March 2007.

¹⁵ Зукан Хелез прети Србима и Републици Српској, *Politika*, 13 Jun. 2024.

D. Mr. Schmidt's lawless and destabilizing reign

39. A retired German politician named Christian Schmidt, without a shred of legal basis and in flagrant violation of the BiH Constitution, continues to claim and exercise unrestrained authority to rule BiH by decree.

40. The dictatorial authorities claimed and employed by Mr. Schmidt are quite obviously incompatible with the human rights of BiH citizens, such as the right to free elections guaranteed under Protocol No. 1 of the European Convention on Human Rights. Moreover, Mr. Schmidt's rule ravages the rule of law in BiH, manifestly violating BiH's constitutional order, which requires laws to be passed through specific democratic procedures. No person—not even a legitimate High Representative—has authority to enact laws in BiH by edict. Annex 10 of the Dayton Agreement, which is the sole source of the High Representative's legal authority, does not give the High Representative anything remotely resembling the power to rule by decree.

41. In addition to being illegal, the OHR's dictatorial role is destructive, as is increasingly obvious to those knowledgeable about BiH. The presence of a foreigner claiming dictatorial powers has badly warped BiH's political culture for many years, and Mr. Schmidt's lawless and bumbling reign has been especially harmful and destabilizing, hindering BiH's advance toward EU membership. Former High Representative Carl Bildt said last year the OHR has long been “part of the problem”¹⁶ in BiH, and former High Representative Wolfgang Petritsch emphasized last year that continued use of the OHR's claimed dictatorial powers is “a blueprint for disaster.”¹⁷

42. One way Mr. Schmidt is destabilizing BiH is through his attempt to imprison the RS's duly elected President, Milorad Dodik. Mr. Schmidt first decreed a “law” establishing prison sentences for public officials who refuse to treat his illegal decrees as if they are duly enacted laws. After Mr. Dodik performed his constitutional duty to formalize a law passed by the RS National Assembly that was not to Mr. Schmidt's liking, Mr. Schmidt pressured prosecutors to charge Mr. Dodik, who is now on trial based on Mr. Schmidt's counterfeit law.

43. Many diplomats are privately appalled by Mr. Schmidt's dictatorial rule. The RS is hopeful that members of the Security Council and other countries will find the courage to speak openly about the illegal and destructive role of Mr. Schmidt and the legally appointed High Representatives who preceded him. Attachment 1 examines Mr. Schmidt's lawless and destructive role in greater detail.

E. Illegal foreign meddling in BiH's political affairs and attacks on the RS for its

¹⁶ Michael Martens, *Der König von Bosnien-Herzegovina*, *Frankfurter Allgemeine Zeitung*, 26 Feb. 2023.

¹⁷ Esmir Milavić, *Wolfgang Petritsch: Bosnia and Herzegovina needs a radical turning point*, N1, 28 Mar. 2023.

leaders' defense of BiH's constitutional order

44. The principle of non-intervention, which forbids a state's interference in another state's domestic affairs, is, as the International Court of Justice (ICJ) has held, "binding as part of customary international law."¹⁸ According to the ICJ: "The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law."¹⁹ Describing the content of the principle, the ICJ wrote: "[T]he principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States."²⁰

45. In response to RS officials' actions defending BiH's constitutional order, elements of the US Government have been waging an economic war against the RS, cynically and flagrantly violating international law and showing contempt for BiH's sovereignty and democratic self-rule.

46. A US official earlier this year threatened sanctions against banks if they did not close all accounts belonging to sanctioned entities and individuals, thus causing severe hardship to many RS individuals who are not even under sanctions. Moreover, the US Embassy has quietly attempted to prevent the RS Government, which is not under sanctions, from accessing international financial markets. By doing so, elements of the US Government are trying to impoverish RS residents who rely on government payments, thereby forcing RS leaders to swallow BiH's unconstitutional centralization and Mr. Schmidt's lawless despotism. Coercion such as this is an extreme violation of the principle of non-intervention, which, as explained above, has long been a binding rule of international law.

47. Under the rogue leadership of Ambassador Michael Murphy, the U.S. Embassy in Sarajevo has abandoned all pretense of being a diplomatic mission, having illegally transformed itself into an active participant in BiH's domestic politics. The embassy utterly scorns the legally binding Vienna Convention on Diplomatic Relations, which obliges diplomats "not to interfere in the internal affairs" of the host country.

48. The US Embassy has recently engaged in a hashtag campaign on the social media site X aimed at undermining the RS economy and meddling in local elections. On 12 August, for example, the embassy ominously warned foreign investors to "conduct rigorous due diligence before investing" in

¹⁸ ICJ Nicaragua Judgment 1984, para. 73.

¹⁹ *Id.* at para 202.

²⁰ *Id.* at para 205.

BiH, particularly the RS, in order to avoid “exposure to U.S. sanctions.” A warning could hardly be better designed to chill foreign investment in the RS.

49. In July, the embassy attacked the RS Government for its borrowing and spending decisions—matters that are quintessentially internal affairs. On the social media website X, the embassy blasted the RS Government for borrowing, over previous last 18 months, 1.1 billion KM and asking, “#WhereIsTheMoney.” BiH diplomats could ask the same question about the \$1.8 *trillion* (about 3.3 *trillion* KM) that the US Government borrowed just in the past 12 months, but BiH diplomats would never dream of so flagrantly meddling in another country’s politics in violation of the Vienna Convention.

50. On 24 October, the US Embassy issued an ill-advised press release spreading a malicious rumor about the “alleged existence” of paramilitary camps in the RS training individuals to interfere in Moldova’s democratic processes. RS police investigated the matter and found no evidence of such camps. There was no more truth to this slanderous rumor than there was to earlier allegations of paramilitary training camps in the RS, which are now widely known to be pure fabrications intended to generate fear and antipathy toward the RS.

51. By their constant meddling in the individual and political affairs of BiH, and their controlling BiH through their proxy in the OHR, foreign capitals show their utter contempt for the rule of law. Though almost all legal experts would agree that the very purpose of law is to protect the rights of the weak, these foreign powers show that the rule of law does not apply to them at all. They rant about the rule of law while flagrantly violating the law on a daily basis, without even the pretense of shame. Their actions regularly remind the citizens of BiH that powerful countries do not need to pay attention to the law, but only weak ones. Lest the citizens of the RS forget that, the United States will fly menacing war planes over the RS for having the nerve to hold a parade on RS Day without US permission.

52. What is especially bizarre about the US Embassy’s spiteful campaign against the RS is that the RS has an excellent working relationship with the US military and other US agencies regarding security, intelligence, cybercrime, and anti-terrorism efforts. For many years there has been a regular presence of US military personnel in the RS training its police forces and engaging in joint exercises on counter-terrorism initiatives.

53. The campaign of bullying against the RS and its citizens by elements of the US Government will not succeed, though it does inflict needless pain on RS residents. The economic war against the RS only serves to further alienate RS voters, and to push the RS away from the West.

III. The RS Government is committed to BiH’s EU integration.

54. The RS remains committed to advancing BiH’s EU path while preserving BiH’s constitutional order. There are important impediments slowing BiH’s progress—chief among them the despotic presence of the OHR and the control of the BiH Constitution Court by foreign judges. However, the

RS is confident that when these impediments are removed BiH can advance rapidly on the road to EU membership.

55. The RS is firmly committed to enacting the reforms necessary for BiH's EU integration while preserving BiH's constitutional structure. The RS has worked vigorously for many years on aspects of EU integration within its constitutional competences and has made important progress on the objectives outlined by the EU in its reports on BiH. Thousands of RS regulations have undergone the procedure of harmonization and assessment of conformity with the EU *acquis*.

A. Why rapid progress on EU integration came to a halt.

56. BiH's multiethnic leadership, with the support of the RS, made rapid progress on BiH's EU integration in 2023 and early 2024, and the European Council recognized this progress in March 2024 by approving the start of BiH's EU membership negotiations.

57. BiH's EU progress, unfortunately, was brought to a halt less than a week later when Mr. Schmidt handed down an edict imposing sweeping amendments to the BiH Election Law, casting aside BiH's democratic constitutional system for enacting laws. As Mr. Schmidt must have intended, this triggered a political crisis that paralyzed progress on EU integration. BiH's crisis only deepened when the Bosniak-controlled BiH Foreign Ministry, as mentioned in part __, above, defied the Constitution by acting without authorization from the Presidency to attain passage of a highly controversial resolution on the Srebrenica war crime in the UN General Assembly.

58. Notwithstanding the political crisis triggered by Mr. Schmidt and exacerbated by the Bosniak parties, in July BiH nearly achieved an important success on the road to EU membership when a Reform Agenda was harmonized through negotiations by elected representatives of the three constituent peoples and two entities. Unfortunately, BiH's largest Bosniak party, the SDA, acted through its cantonal prime ministers to block the Reform Agenda, setting back EU integration and costing BiH 70 million euros in aid as part of the EU's Growth Plan for the Western Balkans.

59. Edin Forto, the leader of one of the governing Bosniak parties at the BiH level, blasted the SDA for its obstructionism, saying, "It seems the citizens reacted too positively to Bosnia's progress on the European path, and we received too much praise from Brussels. The SDA decided to block the European path and deny funds to citizens and businesses throughout Bosnia and Herzegovina."²¹ Mr. Forto also said that the SDA opposed the projects in the EU Growth Plan simply because it is not in power.²²

²¹ *Bosnian authorities fail to agree on Reform Agenda, jeopardizing EU growth plan funds*, N1, 24 Jul. 2024.

²² *Forto accuses SDA of blocking EU Growth Plan projects for political reasons*, N1, 25 Jul. 2024.

60. Despite BiH's political crisis, it has made some progress on EU integration objectives in recent months. In June, for example, the BiH Council of Ministers adopted the BiH Anticorruption Strategy, which is part of the 14 key priorities for BiH's EU integration. Moreover, BiH, with the RS Government's support, recently moved toward the adoption of a law enabling the establishment of the "112" phone number for emergencies throughout BiH.²³ In September, BiH Ambassador to the EU Obrad Kesic and EU Justice Commissioner Didier Reynders signed an agreement for BiH to participate in the EU Justice Program.²⁴ The program enables judicial bodies and other stakeholders in BiH to apply for EU funding under the same conditions as EU member states.²⁵ In May, BiH and the European Commission signed an association agreement enabling BiH to participate in the EU-funded Digital Europe programme.²⁶ According to an EU press release, the "agreement will enable legal and natural persons in [BiH] to apply for grants provided by the European Union in the field of digitalization under the same conditions as applicants throughout Europe."²⁷

61. The RS is hopeful that BiH's leaders can come together again to resume BiH's rapid progress toward EU membership. The RS, in fact, supports implementing as a package all the remaining elements of the 14 key priorities the European Commission has identified for BiH's EU integration. Unfortunately, the Bosniak parties reject this proposal because one of the elements of the 14 key priorities is replacing the foreign judges on BiH's Constitutional Court with BiH citizens—a reform the Bosniak parties oppose. The need to end the role of foreign judges on the BiH Constitutional Court is examined in Attachment 2 to this Report.

B. EU integration requires closure of the OHR.

62. The OHR must be closed for BiH to attain the full sovereignty and democratic self-government necessary for advancing toward EU membership. The EU itself has made clear that the OHR's presence is incompatible with BiH's EU path. As explained below, Mr. Schmidt's lawless edicts and very presence badly undermine BiH's EU integration.

1. Mr. Schmidt's reckless interventions have stymied BiH's EU integration.

63. The continued presence of a foreign official in BiH who exercises illegal dictatorial powers, along with the OHR's legacy of antidemocratic edicts, are major barriers to BiH's EU integration.

²³ *Bosnia's RS entity agrees to introduction of 112 EU emergency number in the country*, N1, 15 Aug. 2024.

²⁴ *Bosnia joins EU Justice program*, FENA, 9 Sep. 2024.

²⁵ *Id.*

²⁶ *Dragana Petrushevska, Bosnia to join EU's Digital Europe programme*, SeeNews, 14 May 2024.

²⁷ *Bosnia and Herzegovina is joining the EU Digital Europe Programme*, EU Delegation to BiH, 4 Jun. 2024.

Mr. Schmidt has taken every opportunity to undermine BiH's EU integration and preserve his own position, sometimes by exaggerating BiH's problems, sometimes by downplaying BiH's progress on reforms, but most of all by manufacturing political crises through his own ill-conceived bumbling. His reckless edicts, threats, and other interference have provoked crisis after crisis in BiH ever since his arrival. Indeed, the recent actions and rhetoric by RS officials that certain foreign states have condemned were all provoked, predictably, by Mr. Schmidt's egregiously illegal actions.

64. The OHR competes with the EU for influence on BiH's political scene and distracts BiH leaders from the work necessary for EU integration. The OHR routinely interferes with the EU's diplomatic objectives and acts against the EU's expressed wishes. The EU Delegation to BiH, not the OHR, should be paramount among international actors in BiH. BiH's main interlocutors should be the EU Special Representative and other EU officials, not an ambassador without portfolio who exercises dictatorial authority and is accountable to no one. The EU and the OHR have contradictory agendas. The EU is focused on helping BiH stand on its own two feet and meet the standards for EU membership, while the OHR is focused on maintaining its grip on dictatorial power by ensuring that BiH remains a helpless protectorate far from EU membership.

65. In March 2024, just five days after the European Council decided to open accession talks with the EU, Mr. Schmidt, acting willfully against the EU's clearly expressed objections, issued an illegal edict purporting to enact 114 amendments to the BiH Election Law. Knowing that his despotic powers are incompatible with BiH's EU integration and having seen BiH's multiethnic governing partners prove how much they could accomplish on their own, Mr. Schmidt purposely created a political crisis to derail BiH's EU integration and enable to him to argue that BiH does not deserve sovereignty and cannot be governed by its own democratic institutions.

66. The European Commission's Opinion on BiH's application for EU membership urges steps to increase legal certainty about the division of competences between various levels of government, which the RS Government supports. The greatest cause of such uncertainty has been the issuance of ill-advised edicts and other political machinations by the High Representative, which actions have typically sought to centralize governance in a piecemeal fashion in violation of the division of competences clearly established in the BiH Constitution. A key requirement for increasing constitutional and legal clarity, then, is for the OHR to close.

67. Even if the OHR were to close tomorrow, the legacy of foreign envoys' dictatorial rule of BiH would complicate BiH's EU integration. Many laws that emanated from the OHR are inconsistent with European standards. For example, as the EC's 2019 Opinion makes clear, the Law on the Court of BiH and the OHR-created High Judicial and Prosecutorial Council system must be reformed. When HRs imposed these laws on BiH, they evidently did not care whether they met EU standards. Reforming the Law on Court of BiH or the HJPC system is now extremely difficult, as HRs knew it would be when they imposed them.

68. The laws imposed on BiH through decrees and coercion are extremely difficult to undo. One provision of the BiH Constitution requires that all legislation receive the votes of at least one-third of the members of the House of Representatives from each Entity. Another provision allows a majority of the Bosniak, Serb, or Croat members to declare a piece of legislation destructive of a vital interest of their people. OHR decrees circumvented such protections, and now those protections give BiH's Bosniak parties veto power over any legislation intended to undo the OHR's damage.

2. The EU has recognized that the OHR must not continue ruling BiH.

69. The EU has recognized that the continued operation of the OHR, with its self-asserted right to rule BiH by decree, is incompatible with BiH's EU integration. Regarding the OHR, the European Commission's 2019 Opinion on BiH's application for EU membership says: "Such extensive international supervision is in principle incompatible with the sovereignty of Bosnia and Herzegovina and therefore with EU membership."²⁸

70. The Analytical Report accompanying the 2019 EC Opinion elaborates, explaining:

In its 2005 opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, the Council of Europe's European Commission for Democracy through Law (Venice Commission), although recognising the use of the Bonn powers as beneficial for post-war Bosnia and Herzegovina, noted that 'such an arrangement is fundamentally incompatible with the democratic character of the state and the sovereignty' of Bosnia and Herzegovina, in particular since these powers may be exercised without due process and judicial control.

The Analytical Report concludes that the OHR's "executive powers" must "be phased out,"²⁹

71. Since 2019, however, the OHR's despotism over BiH has only become much more extreme. Until 2021, the High Representative had gone ten years without handing down any illegal decrees or punishments. In the closing days of his term as HR in July 2021, however, the most recent validly appointed HR, Valentin Inzko, imposed a decree criminalizing the expression of certain opinions. Mr. Schmidt, since his arrival in BiH in 2021, has been a much more aggressive abuser of the rule of law. As of this writing, Mr. Schmidt has handed down no fewer than 21 lawless edicts, including an ersatz law establishing prison sentences for those who do not obey his commands.

²⁸ European Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 29 May 2019, at p. 7.

²⁹ European Commission Staff Analytical Report accompanying European Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 29 May 2019, at p. 13.

72. In a May 2024 interview, Mr. Schmidt, always doing his best to undermine BiH's EU path, said that BiH's EU accession "is not justified, based on merit and facts."³⁰ But Mr. Schmidt fails to recognize that his own presence is the greatest hindrance to BiH's progress on the road to EU membership.

3. Mr. Schmidt's new condition for OHR closure

73. In an interview in September, Mr. Schmidt pronounced, astonishingly, that the OHR would only close once BiH became a full member of the EU.³¹ This is a brand-new condition for closure of the OHR that, as far as the RS is aware, Mr. Schmidt simply invented without consulting anyone. His new condition seems designed to ensure that he remains in office ruling BiH indefinitely; as he adds this condition for OHR closure, he simultaneously prevents the achievement of the condition. The patent absurdity and arrogance of his new condition for closure of the OHR can hardly be exaggerated.

C. BiH's constitutional structure must be respected in the EU integration process.

74. As BiH implements reforms to advance on the road toward EU membership, it is essential that it retain the consociational measures and federal structure that have ensured peace and stability in BiH for almost three decades. As explained in Attachment 3 to this Report, all actors involved in the EU integration process should respect the Entities' constitutional competences, the strict constitutional limits on BiH-level competences, and the protections for BiH's constituent peoples.

³⁰ *UN High Representative: Bosnia and Herzegovina not ready for EU, but no other option*, Euractiv, 28 May 2024.

³¹ *Schmidt addresses Bosnia's political crisis and future challenges amid Dodik's actions*, N1, 11 Sep. 2024.

Christian Schmidt's lawless and destabilizing reign

A German politician named Christian Schmidt continues unlawfully to claim the title of High Representative, even though his appointment to the position was not approved by the Security Council as required by the Dayton Agreement. Even worse, Mr. Schmidt, without a shred of legal basis and in violation of the BiH Constitution, continues to claim and exercise authority to rule BiH by decree, and acknowledges no limits or restraints on his power from any domestic or international institution. Mr. Schmidt's lawless rule violates BiH citizens' human rights, tramples on the rule of law and BiH's democratic constitution, and destabilizes BiH.

Mr. Schmidt's dictatorial rule violates BiH citizens' human rights.

Aside from their lack of a legal basis, the dictatorial authorities claimed and employed by Christian Schmidt are plainly incompatible with the human rights of BiH citizens. Under Annex 4 of the Dayton Agreement, the BiH Constitution, the European Convention on Human Rights and its protocols "apply directly in Bosnia and Herzegovina" and "have priority over all other law."¹

Mr. Schmidt's appointment and rule by decree plainly violates the right to free elections guaranteed under Protocol No. 1 of the European Convention² and the International Covenant on Civil and Political Rights (ICCPR),³ which also applies directly under the BiH Constitution.⁴ In addition, the HR's edicts violate the very first article of the ICCPR, which provides: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Unlimited dictatorial rule by a foreign-appointed individual clearly violates this right of BiH citizens.

Commenting on the High Representative's asserted authority to enact laws by edict, the Venice Commission condemned the practice in 2005 stating, "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."⁵

Mr. Schmidt also claims—and regularly threatens to employ—authority to summarily remove individuals from office and ban them from public employment without the need for any

¹ BiH Constitution, art. II (2).

² Protocol no. 1, European Convention on Human Rights, art. 3.

³ International Covenant on Civil and Political Rights, art. 25.

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

⁵ 2005 Venice Commission Opinion at para. 88.

hearing, investigation, or due process whatsoever. The European Convention, however, clearly forbids such extrajudicial punishments, providing, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."⁶ Mr. Schmidt's claimed right to oust democratically elected officials also violates the right to free elections under Protocol No. 1 of the European Convention;⁷ Mr. Schmidt's view is that democratically elected officials in BiH are only allowed to hold the office to which they were elected if Mr. Schmidt allows it.

The flagrant illegality of such absurd claims to unlimited power over the citizens of BiH has long been recognized by authoritative legal experts and institutions. For example, the Parliamentary Assembly of the Council of Europe pronounced in a 2004 resolution, "[T]he Assembly considers it irreconcilable with democratic principles that the High Representative should be able to take enforceable decisions without being accountable for them or obliged to justify their validity and without there being a legal recourse."⁸ Similarly, the Council of Europe's Venice Commission said in a 2005 opinion regarding the High Representative's claimed powers, "As a matter of principle, it seems unacceptable that decisions directly affecting the rights of individuals taken by a political body are not subject to a fair hearing or at least the minimum of due process and scrutiny by an independent court. . . . The continuation of such power being exercised by a non-elected political authority without any possibility of appeal and any input by an independent body is not acceptable."⁹

Moreover, the European Stability Initiative's Gerald Knaus and Felix Martin observed about the High Representative, "Banning individuals for life from public employment or political office without even giving them a chance to confront the charges against them plainly violates even the most basic notions of due process and is simply unacceptable in a democratic country."¹⁰ And Austrian professor Joseph Marko has written that the High Representative's claim of power to remove public officials from office "did not meet the lowest standards of rule of law."¹¹

⁶ European Convention on Human Rights, art. 6.

⁷ Protocol no. 1, European Convention on Human Rights, art. 3.

⁸ Parliamentary Assembly of the Council of Europe, Res. 1384 (2004), June 23, 2004.

⁹ 2005 Venice Commission Opinion at paras. 94, 96, and 98 (emphasis added).

¹⁰ Gerhard Knaus and Felix Martin, *Travails of the European Raj*, 3 J. Democracy 60, 72 (2003).

¹¹ Joseph Marko, *Post-conflict Reconstruction through State- and Nation-building: The Case of Bosnia and Herzegovina*, European Diversity and Autonomy Papers EDAP 4/2005, at 16-17.

The dictatorial powers claimed by Mr. Schmidt make a mockery of the rule of law and BiH's democratic Constitution.

Mr. Schmidt's rule-by-decree in BiH is a heinous abuse that should shock the conscience of everyone who claims to believe in democracy, the rule of law, human rights, or BiH's sovereignty. Even if Mr. Schmidt were a legitimately appointed HR, his publication of blog entries purporting to enact BiH laws would be a flagrantly illegal breach of BiH's sovereignty and democratic constitutional order. An unelected foreigner decreeing laws without any legal basis manifestly violates the BiH Constitution, which establishes and guarantees a democratic constitutional system in which laws are enacted only by the legislature. And nothing resembling the so-called "Bonn powers" is mentioned, implied, or even contemplated in any part of the Dayton Agreement or any other source of law.

In Annex 10 of the Dayton Agreement, which is the sole source of the HR's legal authority, the HR is requested by the parties to participate in activities such as to "monitor," "maintain close contact with the Parties," "facilitate," "participate in meetings of donor organizations," "report," and "provide guidance" to the commissioner of the International Police Task Force. Nothing in Annex 10 can be interpreted in good faith to empower the HR to make decisions that are binding on BiH or its citizens. Any interpretation of Annex 10 finding a power to rule BiH by decree is an interpretation in the most extreme bad faith and therefore violates the Vienna Convention on the Law of Treaties.

It is sometimes claimed that HRs were granted such authority by the so-called Peace Implementation Council (PIC). But as the European Court of Human Rights has explicitly recognized that the PIC is nothing more than an "informal group of states."¹² The ad-hoc collection of countries did not even claim to grant the HR new authority. Instead, it "welcomed" the HR's assertion of executive powers. The PIC had no legal authority at all, let alone authority to bestow sweeping new powers on the HR. Under international law, a body cannot delegate powers it does not itself hold. Moreover, the UN Security Council never bestowed additional powers on the HR beyond the HR's strictly limited Dayton mandate, nor could it have done so.

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

¹² *Berić v. Bosnia and Herzegovina*, Eur. Ct. H.R., decision of 16 Oct. 2007, at para. 26; available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-83109%22%5D%7D>.

these decisions, which is not exactly in legal terms with Dayton. . . . It was not very legal, I have to admit.”¹³

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.”¹⁴

For BiH to live under the rule of law, the bogus claim to the HR's “executive powers” dreamt up at the Bonn conference must finally be recognized for the illegal sham that it is.

Rule by an unelected foreigner corrodes BiH's political culture.

The presence of a foreigner claiming dictatorial powers has badly warped BiH's political culture for many years, but Mr. Schmidt's lawless reign has been especially harmful and destabilizing. The International Crisis Group has recognized that “keeping the OHR open will not push its citizens toward reform and may sow enough discord to push reform out of reach.” Prof. Bernhard Knoll, a former special advisor to the OSCE, has observed regarding the OHR, “[T]he international community's practice of ruling by command may lastingly debilitate democratic development” Even former High Representatives have lamented the baleful effect the OHR has on BiH's political culture.

Mr. Schmidt's 2024 Election Law edict exemplifies how the OHR's presence cripples development of the culture of compromise that is necessary for politics to function in any democracy, especially one as deeply divided as BiH. Instead of negotiating Election Law amendments acceptable to all three ethnic groups, Bosniak parties knew they could simply wait for an Election Law edict from Mr. Schmidt that bypasses the inconvenient processes and give-and-take of democracy and gives them everything they want and nothing they do not.

In a May 2024 interview, even Mr. Schmidt made a rare acknowledgement that his edicts can have a downside, saying that “when there are too many of them, some people start to sit back and say: he'll do it for us if we can't do it.” In a staggering understatement he added, “That is not in line with the democratic principle.”

¹³ Adis Merdzanovic, *Democracy by Decree, Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (2015), 256.

¹⁴ 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).

It is not “too many” edicts that contradict the democratic principle. Even a single edict is a terrible offense against BiH's people and its democratic constitutional order.

Mr. Schmidt's false claims about the High Representative's interpretive authority

In an interview in June 2024, Mr. Schmidt claimed, “When it comes to interpreting the Dayton Agreement, the final interpreter is the High Representative, that is, myself.” Leaving aside that Mr. Schmidt is not a legitimately appointed HR, Schmidt's claim that the HR is the final interpreter of the Dayton Agreement is utterly false, as the text of the Dayton Agreement shows. The only part of the Dayton Agreement that provides any interpretive authority to the HR is Annex 10, the Agreement on the Civilian Implementation of the Peace Settlement, and that interpretive authority extends only to Annex 10 itself, not to any other part of the Dayton Agreement. As the Annex 10 provides, “The High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement.”

The words of Annex 10 could hardly be clearer on this point. But other parts of the Dayton Agreement confirm that the HR's interpretive authority does not extend to the entire Dayton Agreement. No other part of Annex 10 provides the HR with interpretive authority, and other annexes of the Dayton Agreement even specifically designate other interpreters. For example, Annex 1A provides that “the IFOR Commander is the final authority in theatre regarding interpretation of this agreement on the military aspects of the peace settlement.” Other examples can be found in Annexes 1B, 2, 3, 4, 5, 6, 7, and 8. Thus, in addition to the clear words of Annex 10, the plain terms of the rest of the Dayton Agreement are clear: The HR's interpretive authority is strictly limited to Annex 10.

Mr. Schmidt's making such a patently false claim about the scope of the High Representative's interpretive authority despite the clarity of the Dayton Agreement on this point leaves two possibilities: that Schmidt is willfully lying, or that he, despite claiming to hold the position of High Representative, has never bothered to read the Dayton Agreement. With either possibility, Mr. Schmidt disgraces himself and his supporters in the international community.

Mr. Schmidt's persecution of the RS President for following the law

Not only have Mr. Schmidt and some past High Representatives illegally decreed laws; they have also unlawfully interfered with prosecutors' implementation of their illegitimate criminal statutes. In July 2024, Mr. Schmidt confirmed this when he said, “I'm still not satisfied with how war criminals are glorified within society. That is why we need to work harder and cooperate with the state prosecutor's office.” His remark provides additional confirmation of one of the worst-kept secrets in BiH, which is that Mr. Schmidt and the OHR illegally tamper with prosecutorial decisions.

In July 2023, Mr. Schmidt posted on his blog his most destabilizing and repressive edict, a “law” establishing prison sentences for public officials who refuse to treat his illegal decrees as if they are duly enacted laws. In June 2023, in response to Mr. Schmidt’s lawless and unconstitutional efforts to rule BiH by decree, the RS National Assembly had approved a statute ending the publication of such illegal edicts in the RS’s Official Gazette. When the President of the RS formalized the law as required by the RS Constitution, the BiH Prosecutor’s Office—acting under pressure from Mr. Schmidt—indicted the President based only on Mr. Schmidt’s fake new criminal statute. The indictment is a dangerous escalation of Mr. Schmidt’s attack on BiH’s constitutional order and is nothing less than an attempted coup d’état against the RS’s democratically elected leadership, indicted based on a fictitious law, Mr. Dodik is now undergoing a sham trial presided over by a former wartime Bosniak army judge.

Mr. Schmidt’s outrageous intervention in a European Court of Human Rights case

On 7 October, Mr. Schmidt submitted to the European Court of Human Rights a document attempting to intervene in the case *Kovačević v. BiH*, which challenges certain provisions of the BiH Constitution. Mr. Schmidt’s attempt to intervene is outrageous because, even if he were a duly appointed High Representative, he would have no authority to interpret the BiH Constitution. This is simply another example of Mr. Schmidt’s (and OHR’s) habitual meddling in judicial processes.

Notably, Mr. Schmidt’s submission, in its third paragraph, tells the court an outright lie, claiming, “The High Representative is appointed by an international Peace Implementation Council, pursuant to Annex 10 of the Dayton Agreement.” In reality, Annex 10 has no such provision and does not even mention the Peace Implementation Council, instead requiring approval of the UN Security Council for the High Representative’s appointment at the request of parties to Annex 10. In addition, on 10 March 2021, the National Assembly of the Republic of Srpska expressly rejected the appointment of any new High Representative without the procedure provided for by Annex 10.

With his record of glorifying Nazis, the bumbling Mr. Schmidt is particularly ill-suited to play any role in BiH, let alone to be its dictator.

In Mr. Schmidt, a self-selected group of foreign capitals has foisted upon the people of BiH a man with no diplomatic experience or skill, a failed German politician who knows nothing of BiH’s history, culture, and languages. Naturally, Mr. Schmidt has triggered crisis after crisis since his arrival in BiH, badly undermining BiH’s political stability. One wonders what more Mr. Schmidt could possibly do to prove himself unworthy of the position he claims to hold. For foreign capitals to select such an ill-suited bumbler for the sensitive position of HR was colossal diplomatic malfeasance.

Worse yet, these capitals sent a man with well-known sympathies for Third Reich war “heroes” to a place that was ravaged by the German army and its allies. If such foreign capitals

were specifically intending to offend all citizens of BiH who opposed the Nazis, they could hardly have found a better candidate.

Mr. Schmidt is an active member of Kameradenkreises der Gebirgstruppe (Circle of Comrades of the Mountain Troops), an organization that has frequently honored Nazi "heroes" of World War II. In 2007, Schmidt was caught on video standing alongside convicted Nazi war criminal Josef Scheungraber at a ceremony paying tribute to the Third Reich's mountain infantry, which committed numerous war crimes. When Mr. Schmidt was Parliamentary State Secretary of Defense, he made it a priority to rehabilitate Werner Molders, a Nazi fighter pilot who was closely tied with Hermann Göring and was awarded as a "hero of National Socialism."

When such a man berates the citizens of BiH for their views on their own military past, it is little wonder that he cannot be taken seriously. The hypocritical Mr. Schmidt is a disgrace not just to Germany, but to all those countries that continue to support his role in BiH.

The BiH Constitutional Court must be composed of BiH citizens

The continued presence of foreign judges on Bosnia and Herzegovina's Constitutional Court is incompatible with BiH's sovereignty, badly undermines the court's legitimacy, and stands as a barrier to BiH's EU integration.

The BiH Constitution includes a peculiar provision—intended as a transitional measure to last five years—in which three of the nine seats on the BiH Constitutional Court are reserved for foreigners. These foreign members, according to the Constitution, are “selected by the President of the European Court of Human Rights after consultation with the Presidency.”¹ After a transitional five-year period, the Constitution authorizes BiH to replace the foreign judges by passing an ordinary law.²

The EU has identified the replacement of the foreign judges among its “key priorities for opening EU accession negotiations.”³ This is a fundamental requirement that must be met before accession negotiations can begin. Yet BiH's Bosniak political parties have refused to consider legislation to replace the foreign judges because those judges vote reliably as a bloc with the Bosniak judges to unconstitutionally expand BiH-level competences and weaken the Entities. For much the same reason, the US Embassy in Sarajevo has broken with the EU to oppose this long overdue reform.

A Constitutional Court with foreign members is incompatible with BiH sovereignty and democracy.

The presence of foreign judges on the BiH Constitutional Court is irreconcilable with BiH's sovereignty and democracy—and thus EU membership. There is no other sovereign state in the world that has seats on its constitutional court reserved for foreign judges, let alone judges appointed by a foreign individual (the President of the European Court of Human Rights) without any requirement of domestic consent.

Numerous legal scholars have severely criticized the continued presence of foreign judges on the Constitutional Court. For example, Professor Robert Hayden has noted that the role of

¹ BiH Constitution, art. VI(1)(a).

² BiH Constitution, art. VI(1)(d).

³ European Commission Bosnia and Herzegovina 2023 Report, 8 Nov. 2023, at 10. *See also* European Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 29 May 2019, at 7 and 15; European Commission Staff Analytical Report accompanying European Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 29 May 2019, at 12-13.

foreign judges on the Constitutional Court “of course, compromises the sovereignty of Bosnia and Herzegovina, since it gives decision-making powers to people who may not, by constitutional mandate, be citizens of the country.”⁴

Similarly, in a 2016 article about the BiH Constitutional Court, Stefan Graziadei of the University of Antwerp wrote:

Even more at odds with national sovereignty is the idea that international judges may sit in national apex courts: “Because of the doctrine of state sovereignty, it sounds almost inconceivable that a foreign citizen should serve on the bench of a national supreme court or a separate constitutional court of another country.” This is particularly true because such courts operate at the boundary between politics and law: they have the power to review legislation, which is based on the will of the people, for conformity with the national constitution.⁵

In an analysis of the foreign judges on the BiH Constitutional Court, Dr. Alex Schwartz of the University of Hong Kong writes, “It is usually taken for granted that the judiciary will be native to the polity it serves. Although judges are not typically elected by popular vote, it is probably implicit in the way judicial legitimacy tends to be constructed in modern states that judges are representatives of the demos, at least in some vague or indirect sense.”⁶

Even one former foreign member of the BiH Constitutional Court, Judge Constance Grewe, admitted that the presence of foreign judges “can be seen as an intrusion into the national affairs” or “as an attempt at supervision.”⁷ Indeed, it could not be seen as anything else, as that is exactly what it is.

⁴ Robert M. Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (1999) 131.

⁵ Stefan Graziadei, *Six models for Reforming the Selection of Judges to the BiH Constitutional Court*, Centre for Southeast European Studies, Working Paper No. 14 (Jan 2016) at 4 (quoting Joseph Marko, *Foreign Judges: A European Perspective*, in *Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong*, ed. by Simon Young and Yash Ghai (New York: CUP, 2014), pp. 637-65 (p. 637)). (footnotes omitted).

⁶ Alex Schwartz, *International Judges on Constitutional Courts: Cautionary Evidence from Post-Conflict Bosnia*, 44 *Law & Social Inquiry* 1, 7 (Feb. 2019) (emphasis added).

⁷ Constance Grewe and Michael Riegner, *Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared*, *Max Planck Yearbook of United Nations Law*, Vol. 15, p. 41.

The presence of foreign judges on the BiH Constitutional Court is also incompatible with BiH democracy. As an international expert panel on Cyprus observed, “Leaving the final decision in case of stalemate to foreign citizens in such critical organs as the Supreme Court and others is in stark contradiction to the principle of democracy.”⁸

The Constitutional Court's foreign judges severely undermine the court's integrity and legitimacy, and corroded the legal culture of BiH.

The most precious asset of any court that exercises judicial review is the respect of the citizenry for the legitimacy of the court's decisions. Without such legitimacy, the public will not accept court decisions that nullify legislation approved by democratically elected institutions. The BiH Constitutional Court will always suffer a legitimacy deficit as long as its membership includes judges who—in addition to lacking democratic legitimacy—are not even BiH citizens, BiH residents, or speakers of BiH languages.

Dr. Schwartz's analysis of the role of the foreign judges on the BiH Constitutional Court concludes that “the foreign judges appear to have contributed to the Court's crisis of authority.”⁹

A 2019 analysis of foreign judges by Professor Vicki Jackson of Harvard Law School and Professor Rosalind Dixon of the University of New South Wales Sydney observes:

Judges who decide constitutional challenges to the actions of other parts of the government not infrequently face challenges to their “democratic” legitimacy. . . . [T]his challenge may be heightened where the holder of judicial office is a foreign judge. . . . Both the decision to have foreign judges sit and the selection (or selection methods) of those judges may implicate democratic legitimacy concerns.¹⁰

The foreign members of the BiH Constitutional Court particularly raise such concerns because they are not just foreign but also selected without the consent of any BiH official or institution.

⁸ International Expert Panel Convened by the Committee for a European Solution in Cyprus, *A principled basis for a just and lasting Cyprus settlement in the light of International and European Law*, 2005 (quoted in Graziadei at 4).

⁹ Schwartz at 26. One decision Dr. Schwarz cites in particular is the 2000 “Constituent Peoples” decision that struck down a number of provisions in the Entity constitutions.

¹⁰ Rosalind Dixon and Vicki Jackson, *Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts*, 57 Colum. J. Transnat'l L. 283, 317 (2019).

Dr. Graziadei points out that foreign judges “are not trained in the domestic legal system, often do not understand the local language(s), and as citizens of another country they appear to be ill-equipped to uphold the supreme law of a country with which they share no bond of citizenship.”¹¹ Similarly, Professors Dixon and Jackson write that foreign judges “may lack sufficient local contextual knowledge to appropriately perform the constitutional function.”¹² Such judges, Professors Dixon and Jackson write, “will often have limited knowledge of local history, socio-political values and attitudes, and the kinds of national social, economic, and political conditions that can affect the implementation of a court decision.”¹³ In addition, as Professor Tim Potier has pointed out, the use of foreign judges in a country's highest court prevents a society's ownership of its constitution and system.¹⁴

A 2016 study by the Analitika Center for Social Research said with respect to the foreign judges: “Even though agreeing that the provision had its justification at first, most of our interlocutors now see such a feature as unnecessary, and as overstaying its welcome almost twenty years later, with one constitutional scholar noting that such hybridization of [the BiH Constitutional Court] is ‘demeaning,’ while the first president of the Court after the Dayton Agreement saw in it ‘elements of protectorate.’”¹⁵

The presence of the foreign judges on the court has also undermined the court's legitimacy because such judges have shown themselves to be far from the disinterested “swing votes” they were intended to be. In reality, the foreign judges have allied themselves with the Bosniak bloc of the court—consistently in favor of BiH's unconstitutional centralization, subservient to the OHR, and hostile to the Entities' rights under the BiH Constitution.

It is an open secret that the foreign judges on the Constitutional Court take instruction from the OHR and other foreign actors. A former foreign judge on the Constitutional Court even

¹¹ Graziadei at 5 (footnotes omitted).

¹² Dixon and Jackson at 317.

¹³ *Id.*

¹⁴ See Tim Potier, *Making an Even Number Odd: Deadlock-Avoiding in a Reunified Cyprus Supreme Court*, *Journal on ethnopolitics and minority issues in Europe*, Vol. 7 (2008), at 4.

¹⁵ 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 15.

admitted that there is a “tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation.”¹⁶

The foreign judges' manifest bias and lack of independence has done terrible damage to the court's legitimacy, and the meddling in the Court's affairs by the Office of the High Representative and certain foreign powers has shown their cynical harrangues about the “rule of law” to be nothing but hollow sloganeering.

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

BiH must retain its constitutional order during the EU accession process

The constitutional structure of BiH is fully consistent with EU membership.

Republika Srpska (RS) is confident that Bosnia and Herzegovina (BiH) can meet the criteria for EU membership while preserving its essential constitutional order as established in the Dayton Accords—a constitutional structure that guarantees substantial autonomy to BiH's two Entities, Republika Srpska and the Federation of Bosnia and Herzegovina.

The European Commission's Opinion on BiH's Application for Membership reaffirmed that a federal structure is compatible with EU membership. In the EU's federal and devolved states, territorial units have vital competences, including in many areas that require transposition of EU directives. EU member states whose regions transpose EU directives include: Germany, Italy, Spain, Belgium, Austria, the Netherlands, and Portugal.¹ Moreover, federal and devolved constitutional structures have not prevented EU member states from meeting their EU obligations. The BiH Constitution already has provisions ensuring that the Entities would, in their areas of competence, meet BiH's EU obligations. Article III(2)(b), for example, provides, "Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina."

The EU has strongly supported consociational systems in countries with deep ethnic and confessional divides, and there is no conflict between consociational democracy and EU membership. As Professors Christopher McCrudden and Brendan O'Leary point out in their landmark study of consociational systems, "consociation has been encouraged in *practice* by the European Union in its [talks] with Central, Eastern, and Balkan European applicant or pre-applicant states in order to establish secure and stable inter-ethnic relations."²

Even the governing structure of the EU itself has many consociational elements. As McCrudden and O'Leary explain, "Analysts observe that the European Union has a power-sharing executive (in the Council of Ministers and the Commission), in which principles of parity, proportionality, inclusivity, unanimity, and qualified majority voting often apply."³

The Treaty on European Union (TEU) provides, in part, "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental

¹ Enrico Borghetto and Fabio Franchino, *The Role of Subnational Authorities in the Implementation of EU Directives*, Reihe Politikwissenschaft Political Science Series 119, Institute for Advanced Studies, Vienna, at p. 7.

² Christopher McCrudden and Brendan O'Leary, *Courts and Consociations* 5 (2013).

³ *Id.* at 2.

structures, political and constitutional, inclusive of regional and local self-government.”⁴ This provision respects the fact that EU member states' constitutional systems vary widely from centralized states to loose federations, and from systems that are blind to ethnicity to systems with special ethnic rights. During the EU integration process, the EU should give the same respect to BiH, with its highly autonomous Entities and its protections for constituent peoples.

BiH's constitutional structure is vital for European security.

BiH's federal and consociational system is essential for Europe's security, especially given BiH's status as a haven for jihadists. The perpetrators of many of the worst terrorist attacks of recent decades had significant connections to BiH, including the 9/11 attacks in the United States, the 2004 Madrid Train bombing, and the 2015 Paris attacks. According to data published by the Wilson Center in Washington, among European countries, BiH had the highest per-capita number of citizens who left to join the Islamic State and other jihadist organizations in Syria and Iraq.⁵ Germany's leading news magazine, *Der Spiegel*, wrote in 2016, “Radical Islamists have found a new refuge in Bosnia. They recruit fighters, promote jihad and preach a fundamentalist interpretation of Islam—just across the border from the European Union. . . . Most recently, 64 illegal Muslim communities suspected of radicalism have been counted.”⁶

In BiH's most recent terrorist attack, which took place on 24 October 2024, just before publication of this Report, a teenager broke into a police station, killed a police officer and wounded another in the Federation of BiH town of Bosanska Krupa. This was not the first terrorist attack on a police station in BiH. In June 2010, one officer was killed and six others injured in the bombing of a police station in the Federation of BiH town of Bugojno. In April 2015, an attacker killed one police officer and wounded two in an attack on a police station in the RS town of Zvornik.

Although many Bosniaks practice a moderate form of Islam, the largest political party in BiH representing the Bosniaks has its roots in Islamic extremist ideology. The party's manifesto emphasizes 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.”⁷ Although the party tries to present a moderate, democratic face to the West, it has never disavowed its explicitly Islamist ideology, and its leadership maintains close ties to radical leaders in the Muslim Brotherhood and in places like Iran.

⁴ Treaty on European Union, Art. 4(2).

⁵ *Report: More than 20,000 Foreign Fighters in Syria/Iraq*, Wilson Center, 26 Jan. 2015.

⁶ Walter Mayr, *Bosnia's Islamic State Problem*, 5 Apr. 2016.

⁷ Alija Izetbegovic, *Islamic Declaration* (1990) at 56.

Since the 7 October 2023 terrorist attacks in Israel, large demonstrations in Sarajevo have revealed widespread support for Hamas among the Bosniak community. An anniversary event to be held in remembrance of the victims of the 7 October attacks, which had been planned for Sarajevo, had to be moved to the RS after Sarajevo officials and residents made clear that the event was unwelcome.

A recent scandal further highlights the power of Islamist ideology in Bosniak society and politics. At a military ceremony in Austria in September, an officer from BiH refused to shake hands with Austrian Defense Minister Klaudia Tanner because she is a woman. BiH Defense Minister Zukan Helez reacted by secretly signing a contract with the officer making him a second lieutenant in the BiH Armed Forces.⁸

Sympathy in political Sarajevo for radical ideology helps explain why there has not been sufficient political will to rid BiH of dangerous jihadist elements.

The federal and consociational order prescribed in the BiH Constitution bolsters European 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 ethnic groups, 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.

The coordination mechanism must be respected.

It is important that BiH's EU integration proceed in accordance with the EU-supported Coordination Mechanism for the European integration process that was agreed upon at the highest technical and political levels in 2016. This agreement formally established the institutional and operational system and the method of coordinating institutions in BiH in implementing activities related to BiH's EU integration process. It also includes the joint bodies within the Coordination Mechanism, their composition, competences, and interrelationships.

Coordination of the EU integration process involves activities aimed at ensuring a high degree of alignment and coherence among institutions at all levels of administration in BiH, specifically regarding fulfillment of contractual obligations under the Stabilization and Association Agreement between the European Communities, their Member States, and BiH, as well as other EU integration obligations. The goal is to ensure and present a unified stance on behalf of BiH in communication with EU institutions. The Coordination Mechanism is based on principles that respect the existing internal legal and political structure in BiH, safeguard constitutionally defined competences of all levels of government and their institutions in areas covered by the EU integration process, and ensure

⁸ *Helez secretly signed contract with cadet who didn't shake hands with Tanner*; SRNA, 3 Oct. 2024.

transparency and accountability of all levels of administration in timely and effective fulfillment of their EU integration obligations.

Implementation of European Court of Human Rights decisions

The RS agrees with the European Commission that BiH must ensure equality and non-discrimination for all citizens, including by implementing the European Court of Human Rights' *Sejdić-Finci* decision and related decisions. The RS has long advocated a simple solution for members of the BiH Presidency and House of Peoples representing the RS: to eliminate all ethnic qualifications. For office holders representing the Federation, the RS has for years made clear that it would accept any solution the Croat and Bosniak parties agree to that does not disenfranchise any of the three Constituent peoples of BiH. The RS remains hopeful that BiH's Croat and Bosniak parties will find such a solution.