



Security Council

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Letter dated 1 November 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council

Please find attached the twenty-eighth report of the Republika Srpska on recent political developments in Bosnia and Herzegovina (see annex).

I would be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Vassily **Nebenzia**



Annex to the letter dated 1 November 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council

Republika Srpska's 28th Report to the UN Security Council

October 2022

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Republika Srpska's 28th Report to the UN Security Council

Introduction and Executive Summary

Republika Srpska (RS), a party to the treaties that make up the 1995 Dayton Peace Accords and one of the two autonomous Entities that make up Bosnia and Herzegovina (BiH), is pleased to submit this 28th Report to the UN Security Council.

Part I of the report examines the results of BiH's 2 October 2022 elections, including the success of the RS's current governing coalition, which demonstrates RS voters' support for the coalition's zealous defense of the RS's rights under the Dayton Accords. Part I also examines: the regrettable election to the BiH Presidency of two politicians who want to scrap the Dayton Accords; the denial of representation on the BiH Presidency to the Croats; and the Central Election's recount order in the election for the RS Presidency.

In part II, the report explains why adherence to the Dayton Accords is essential for BiH's success, given its tragic history. It notes that many successful democratic systems, like BiH, include regional autonomy and national rights. It emphasizes the RS's commitment to the Dayton Accords and the need for the international community and BiH's Bosniak leadership to stop attacking the Accords and accept them as the key to BiH's future.

Part III explains that BiH's security is not in danger, despite irresponsible rhetoric by some Bosniak politicians, and that alarmism about BiH's security is a cynical political ploy. Part III also emphasizes that the RS has consistently ruled out any resort to violence and has no plans for secession.

In part IV, the report examines the harm that the Office of the High Representative (OHR) continues to inflict on BiH. It explains why the dictatorial powers the OHR asserts are manifestly unlawful and why German diplomat Christian Schmidt's issuance of decrees flagrantly violates the Dayton Accords. Part IV also describes how the Bosniak parties' vehement rejection of a decree by Mr. Schmidt helps expose the illegitimacy of the OHR's claimed powers. Moreover, it notes the growing support for closing the OHR and calls for the OHR to at last renounce its asserted dictatorial authority.

Finally, part V welcomes the European Commission's recent decision recommending BiH for EU candidate status and emphasizes the RS's support for BiH's European integration.

I. Election results

1. On 2 October 2022, voters in the RS and throughout BiH continued the unbroken succession of free and fair elections in the more than 26 years since the Dayton Accords. According to a press release by the Organization for Security and Cooperation in Europe (OSCE), the “general elections in Bosnia and Herzegovina were competitive and overall well organised with fundamental freedoms respected during the campaign.”¹

2. The joint observation mission of the OSCE, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, and the European Parliament found, “The campaign was competitive, including on social networks, and fundamental freedoms of association, assembly and expression were respected.”² The campaign, the joint mission wrote, was particularly competitive “in the presidential elections at the state level and in the Republika Srpska.” The joint mission further found that the “campaign environment was overall calm” and that “the number of hate speech cases reported remained low.”³ According to the joint mission’s report, “Observers positively assessed the voting process in 95 per cent of the 1,785 observations, and procedures, including voter identification, were largely respected.”⁴

A. The people of the RS have endorsed the RS Government policy of vigorously defending the Dayton Accords.

3. RS voters have once again chosen the current governing coalition led by the Alliance of Independent Social Democrats (SNSD) to lead the RS National Assembly and form a new RS government. The RS governing coalition’s candidate for RS President, Milorad Dodik, was also elected by a substantial margin. Moreover, the coalition was successful at the BiH level, winning a majority of the RS seats in the BiH Parliamentary Assembly, with current RS President Željka Cvijanović elected to represent the RS as member of the BiH Presidency.

4. The RS governing coalition’s sweep of the 2022 elections gives it an emphatic mandate to continue its policy of vigorously standing up for the Dayton Accords, including the BiH political structure established under the BiH Constitution. During the past four years, the RS Government has made it a priority to defend the rights of BiH’s entities and constituent peoples as guaranteed under the BiH Constitution (Annex 4 of the Dayton Accords).

5. The defense of the Dayton Accords by the RS governing coalition has elicited disfavor in some Sarajevo embassies. Indeed, some members of the international community have tried to drive a wedge between the citizens of the RS and its leadership, even supporting the premature and unjustified calls for a recount before the Central Election Commission (CEC) even finished a preliminary tally of the results, and on the basis of many claims of irregularities that were subsequently determined to be utterly groundless. The efforts of the opposition and their foreign allies have failed, because, as the election results have demonstrated, the policies and priorities of the RS leadership closely reflect the preferences of a large majority of RS voters. The citizens of the RS, like the RS leadership, consider the preservation of BiH’s constitutional structure to be a crucial priority. The RS’s commitment to honoring the Dayton Accords, including the BiH Constitution, is further examined in part II, below.

¹ *Elections in Bosnia and Herzegovina were competitive but concerns remained over failed reforms and divisive rhetoric, international observers say*, OSCE, 3 Oct. 2022.

² Statement of Preliminary Findings and Conclusions, International Election Observation Mission, BiH General Elections, 2 October 2022 (available at <https://www.osce.org/files/f/documents/9/8/527523.pdf>).

³ *Id.*

⁴ *Id.*

B. Other election results

1. Bosniak voters have elected to the Presidency two politicians who are dedicated to unravelling the Dayton Accords.

6. Bosniak voters elected to the BiH Presidency Željko Komšić and Denis Bećirović, two politicians who emphatically reject the Dayton compromise. Mr. Komšić has made clear that he wants to replace the BiH Constitution (Annex 4 of the Dayton Accords) with a so-called “civic” Constitution that would give Bosniaks free reign to rule over BiH’s other constituent peoples. In May 2022 Facebook post, for example, Mr. Komšić lamented that BiH “it is still not what we fought for” during the 1992–95 war.⁵ “We did not fight for cantons, entities, entity voting, such houses of peoples,” Mr. Komšić wrote.⁶ He promised: “Bosnia and Herzegovina will be a civic state, sooner or later. That is why it is worth fighting and not being a coward . . .”.⁷

7. Similarly, Mr. Bećirović’s political party, the SDP, has made clear that its eventual goal is the extinction of the RS and the Federation. According to the SDP’s official platform: “It would be best to abolish the government in all 13 states in the country,” which includes the governments of both entities, the Federation’s ten cantons, and the Brčko District.⁸ The SDP’s official platform also promises that the party will “abolish the legislative, executive and judicial powers in the cantons.”⁹

8. Although the SDA party’s candidate for the BiH Presidency, Bakir Izetbegović, was not elected, the SDA won the largest share of seats in the Federation’s Parliament as well as the largest share of Federation seats in the BiH House of Representatives. The SDA party has, as explained in part II, below, called in an official platform document for the abolition of BiH’s Dayton structure.

2. BiH’s Croats have again been denied legitimate representation on the BiH Presidency

9. One of the BiH Constitution’s most important elements is its establishment of a three-member Presidency, which is intended to ensure representation for each of BiH’s three constituent peoples: Bosniaks, Serbs, and Croats. This provision was designed to protect each of the constituent peoples against violation of its interests by the other peoples. In the 2022 election, however, just as in the 2006, 2010, and 2018 elections, Bosniak political parties ran roughshod over this principle by encouraging Bosniak voters to vote for the Croat presidency member, thus, disenfranchising the Croats from electing a member of the BiH Presidency to represent them.

10. Because Bosniaks are much more populous than Croats in the Federation, Bosniak voters were able to elect not just the Bosniak member of the Presidency, but also Mr. Komšić, a nominally Croat politician with almost no support among Croats (indeed, he has been declared *persona non-grata* in some Croat-majority cantons and towns). This electoral manipulation, once again, effectively gives the Bosniaks two seats on the Presidency and the Croats none.

11. Each constituent people should choose its own representative in the Presidency; the electoral engineering used to elect Mr. Komšić and disenfranchise the Croats was cynical and outrageous. The Dayton formula should be respected to ensure that Croats, like the other Constituent Peoples, have the ability to choose a member of the Presidency to represent them.

⁵ *Presidency member: Bosnia and Herzegovina will be a civic state sooner or later*, N1, 22 May 2022.

⁶ *Id.*

⁷ *Id.*

⁸ *Država se ne pravi sama, za državu treba plan*, SDP (downloaded from SDP website, 26 Oct. 2022).

⁹ *Id.*

C. The Central Election Commission's recount order

12. Despite the OSCE's positive assessment of the fairness of BiH's election – and before the initial counting of votes was finished – the BiH Central Election Commission (CEC), which is controlled by the SDA and the RS opposition, ordered a full recount of votes for the RS President. Early on election night, the RS opposition parties had, with a very small number of votes counted, and without waiting for clear election results, prematurely declared that they had won the RS Presidency even as their candidate was behind in voting, seemingly in a premeditated preparation for claiming that the election they lost had been stolen from them. Within hours, the RS opposition parties then demanded a recount as soon as it became clear that they would not win the RS Presidency.

13. Unfortunately, certain foreign embassies in Sarajevo directly interfered in the election process by almost immediately expressing support for the recount of votes for the RS Presidency, without having any taken any trouble to examine any actual evidence of problems in the voting. There are many reasons to suspect that the recount order was improperly motivated by politics, and the international community should be very careful to avoid becoming entangled in the political abuse of electoral administration in direct violation of Article 41 of the Vienna Convention on Diplomatic Relations.

14. It should be recalled that the SDA took control of the CEC illegally and has misused it for political purposes ever since. In March of 2020, the BiH House of Representatives, led by the SDA and Mr. Komšić's DF party, removed two of the seven members of the CEC and replaced them with their own preferred candidates, while also reappointing the two SDA members of the CEC. The two Serb members that were appointed are RS opposition political figures rather than election law experts. The moves violated the rules of procedure for election of CEC members, because the legally required public competition for members was never held.

15. The chairwoman of the commission for election and appointment of members of CEC, Borjana Kristo, warned that the illegitimate appointments would weaken the rule of law.¹⁰ The Croat National Council (HNS), an umbrella organization of major Croat parties and groups, rightly called the SDA's maneuvers unconstitutional and illegal, resulting in a "crude destruction of the functioning of a legal state in BiH." Even the president of another major Bosniak party, the SBB, said that the SDA "is already planning how to again compromise the electoral process and manipulate the will of the citizens."

16. The CEC's illegal constitution in 2020, as well as its politicized acts since, raise questions in the minds of voters about whether the CEC is administering elections fairly and whether its recount order in particular is politically motivated. It is irregular and unprecedented for the CEC to order a recount before even a preliminary tallying of votes. When the CEC officially announced the preliminary results of the 2022 elections on 22 October, it omitted the results from the RS Presidency election, even though the recount clearly confirmed the previously stated results. This created space for speculation and increased public doubt in the RS about the CEC's intentions. A rally held in the RS's largest city, Banja Luka, gathered more than 50.000 people demanding, among other things, that the voting results for the RS Presidency election be announced (as counted and recounted) and that the will of RS voters be respected. Any foreign support given to illegal activities of the CEC is reprehensible and encourages the corruption of the electoral process in BiH. It should also be noted that although the BiH Constitution authorizes BiH to enact an election law for the BiH House of Representatives and the BiH Presidency, it nowhere authorizes BiH to

¹⁰ Кришто: Незаконит избор чланова ЦИК-а не води владавини права, ВХРТ, 16 Jul. 2020.

regulate elections for Entity offices. The CEC has no legal authority to engage in the dangerous political games that it is playing, and the international community should strongly oppose such illegal machinations.

II. Adherence to the Dayton Accords is essential for BiH's success, given its history.

17. The Dayton Accords have been a cornerstone of regional peace for more than a quarter century. The Accords not only established a durable peace, but also created a formula for stability and democratic governance in a country with three deeply divided ethnic groups with strong, but differing, identities. Years of difficult diplomacy, backed by thorough analyses of available options for bringing peace to BiH, produced an agreement that no one of the groups favored, but all could live with. Attacks on the Accords from both inside and outside of BiH are ill-considered, short-sighted, and dangerous.

18. To understand the need for the unique constitutional system established by the Dayton Accords, one first needs to understand the complicated and tragic history of BiH, which has usually been, throughout its history, an administrative unit of some foreign imperial power. BiH's population is composed primarily of three ethnic groups – the largely Muslim Bosniaks, the largely Roman Catholic Croats, and the largely Orthodox Christian Serbs. Each of these groups has strong historical, cultural, and religious identities, and deep wounds from the history of conflicts in the area as the various empires in the region fought for control of the Balkans. There is a great deal of understandable interethnic distrust among the citizens of BiH, which is rooted in memories of murdered friends and relatives, destroyed homes, and dislocation of families during past fighting.

19. Although BiH's 1990s civil war was devastating to all of BiH's ethnic groups, that war's toll is dwarfed by earlier rounds of bloodshed. For example, during World War II, the pro-Nazi Croatian Ustaše regime, which governed the BiH region during the period, slaughtered – with the collaboration of some local Muslims – roughly 800,000 Serbs, along with tens of thousands of Jews and Roma. The memories of the Serbs of BiH of suffering at the hands of other ethnic groups are still fresh, and their fear of losing their rights and coming under the political domination of another group is not irrational and cannot simply be erased by some policy decisions by members of the international community.

20. The Dayton Accords dealt with the inter-ethnic distrust throughout BiH by establishing a decentralized constitutional system that leaves most governmental functions to the two autonomous polities, called the "Entities" in the treaty. The BiH Constitution, which was agreed as Annex 4 to the Dayton Accords, assigns a select few responsibilities, such as foreign policy and foreign trade policy, to BiH-level institutions, and provides, "All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities." The considerable autonomy of the Entities guaranteed under the Accords is designed, in part, to improve BiH's functionality by minimizing the number of contentious issues requiring decisions at the BiH level. As Richard Holbrooke, the chief US negotiator of Dayton, said in 2007, "Bosnia is a federal state. It has to be structured as a federal state. You cannot have a unitary government, because then the country would go back into fighting."¹¹

21. The BiH Constitution also incorporates protective mechanisms for each of BiH's formerly warring constituent peoples. For example, the Constitution provides for a

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)).

three-member Presidency composed of a Bosniak, a Croat, and a Serb. According to the Constitution, “The Presidency shall endeavor to adopt all decisions ... by consensus,” and a dissenting Presidency member may prevent a Presidency decision from taking effect under certain circumstances. Mechanisms such as these are designed to give each of the constituent peoples confidence that they will not come under the domination of one or more of the other peoples.

22. Over the years, through HR decrees and pressure from members of the international community, BiH has been centralized under Bosniak control in flagrant violation of the Constitution. There have been occasional international efforts to renegotiate the Dayton compromise and amend the BiH Constitution in such a way as to legitimize the unconstitutional centralization that had already taken place. These proposed amendments, such as the 2006 “April package” and the 2008 talks at the Butmir military base, failed because their visions of a more centralized BiH were wholly unsuited to BiH’s historical and political reality. The BiH Constitution has, thus, retained its decentralized character. Nevertheless, having failed to adopt legitimate amendments to the Constitution, the SDA and its supporters in the OHR have routinely disregarded the Constitution in the service of a centralizing agenda, as discussed in part IV, below.

A. Many successful democratic systems include regional autonomy and national rights.

23. Critics of Dayton’s special protections for regions and ethnic groups are ignorant of how common such protections are in successful democratic states throughout Europe and around the world. As explained in Attachment 2 to the RS’s 27th Report to the UN Security Council, many democratic states, especially states with more than one strongly held national or religious identity, have ensured peace and stability by incorporating regional autonomy and national rights into their constitutions. The success of these states, which include longtime EU members, shows that there is no contradiction between successful governance on one hand and regional autonomy and national rights on the other. Further, the success of EU members that have regional autonomy and national rights as part of their systems also shows that there is no reason EU directives cannot be implemented in BiH while preserving the Dayton formula.

B. The RS is committed to the Dayton Accords.

24. The RS is fully committed to the Dayton Accords, including BiH’s sovereignty, territorial integrity, and constitutional order. The RS has emphasized this consistently for many years in its regular reports to the UN Security Council. This commitment includes a determination to ensure that BiH’s Constitution, including the provisions guaranteeing the autonomy of the Entities and the rights of the constituent peoples, is faithfully upheld.

25. The RS insists that the constitutional structure established under the Dayton Accords, and the rule of law based upon that constitutional structure, be honored by parties both inside and outside of BiH. The RS will continue to demand the protection of its rights under the BiH Constitution through political and legal means, with the understanding that it is only by protecting the rights of the Entities and the constituent peoples that BiH can succeed and prosper.

26. The RS believes that good-faith dialogue within the Dayton framework is the key to BiH’s long-term success. It firmly believes that BiH can succeed if BiH’s domestic parties and the international community respect the Dayton Accords.

C. Members of the international community must stop attacking the Dayton Accords

27. For BiH to have any chance of succeeding and prospering, it is important for members of the international community to support the Dayton Accords, including the BiH Constitution, which is the main element that has made the treaty successful. Unfortunately, some members of the international community have shown disdain for the Dayton Accords. Their uninformed, reckless attitudes represent the triumph of naïve hope over experience, and they threaten the stability and future of the country.

28. For example, a resolution about BiH adopted by the German Bundestag on 7 July 2022 disturbingly indicates that Germany, one of the guarantors of Dayton, is turning against the treaty. The resolution calls for scrapping the BiH Constitution, evidently in favor a new, post-Dayton constitution that erases BiH's constituent peoples. But the BiH Constitution's protections for the constituent peoples have been one of the keys to BiH's enduring peace. A purely "civic" BiH would be one in which everyone in BiH would come under the domination of the most numerous people, the Bosniaks, led by the Islamist SDA political party. Such a BiH is unimaginable, and completely unacceptable, to Serbs and Croats. BiH's only future is as a country with highly autonomous Entities and protections for the three constituent peoples, as guaranteed by the Dayton Accords.

29. As US-based scholars David de Brujin and Marta Vrbetic wrote, the Bundestag resolution "is dangerously imbalanced and explicitly rejects core features of the Dayton Accords."¹² The resolution is also an inappropriate intervention in BiH's internal affairs. De Brujin and Vrbetnic wrote:

In various formulations, the Bundestag resolution bemoans the intervention of foreign countries in the affairs of BiH, but by explicitly rejecting the Dayton Accords, the resolution itself constitutes a foreign intervention. Both misguided and a threat to the stability of BiH, and in particular the Federation, this resolution should be left to gather dust, and the German government would do well to reiterate its support for the Dayton Accords and the peace that they have provided for the region.

30. The RS calls for the German government's prompt and unequivocal disavowal of the Bundestag resolution and a reaffirmation of Germany's support for the Dayton Accords, including the BiH Constitution. Unfortunately, and surprisingly, the German government has thus far been silent about the resolution, raising legitimate concerns about Germany's commitment to the Dayton Accords, its meddling in BiH affairs, and its future intentions toward BiH. In the wake of these troubling signals from Berlin, other members of the international community should make it absolutely clear that they do not agree with the Bundestag's call for abolition of the BiH Constitution, and they should urge Germany to recommit itself to supporting the Dayton Accords.

D. Bosniak leadership must finally accept the Dayton Accords.

31. As explained in the Attachment to this report, for BiH to remain a viable state, the Bosniak political leadership must finally stop rejecting the Dayton compromise and actively working to subvert it. The SDA's stated platform demands the complete abolition of the Dayton structure – including the Entities and the protections for constituent peoples – in favor of a unitary state that would be utterly dominated by a single constituent people, the Bosniaks.

¹² David de Brujin and Marta Vrbetić, *The German Bundestag Bungles the Dayton Accords*, The National Interest, 23 Jul. 2022.

32. The SDA has also been rejecting electoral reform required by the BiH Constitutional Court's *Ljubic* decision because it threatens the hegemony of the Bosniak political leadership. The SDA's intransigence with respect to implementing the Ljubic decision has caused a long-term political crisis in the Federation of BiH and also driven the Croat parties to call for a territorial reorganization of BiH to protect Croats' equality as a constituent people.

33. Leaders of Bosniak political parties have been continuing to defy the BiH Constitution's clear command that foreign policy is the responsibility of the BiH Presidency. In addition, Bosniak political parties have been spitefully blockading key economic development projects in the RS. For example, politicians like Ms. Turkovic have been trying to stop the Buk Bijela Hydro Power Plant, which will provide 93 MW of carbon-free and inexpensive electricity, and the new Trebinje Airport, which will promote economic development in the southern part of BiH.

34. Denial of a people's ability to freely pursue its economic development and use its natural wealth and resources violates Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the rights of which are incorporated in the BiH Constitution.¹³

35. Dayton's General Framework Agreement provides in its first article, "The Parties shall conduct their relations in accordance with the principles set forth in the United Nations Charter, as well as the Helsinki Final Act and other documents of the Organization for Security and Cooperation in Europe." The UN Charter,¹⁴ the Helsinki Final Act,¹⁵ the OSCE's Charter of Paris for a New Europe, the ICCPR, and the ICESCR all recognize a right of self-determination of peoples.

36. The Dayton Accords preserve the right of self-determination of Bosniaks, Serbs, and Croats by leaving BiH's Entities broad autonomy and establishing mechanisms to protect BiH's three constituent peoples. Blocking vital economic projects denies the right to self-determination of peoples guaranteed under Dayton. The more Bosniak politicians in Sarajevo deny Serbs and Croats this right, the more it causes the Serb and Croat citizenry to question whether self-determination can only come in some other way.

III. Despite BiH's turbulent politics, its security is not in danger.

A. False alarmism about BiH's security is a disingenuous political ploy.

37. There continues to be a concerted campaign to promote increased foreign intervention in BiH with alarmist warnings that BiH is on the precipice of war. Some members of the international commentariat have been purposefully exaggerating risks to BiH's stability in hopes of bringing about the end of BiH's Dayton Constitution. They dream of a "Dayton II" to replace the BiH agreed to at Dayton with a centralized "civic" state with no protections for the Serb or Croat communities. Those dreams are utterly unrealistic – and so, thankfully, is the prospect of BiH returning to war.

38. Unfortunately, major Bosniak politicians have contributed to alarmism about BiH's security by engaging in warmongering rhetoric. In August, Mr. Izetbegović made statements about a return to war in BiH. He said during a speech, referring to a potential war, "We [Bosniaks] counted ourselves. And how many hunters we have and how many young people there are and how many instructors we have on drones and

¹³ BiH Constitution, Art. II (4) (emphasis added).

¹⁴ Preamble and Article 55.

¹⁵ Helsinki Final Act, Art. VIII.

so on. I won't go any further, but just so you know."¹⁶ This statement continues a long pattern of threatening statements by Mr. Izetbegović. For example, in October 2021, he said, "We must be ready for [war]," adding, "If you want to live, you have to be ready to die, if you want peace, you have to be ready for war."¹⁷ In April 2021, Mr. Izetbegović said he could not say there would be no war in BiH and added, "I would rather die today than allow genocidal [his derogatory term for Serbs] to rule part of Bosnia and Herzegovina."¹⁸

39. BiH Presidency member Šefik Džaferović (also an SDA member) warned "there are BiH patriots who defended BiH even when BiH was in a much more difficult position."¹⁹ Other calls for war against the RS have been even more explicit. Admir Atović, BiH's Bosniak consul in Frankfurt, wrote on Twitter in October 2021: "One hundred thousand Bosnians with war experience currently live in Bosnia! Ammunition in Konjic and Gorazde! Howitzers in Travnik! RPGs in Hadžići! Etc. Trust yourself and your hooves! They know that this is not a joke and that Bosnian strength is not a small cat! Eph. Velic .. Allahu Akbar."²⁰

40. Despite this threatening rhetoric from Bosniak politicians, anyone who understands the situation in BiH knows that there is no risk to the peace that has prevailed in the more than 26 years since the Dayton Accords.

41. Notwithstanding the disturbing bellicose rhetoric from some Bosniaks, there is no basis for rhetoric suggesting that the conflict in Ukraine will somehow spread to BiH. By claiming that the fighting in Ukraine portends danger for BiH, the Bosniak parties and their international supporters are stoking alarm and fear for political gain. As EUFOR officials have consistently emphasized in the time since the war in Ukraine began, there is no threat peace in BiH. For example, in February 2022, EUFOR's spokesman said, "There is currently no threat to the safe and secure environment" in BiH,²¹ and EUFOR has not expressed any concerns about BiH's security in the months since. A July 2022 EUFOR statement said EUFOR's contributing nations are "committed to supporting the Government of BiH to contribute to the *ongoing stability* of this country."²² The RS appreciates the role of the EUFOR Althea mission in BiH under its UNSC-authorized mandate.

B. The RS has consistently ruled out any resort to violence.

42. Even with the threatening rhetoric from Bosniak leadership in Sarajevo, the RS and its leaders consistently and categorically reject any resort to violence and insist on resolving BiH's political disagreements solely through peaceful dialogue. The RS has emphasized that it is unalterably committed to peace and that it believes strongly that the way for BiH to overcome its current challenges is through intensified political dialogue among domestic parties, aimed at finding solutions in the interests of all constituent peoples and BiH citizens. Moreover, the RS is dedicated to the preservation of the BiH Constitution and its guarantee of autonomy to the entities and rights to the constituent people. As stated in prior reports to the Security Council, the RS has no plans for any form of secession.

¹⁶ *Numerous Reactions after Izetbegovic's Statement about "Counting,"* Sarajevo Times, 27 Jul. 2022.

¹⁷ Изетбеговић: Ако хоћете мир, морате бити спремни на рат, SRNA, 25 Oct. 2021.

¹⁸ *Bakir Izetbegović: Ako bude rata, spreman sam stati ispred ljudi*, N1, 20 Apr. 2021.

¹⁹ *Džaferovic: BiH will be defended, who is Dodik to endanger the defense sector*, N1, 18 Oct. 2021.

²⁰ *Admir Atović za "Avaz" o skandalu koji je izazvao: Nemojte, ljudi, po onome što hiljadu godina postoji*, Dnevni Avaz, 16 Oct. 2021.

²¹ Srecko Latal, *EU Doubles Bosnia Peacekeepers as Global Security 'Deteriorates'*, BIRN, 24 Feb. 2022.

²² *19 Nations United for Bosnia and Herzegovina*, EUFOR Althea (downloaded from EUFOR Althea website, 26 Oct. 2022) (emphasis added).

IV. The OHR's baleful effects on BiH are more apparent than ever.

A. The dictatorial powers asserted by the OHR are flagrantly illegal.

43. The position of the HR was authorized by the parties to Annex 10 of the Dayton Accords, including the RS, as a coordinator of international activities involved in the civilian aspects of the Dayton Accords and a facilitator of the parties' efforts. Annex 10 defines a strictly limited mandate for the HR that does not include the slightest suggestion of dictatorial authority to make decisions binding on governments and citizens of BiH. As international relations scholar and former OHR attorney Matthew Parish has written, the HR's "functions were limited to coordinating other international organisations' work and monitoring and exhorting domestic officials to comply with their Dayton obligations."²³

44. Despite this, since 1997 successive HRs have claimed, with no legal justification whatsoever, unlimited powers in BiH to rule and punish by decree, thus flagrantly exceeding the HR's Dayton mandate and casting aside the entire democratic system established by the BiH Constitution. Successive HRs have even declared that their decrees are immune from review by the BiH Constitutional Court.

45. The first HR to assert these dictatorial powers, Carlos Westendorp, later said, "It was not very legal, I have to admit." In a January 2021 article, former Swedish Prime Minister Carl Bildt, who served as the first HR, pointed out, "The legal basis for [the Bonn powers] was questionable in the extreme."²⁴

46. Former UK Ambassador to BiH Charles Crawford, who 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."²⁵

47. The HRs have claimed to be supported in their exercise of unbounded executive powers by the so-called Peace Implementation Council (PIC). The PIC itself, however, is merely an ad-hoc, self-appointed group of countries with no charter, no basis in any treaty, and no legal authority. The PIC "welcomed" the HR's assertion of executive powers, but it had no legal authority whatsoever to bestow sweeping new powers on the HR. Nor did the UN Security Council ever bestow additional powers on the HR beyond its mandate under the Dayton Accords.

B. Mr. Schmidt has been issuing decrees in flagrant violation of the Dayton Accords.

48. Since the RS's previous report to the Security Council in April, Mr. Schmidt has begun issuing decrees that he claims are binding on BiH's citizens and governments. After Mr. Schmidt decreed changes to BiH's electoral law in July, Transparency International in BiH rightly condemned the imposition as completely unacceptable and irreconcilable with democratic principles.²⁶

49. Mr. Schmidt's decrees are legal nullities for two reasons. First, as explained above, under the Dayton Accords, it is illegal for the HR (the position he claims to hold) to decree what is law. Second, even if the position of the HR had been endowed

²³ Matthew Parish, *A Free City in the Balkans* 86 (2010).

²⁴ Carl Bildt, *Bosnia to war, to Dayton, and to its slow peace*, *European Council on Foreign Relations*, 28 Jan. 2021.

²⁵ 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).

²⁶ *Transparency International BiH condemns High Rep's amendments to Election Law*, N1, 28 Jul. 2022.

with the authority issue binding decrees, Mr. Schmidt would not have such authority. As the RS has explained in its last two reports to the Security Council, Mr. Schmidt is not the High Representative. The Dayton Accords require that the appointment to the position of HR be approved by the Security Council. Because the only draft resolution approving Mr. Schmidt as HR was rejected in a July 2021 vote in the Security Council, Mr. Schmidt is not the HR.

C. Even the Bosniak parties reject Mr. Schmidt's claimed authority to decree laws.

50. As explained in the Attachment to this report, the Bosniak political parties' furious and defiant reaction to news that German diplomat Christian Schmidt was planning a decree to change BiH's election law in a way intended to protect Croat political rights guaranteed under the Dayton Accords exposes the lack of legitimacy of the OHR's claimed dictatorial powers, and the unprincipled hypocrisy of the Bosniak political parties and their international supporters. As the International Crisis Group explained in a report this past September, Bosniak leaders "fear that Schmidt's measure would weaken their hand and speak of preparing for renewed fighting if he follows through with it."²⁷ The Bosniak political parties' furious and defiant reaction to Mr. Schmidt's proposed decree highlights the fact that their support for the OHR's illegally claimed dictatorial powers has been unprincipled all along.

D. Support for closing the OHR continues to grow.

51. More and more thoughtful observers of BiH are concluding that the OHR must be abolished. For example, in Europe's largest news weekly, *Der Spiegel*, columnist Maximilian Popp wrote in August, after a furious outburst by Mr. Schmidt's at reporters in Goražde:

The choleric appearance once again raises the question of whether Schmidt is the right man for the job as a top diplomat. However, the problem goes further. In truth, the office of High Representative should be abolished. It's undemocratic, neocolonial. It is an impertinence for the people of Bosnia and Herzegovina.²⁸

52. The OHR, Popp wrote, is "now an anachronism," and many BiH citizens "perceive [Schmidt] as a dangerous interference in the affairs of the country."²⁹

53. In a September 2022 report, the International Crisis Group wrote that it "has long argued that [the OHR] should be closed, having outlived its utility, and stood against use of the Bonn powers while it endures."³⁰

54. This month, Radio Free Europe/Radio Liberty reported, "Critics have accused Schmidt . . . of dealing a major blow to Bosnian democracy by using his so-called 'Bonn powers' to sidestep local officials."³¹

55. Even former HRs have joined the calls to close the OHR. As Carl Bildt, who served as the first High Representative, wrote in January 2022, the OHR "has gone from being part of the solution to part of the problem."³²

²⁷ *Bosnia and Herzegovina's Hot Summer*, International Crisis Group Briefing No. 95, 26 Sep. 2022, p. 2.

²⁸ Maximilian Popp, *Wie ein Kolonialherr*, *Der Spiegel*, 18 Aug. 2022.

²⁹ *Id.*

³⁰ *Bosnia and Herzegovina's Hot Summer*, International Crisis Group Briefing No. 95, 26 Sep. 2022, p. 11.

³¹ *Schmidt Says Bosnian Election-Night Decrees Have Country 'On Right Track'*, Radio Free Europe/Radio Liberty, 6 Oct. 2022.

³² Carl Bildt, *Bosnia's Next Crisis*, Project Syndicate, 14 Jan. 2022.

E. The OHR must renounce its asserted dictatorial powers.

56. The OHR should have been closed long ago, and long ago it should have renounced its assertion that the HR has despotic authority to impose laws and punishments by decree. There are four principal reasons why the OHR should renounce such powers. First, as explained above, the use of the HR's asserted dictatorial powers is a flagrant violation of the law, including the BiH Constitution, Annex 10 of the Dayton Accords, and applicable human rights conventions.

57. Second, any use of the HR's claimed dictatorial powers is an outrageous neocolonial violation of BiH's sovereignty. It is an affront to the peoples of BiH, who are entitled to govern themselves under their own constitutional system.

58. Third, the HR's many interventions in BiH, especially those measures that upset the delicate balance of the Dayton Compromise, have been disastrous for BiH's functionality and political stability. The HR's unconstitutional centralization of competences at the BiH level – through the HR's own edicts and by meddling in cases before the BiH Constitutional Court – has made that level almost completely dysfunctional. Indeed, it was the HR's earlier measures changing elections that disenfranchised the Croats and plunged the Federation of BiH into a long-running political crisis.

59. Fourth, making the HR's exercise of dictatorial authority even worse is that the HR answers to literally no one on earth. Mr. Schmidt even boasts about his unfettered power, telling Radio Free Europe in October, "the decisions I make are my decisions . . . I can't wait for everything to be agreed upon."³³ The OHR's utter lack of unaccountability is highlighted by Mr. Schmidt's 2 October 2022 decrees changing BiH's election law and the Federation Constitution, which were imposed against the wishes of a majority of the members of the Peace Implementation Council (PIC) Steering Board. (Although the PIC Steering Board has no legal authority, it has long been held out as a source of accountability and control over the OHR.) Just two countries in the world expressed support for Mr. Schmidt's decrees.

60. Meanwhile, the EU issued a statement making clear its displeasure with Mr. Schmidt's decision. The EU wrote, "This was a decision of the High Representative alone. The executive powers of the High Representative (Bonn Powers) should be used solely as a measure of last resort against irreparable unlawful acts."³⁴ At this point, then, the HR is even acting contrary to the wishes of the international bodies from whom he claims to receive legitimacy for his exercise of his alleged executive powers.

61. It is long past time for the OHR to acknowledge that decreeing what is law in BiH is illegal, that such decrees violate BiH's sovereignty, that OHR decrees' effects have been disastrous, and that the totally unaccountable nature of the OHR's claimed dictatorial power is unconscionable.

V. The RS fully supports, and vigorously works toward, BiH's European integration.

62. The RS has always remained committed to BiH's EU integration, and it is doing everything possible to move it forward. The RS welcomes the European Commission's 12 October 2022 recommendation for the Council to grant the status

³³ High Rep: Decision to impose Election Law changes was my own, N1, 6 Oct. 2022.

³⁴ EU in BiH on the decision by the High Representative to amend the BiH Election Law and the Constitution of the Federation of BiH, EU Delegation to BiH, 2 Oct. 2022.

of a candidate for EU membership. The RS appreciates that the Commission has recognized that BiH belongs in the EU. Much work remains to be done, of course, but the RS expects the Commission's announcement to reenergize EU integration efforts at all levels.

63. The RS has already made significant progress toward meeting many of the objectives outlined by the EU in its reports on BiH. Consistent with its competences guaranteed in the Dayton Accords, the RS has been diligently harmonizing legislation with the EU *acquis* since 2007. Thus far literally thousands of RS regulations have undergone the procedure of harmonization and assessment of conformity with the EU *acquis*.

64. The RS also strongly supports BiH participation in the EU-supported Open Balkans initiative and other regional integration efforts, which can advance parallel to BiH's road to EU membership.

65. The RS remains committed to BiH's EU integration efforts for two reasons. The first is, of course, the goal of EU membership. The second is that many of the reforms required for BiH's EU integration are valuable on their own merits, even leaving EU integration aside. The RS believes that enacting reforms to meet EU standards will strengthen the RS and BiH as a whole.

66. The RS is confident that BiH can meet the requirements of EU membership while preserving the decentralized constitutional structure of BiH guaranteed by the Dayton Accords. EU members like Belgium, Germany, and Spain faithfully fulfill their EU membership obligations while maintaining a high degree of regional autonomy.

67. The importance of BiH's EU integration is one of the few issues on which BiH's three constituent peoples agree. In June, both houses of the BiH Parliamentary Assembly sent a request to the European Council for BiH to be awarded EU candidate status in a fast-track procedure. Despite BiH's consensus on the importance of EU integration, important obstacles are standing in BiH's EU path. The main barriers to progress on EU integration lie with institutions that are entirely out of the RS's control. The continued presence of an OHR that unlawfully claims dictatorial powers over BiH, along with the OHR's legacy of imposed laws, are major obstacles to BiH's EU integration.

68. The European Commission and its staff have repeatedly recognized that the continued operation of the OHR, especially its self-asserted powers to rule by decree, hinders BiH's progress toward EU integration. Regarding the OHR, the Commission 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."

69. The EU has also acknowledged that the foreign judges on the BiH Constitutional Court are inconsistent with EU integration. The Commission Opinion includes among its "key priorities" for BiH "addressing the issue of international judges" on the Constitutional Court. As long as BiH has a colonial overseer – the HR – and a Constitutional Court with three seats reserved for foreigners, it will remain a protectorate rather than a fully sovereign state eligible for EU membership, as EU officials have acknowledged.

70. The RS's commitment to EU integration has been demonstrated time and time again, and it will continue to demonstrate its determination in the future at all levels, working with the EU's constructive assistance, to help move BiH forward on the road toward EU membership.

Attachment

BiH's Bosniak Leadership Must Finally Accept the Dayton Accords

For BiH to succeed, the Bosniak political leadership must finally stop rejecting the Dayton compromise. Its persistent failure to accept Dayton has caused one political crisis after another in BiH.

Attempts to undo the Dayton compromise

BiH's largest Bosniak party, the SDA, has repeatedly called for, and is openly working toward, the complete destruction of the Dayton compromise. The SDA's stated platform demands the complete abolition of the Dayton structure – including the Entities and the protections for constituent peoples – in favor of a unitary state that would be utterly dominated by a single constituent people, the Bosniaks. The party's 14 September 2019 declaration calls for a "regionalized" state "called the Republic of Bosnia and Herzegovina, with three levels of government: state, regional and local." This, of course, is nothing less than a call for elimination of the RS and the Federation – which are both a crucial part of BiH's constitutional structure that prevents BiH's domination by a single ethnic group – as well as the Federation's cantons, which are essential for ensuring that Croats have a voice in governance.

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

SDA leader Bakir Izetbegović recently highlighted the SDA's hostility for the Dayton Accords when he reacted angrily to US envoy Gabriel Escobar's comment that the "civic" concept for BiH can be discussed only after the country joins the EU and that the Dayton Accords remains the framework until then. Mr. Izetbegović insulted Mr. Escobar with the astonishing assertion that Escobar's statements "have no basis" and are not in line with US policy.¹ Mr. Izetbegović went on to call the Dayton Accords "a straightjacket" that "hinders the main force in BiH," i.e., the Bosniaks.

The SDA has made clear that it aims to achieve the wartime objectives of the Army of the Republic of Bosnia and Herzegovina (the Bosniak army) as if the Dayton Accords had never been signed. For example, BiH Presidency member Šefik Džaferović, an SDA member, lamented in April 2022 that BiH "is still not what [the Bosniak army] fought for."²

The SDA has also been seizing control of all key levers of power at the BiH level in order to govern BiH unilaterally in violation of the Constitution's power-sharing provisions. Such steps destabilize BiH by causing groups that are guaranteed a measure of protection and autonomy under Dayton to feel threatened, and to react accordingly. *Never since the settlement agreed at Dayton have the Croat and Serb citizens of BiH felt so disenfranchised and so insecure in the protection of their constitutional rights, a sentiment that has precipitated a political crisis in BiH.*

¹ Izetbegovic: Escobar's statement on BiH reforms doesn't represent US policy, N1, 7 Apr. 2022.

² Melika Balihodžić, Džaferović: Ova država još uvijek nije ono za šta su se borili borci ARBiH, N1, 14 Apr. 2022.

The SDA rejected electoral reform because it threatens the hegemony of the Bosniak political leadership.

One of the means by which the SDA dominates BiH's more populous Entity, the Federation of BiH, has been through the method by which members of the Federation House of Peoples are chosen. This method has allowed Bosniak-dominated areas to choose most "Serb" members and at least one-third of the "Croat" members of the House of Peoples. In its 2016 decision in the *Ljubić* case, the BiH Constitutional Court held that this violates the Croats' rights as a constituent people.³ The court wrote: "[A]ccording to the general principles of democracy the right to democratic representation is realized through *legitimate political representation* which must be based on the democratic choice of those whose interests are represented."⁴ Nonetheless, the SDA has disregarded the Constitutional Court and the principles recited in the *Ljubić* decision in an effort to further disenfranchise Croats and consolidate the SDA's dominance.

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

With the help of US and EU mediators, the negotiations produced a proposed compromise in March of 2022 that would have conformed to European standards while resolving all of the issues at hand. The proposed compromise included an implementation of the *Ljubić* principles of legitimate representation, improvements in the integrity of the election process, and Croat concessions regarding the functionality of Federation institutions. Five of the six political parties represented at the talks supported the compromise.⁵ At the eleventh hour, however, the SDA demanded impossible new Croat concessions, thus intentionally torpedoing the agreement and deepening the Federation's crisis.⁶

Later in April, the SDA blockaded the work of the House of Peoples of the BiH Parliamentary Assembly because electoral reform was on the agenda. In May, Mr. Izetbegovic ruled out any talks on electoral reform before the October elections.⁷ Moreover, in June, Mr. Izetbegovic ruled out having one-on-one talks with the leader of the main Croat party "ever again."⁸

As Croatian Prime Minister Andrej Plenkovic observed in September, "Bosniak leaders have publicly admitted that they have no real intentions to reach an agreement with the Croat leaders in BiH regarding the electoral reform."⁹

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

³ BiH Constitutional Court, Case No. U-23/14.

⁴ *Id.* (emphasis added).

⁵ HDZ BiH leader: No conditions to hold elections in Bosnia, N1, 20 Mar. 2022.

⁶ *Id.*

⁷ Izetbegović: Electoral Reform to Be Discussed Only After October Election, HINA, 16 May 2022.

⁸ Izetbegovic dismisses possibility of one-on-one talks on election law with Covic, N1, 9 Jun. 2022.

⁹ Croatian PM at UNGA: High Rep in Bosnia must impose electoral reform, N1, 24 Sep. 2022.

Croats' reactions to the SDA's intransigence

The SDA's intransigence with respect to implementing the Ljubici decision has caused a long-term political crisis in the Federation of BiH. Croatia's leadership has strongly backed the BiH Croats' efforts to ensure the equality to which they are entitled under the Dayton Accords. For example, Croatian President Zoran Milanovic said in September, "There is no BiH without equal Croats, Bosniaks and Serbs."¹⁰ Croatian Foreign Minister Gordan Grlic-Radman said in May, "Croatia will continue to prevent any scenario . . . aimed at further disenfranchising and destabilizing Bosnian Croats. Croatia will not stand by passively."¹¹

The Vatican has also expressed strong support for the equality of BiH's constituent peoples. Holy See Secretary of State Pietro Parolin said that it is the Vatican's "mission and commitment" to always advocate for the recognition of the equality of BiH's three constituent peoples.¹²

The SDA's intransigence led BiH Croat and Croatian leaders to encourage Mr. Schmidt to decree an electoral reform ensuring Croats' legitimate representation while, at the same time, making clear they deplore the OHR's use of illegal despotic powers generally.

In June, Mr. Milanović expressed wonder why Mr. Schmidt does not "use his Bonn powers, which are undemocratic and despotic, but are nevertheless used" to change BiH's election law.¹³ Mr. Milanović also noted that Schmidt was in the position of High Representative illegally because he was never confirmed by the UN Security Council.¹⁴

In August, N1 reported: "[Mr. Covic] said he generally does not support the idea of [Mr. Schmidt] imposing solutions in the country, but that he does expect him to 'complete the process' of electoral reform. 'BiH itself should make decisions in its own institutions. However, if the High Representative has intervened in the BiH Election Law twice in recent times, then we expect that process to end in such a way and we do not want to interfere in that,' he stated."¹⁵

Also in August, Mr. Grlic-Radman said he expects Mr. Schmidt to correct the mistakes of past High Representatives who jeopardized the position of Croats and made it possible to outvote them in elections.¹⁶

The SDA's intransigence has also driven the Croat parties to call for a territorial reorganization of BiH to protect Croats' equality as a constituent people. In a May 2022 letter to US, EU and international officials, Dragan Covic, as the leader of the Croat National Assembly (HNS), the umbrella organization of Croat parties in BiH, wrote that the HNS will "initiate all legal procedures and political steps for a new institutional and territorial organization of Bosnia and Herzegovina on the principles of federalism and consociational democracy, which will ensure full constitutional equality of the Croat constituent people in BiH."¹⁷ In August, Mr. Covic said that the HNS will push for a territorial reorganization of BiH unless the electoral system in the country ensures "complete constitutional equality and legitimate representation."¹⁸

¹⁰ Milanovic at Jajce liberation anniversary: No BiH without equality for Croats, N1, 13 Sep. 2022.

¹¹ Croatia's FM slams Bosnia's election commission for calling election in October, N1, 4 May 2022.

¹² Parolin: Vatican strongly supports equality of Bosnia's constituent peoples, N1, 12 May 2022.

¹³ Milanović: Why Doesn't Schmidt Use His Powers and Change Bosnia Election Law?, HINA, 15 Jun. 2022.

¹⁴ *Id.*

¹⁵ Covic: BiH Croat parties expect High Rep to complete process of electoral reform, N1, 19 Aug. 2022.

¹⁶ Croatia FM expects High Rep to correct mistakes that harm Bosnian Croats, N1, 18 Aug. 2022.

¹⁷ Covic threatens territorial reorganization after BiH elections announced, N1, 4 May 2022.

¹⁸ Covic: BiH Croat parties expect High Rep to complete process of electoral reform, N1, 19 Aug. 2022.

Croat calls for a territorial reorganization of BiH are a natural reaction to Bosniak attempts to dominate Croats in violation of the Dayton Accords.

Bosniak parties' reactions to news of a planned decree by Christian Schmidt expose the illegitimacy of the OHR's claimed dictatorial powers.

The furious and defiant reaction by BiH's Bosniak political parties to news that German diplomat Christian Schmidt was planning a decree to change BiH's election law in a way intended to protect Croat political rights guaranteed under the Dayton Accords exposes the lack of legitimacy of the OHR's claimed dictatorial powers, and the unprincipled hypocrisy of the Bosniak political parties and their international supporters.

As the International Crisis Group explained in a report this past September, Mr. Schmidt's then-proposed package of election law changes was "a slightly updated version of one that Bosniak and Croat leaders came close to agreeing on during the US- and EU-mediated talks that broke off in March."¹⁹ As described by the Financial Times, "Schmidt wanted to compel the Bosniaks to stop misusing the complexity of the election system by sending Bosniak candidates to fill seats that are part of the Croat quota. He also wants guarantees that Croats would not obstruct government as they have done in response."²⁰ The proposed measures, the Crisis Group wrote, "are carefully balanced, giving each side some of what it wants."²¹ However, "Bosniak leaders, for their part, fear that Schmidt's measure would weaken their hand and speak of preparing for renewed fighting if he follows through with it."²²

At the direction of Sarajevo's Bosniak political parties, thousands of activists surrounded OHR's offices in response to news of the proposed decree, some refusing to leave unless the proposed decree was abandoned. Leaders of Bosniak parties made clear that they would reject the proposed decree and fight it vigorously by any means necessary.

Legally, the OHR, of course has no authority from the Dayton Accords or any other source of law to decree laws in defiance of BiH's democratic constitutional procedures. The Bosniak political parties, however, had always been highly supportive of the OHR's claimed dictatorial powers, because the OHR had always acted according to those parties' political agenda. The Bosniak political parties' furious and defiant reaction to Mr. Schmidt's proposed decree highlights the fact that their support for the OHR's claimed dictatorial powers has been unprincipled all along.

Examples of political Sarajevo's reactions include:

- In response to the proposed decree, Mr. Izetbegović spoke of the "possibility of armed resistance."²³ He said, "There will be strong resistance to this"²⁴ and warned that such a decree would result in a "political minefield" and "could jeopardize [Mr. Schmidt's] authority."²⁵ Mr. Izetbegovic recounted, "I spoke to him today and repeated the same warnings and my request."²⁶ Mr. Izetbegović said that the High Representative must by no means impose solutions that "we failed to reach through

¹⁹ *Bosnia and Herzegovina's Hot Summer*, International Crisis Group Briefing No. 95, 26 Sep. 2022, p. 9.

²⁰ Marton Dunai, *UN envoy vows to break Bosnia's political deadlock as election looms*, Financial Times, 30 Sep. 2022.

²¹ *Bosnia and Herzegovina's Hot Summer*, International Crisis Group Briefing No. 95, 26 Sep. 2022, p. 9.

²² *Bosnia and Herzegovina's Hot Summer*, International Crisis Group Briefing No. 95, 26 Sep. 2022, p. 2.

²³ Zoran Arbutina, *Bosnien-Wahlen: Keine Besserung in Sicht*, Deutsche Welle, 1 Oct. 2022.

²⁴ *Izetbegovic: High Rep's plan to change election law will be met with resistance*, N1, 22 July 2022.

²⁵ *Izetbegovic: OHR wouldn't impose electoral reform without Parliament's approval*, N1, 25 July 2022.

²⁶ *Id.*

a series of negotiations that stretched throughout the last year, especially changes in the very sensitive sphere of inter-ethnic and party balances and the balance of party influence among the ethnocentric and civic parties.”²⁷

- Mr. Komšić threatened, “I am sure that the citizens of Bosnia and Herzegovina are not ready to accept anti-European solutions that deepen ethnic divisions in the Election Law.”²⁸ He added that such a decision “cannot go without consequences.”²⁹ Mr. Komšić said the reason for the draft decree was “deeply seated anti-Islamic sentiment” and blasted “the shy fascism that is trying to impose itself on us through the institution of OHR.”³⁰
- Presidency member Šefik Džaferović suggested that there would be defiance against the provisions of the proposed decree, saying, “The House of Peoples is a legislative house and no one can be denied the opportunity to be elected to it just because they belong to a minority in the ethnic sense, which in the canton in which they live does not exceed 3 per cent.”³¹
- Mr. Bećirović, then the SDP’s candidate for the BiH Presidency, held a press conference at which he called for the prevention of implementation of Mr. Schmidt’s proposed decree.³²
- SDP President Nermin Nikšić said regarding the proposed decree, “We will not allow it and will do so by all means.”³³ He promised to defend the party’s principles “on the street.”³⁴
- On Facebook, former BiH Foreign Minister Zlatko Lagumdžija, a high SDP official, blasted “Schmidt’s (ill-conceived) papacy” and called for BiH citizens to “stop Schmidt” “if necessary, on the streets with civil disobedience”³⁵
- Zlatan Begić a member of the BiH Parliamentary Assembly representing the Democratic Front, said regarding the proposed decree, “you should know that we will continue to fight, both before the courts, and in the institutions, and on the street, and – if necessary, around and in the OHR building. Please do not underestimate the wrath of the humiliated.”
- Former Federation of BiH Energy Minister Reuf Bajrović, who is seen as an unofficial SDA spokesman, threatened on Twitter: “Since likelihood of violence in Bosnia has gone through the roof due to @OHR_BiH attempt to impose apartheid on the Muslim-majority in the country, it’d be prudent to keep in mind that the population is among the best armed in the world.”
- Jasmin Mujanović, a prominent Bosniak commentator, tried to smear Mr. Schmidt as a Nazi, tweeting, “A man who tried to rehabilitate Nazi war criminals wants to unilaterally impose a segregationist elxn law – mid-elxn campaign!”
- Mr. Bajrović, similarly, tweeted, “If [Schmidt’s] parents/grandparents did serve the Nazis, it’s pretty ironic that he is coming 80 yrs later to impose apartheid on my Partisan grandpa’s offspring. Nazi offspring making Partisan offspring into Untermensch?”

²⁷ *Id.*

²⁸ *BiH Presidency member criticises High Rep over election law changes speculations*, N1, 19 July 2022.

²⁹ *Id.*

³⁰ *Komsic: Intl community’s motives anti-Islamic, Bosniaks are new European Jews*, N1, 23 July 2022.

³¹ *Bosnia’s Bosniaks Claim Election Law Changes Will Help Croats*, BIRN, 21 July 2022.

³² *Reactions to OHR’s plans to amend BiH Election Law are not subsiding*, N1, 21 July 2022.

³³ *Nikšić: SDP-u neprihvatljiv OHR-ov prijedlog Izbornog zakona, ako treba borit ćemo se i na ulici*, Klix.ba, 20 July 2022.

³⁴ *Id.*

³⁵ *Lagumdžija on ‘Schmidt Plan’: It would be last nail in division of country into three parts*, ONASA.ba, 21 July 2022.

After Mr. Schmidt imposed a decree amending the BiH election law on 2 October 2022, Mr. Džaferović challenged the decree in the BiH Constitutional Court, arguing that the decree violated the BiH Constitution's principles of democracy and rule of law. In reality, of course, all OHR decrees have violated those principles.

Despite this, in the past, the Bosniak political parties had always encouraged the OHR to use its illegal so-called "Bonn Powers" to rule BiH as a dictator, trusting that OHR decrees would always carry out the Bosniak parties' agenda of centralizing BiH under Bosniak control and degrading the Croat and Serb political communities' rights under the Dayton Accords. It is now more obvious than ever that the Bosniak parties' longtime support for the OHR's rule by decree was never based on any legal grounds, but rather was hypocritical and unprincipled, conditional as it was on those decrees aligning with the Bosniak political agenda.

The RS has taken a principled position rejecting all the OHR's illegal decrees, regardless of whether the RS leadership agrees with their substance. It is now clear that the Bosniak parties accept the OHR's authority to rule by decree only when the OHR's plans align with their agenda but reject such authority when those parties consider that the OHR's plans might limit Bosniak power over all other political and ethnic groups.

In any event, it is now undeniable that none of the ethnic groups or political parties in BiH accept, as a matter of principle, the OHR's illegal claim to authority to impose his will as law. It is finally time for the international community to likewise abandon the sham.
