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Настоящим препровождается двадцать девятый доклад Республики Сербской о последних политических событиях в Боснии и Герцеговине (см. приложение¹).

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Republika Srpska's 29th Report to the UN Security Council

April 2023

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Table of Contents

I. For BiH to succeed, all parties must respect and adhere to the Dayton Accords.	5
A. The RS is committed to BiH's territorial integrity and constitutional order.	5
B. BiH must be governed as set out in the Dayton Accords, including the BiH Constitution. 5	5
C. Governance and administration at the Entity level is not destabilizing, but the contrary, as recognized by the drafters of the Dayton Accords.	6
D. No one has legal authority to enact BiH laws by edict.	7
II. Post-election political progress in BiH.	9
A. Quick formation of BiH-level governing coalition.	9
B. The RS's new coalition government.	12
C. SDA efforts to sabotage BiH-level functionality and inter-ethnic cooperation.	12
III. EU and regional integration.	13
A. EU candidate status.	13
B. RS commitment to BiH's EU integration.	14
C. The agreed coordination mechanism must be applied consistently.	14
D. With BiH having attained EU candidate status, the country should be respected as fully sovereign.	15
1. For BiH to be sovereign, the OHR must close.	15
2. For BiH to be sovereign, the BiH Constitutional Court must be composed of BiH citizens.	16
E. The EU's blocking of funding for projects in the RS is counterproductive.	16
F. Regional integration.	17
IV. BiH is safe and secure.	17
A. The war in Ukraine has nothing to do with BiH.	17
B. Acts and statements motivated by religious and ethnic hatred should be condemned by all. 18	18
1. Recent statements and acts of ethnic and religious intolerance.	18
2. RS commitment to religious and ethnic reconciliation.	20
V. BiH needs less foreign intervention, not more.	20

- A. The most destabilizing influence in BiH is meddling from foreigners who seem not to have read the Dayton Accords.20
- B. International meddling has stunted BiH's political maturation and prevented resolution of sensitive political issues such as the matter of state property.....21
- C. The OHR is a major source of BiH's problems and must be closed.23
- D. Foreign actors should stop interfering in BiH's elections and politics.26
 - 1. Statements by foreign interests alleging, without evidence, that the election results were fraudulent were reckless.....26
 - 2. Tens of millions of dollars spent trying to influence politics26
- E. International law obligates diplomats to refrain from interfering in their host state's internal affairs.27
- F. BiH's foreign-dominated Constitutional Court is suffering from a well-deserved crisis of legitimacy.28
 - 1. The Constitutional Court's control by foreign judges undermines the court's legitimacy.....28
 - 2. The lawlessness of the BiH Constitutional Court's contorted decisions has further eroded the court's legitimacy.30

Republika Srpska's 29th Report to the UN Security Council

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 29th Report to the UN Security Council, which the RS government approved on April 27, 2023.

Part I: For BiH to succeed, all parties must respect and adhere to the Dayton Accords.

Part I of the report emphasizes the necessity of all relevant actors respecting and adhering to the Dayton Accords. The RS once again reaffirms its commitment to the Accords, including BiH's territorial integrity and constitutional order.

Part I also explains why the decentralized structure set out in the BiH Constitution (Annex 4 of the Dayton Accords) is essential for maintaining stability and progress in a country with deeply rooted interethnic distrust. The RS's insistence on the faithful implementation of BiH's decentralized constitutional order is, thus, a stabilizing step. RS administration of its own constitutional competences also makes sense, given that the RS has the most effective government in BiH.

Part I, lastly, explains that there is no place in the BiH democratic constitutional order for a foreign official who claims that his word is law. Even if German politician Christian Schmidt had been duly appointed High Representative (he was not), neither the Dayton Accords nor any other source of law give the High Representative authority to make any binding decisions at all, let alone act as a foreign dictator.

Part II: Post-election political progress in BiH

Part II of the report focuses on the significant political progress BiH has made since the October 2022 elections. After the elections, a BiH-level political agreement of Bosniak, Serb, and Croat parties was reached in record time. Signatories to the agreement vowed to tackle the tasks necessary for becoming an EU member while also respecting BiH's constitutional structure. During the early months, this cooperation was generally productive, and BiH approved the annual budget for BiH-level institutions in March.

The RS, as usual, formed a new coalition government quickly after the elections. It has promised close cooperation with the government of BiH's other Entity, the Federation of BiH, as soon the new Federation government is formed.

Part III: EU and regional integration

Part III of the report examines BiH's integration into the European Union (EU) as well as regional integration efforts. The European Council's December 2022 decision granting BiH EU candidate status is an important milestone, and the RS hopes and expects it will reenergize EU integration efforts at both the BiH level and in the Entities. The RS remains committed to implementing the reforms necessary for BiH's EU membership while, at the same time, respecting each administrative level's constitutional jurisdiction. For BiH to make progress toward EU membership, it is essential that the coordination mechanism agreed to by BiH's political leadership in 2016 be followed consistently.

Part III also emphasizes that with BiH now having attained EU candidate status, the country should be respected as a fully sovereign state. The continued presence in BiH of the Office of the High Representative (OHR)—a foreign power that claims and exercises unrestricted, despotic authority over BiH citizens—is manifestly incompatible with BiH's sovereignty and, as the EU has recognized, BiH's EU integration. Another restraint on BiH's sovereignty and impediment to EU integration is the continued role of foreigners on BiH's Constitutional Court, a transitional measure that was supposed to end five years after the Dayton Accords. The EU has also acknowledged that having foreign members on the Constitutional Court is inconsistent with EU integration.

Part III, moreover, explains why the EU's financial sanctions against the RS undermine BiH's EU integration. The EU is withholding of hundreds of millions of euros in funding from the RS. Although the RS is committed to BiH's EU integration, such punitive measures weaken enthusiasm for the EU by the RS and its citizens.

Finally, Part III reaffirms the RS's support for regional integration efforts such as the Open Balkans initiative and the Berlin Process.

Part IV: BiH is safe and secure.

In Part IV, the report emphasizes that BiH's peace is secure, despite the statements of some scaremongers calling for more foreign interference in the country.

As the EU's EUFOR-Althea mission has consistently reported, there is no threat to the peace that has prevailed in BiH for more than 27 years. Moreover, allegations that the RS is serving the foreign policy of any foreign state are simply absurd. The RS has always acted only in the best interests of its citizens, and its positions with respect to Entity rights guaranteed by the Dayton Accords have remained completely consistent over many years. Regarding the war in Ukraine, the RS is not taking sides, though it has stated that Ukraine's territorial integrity must be respected and war crimes committed by persons on any side should be prosecuted.

Although recent statements and acts of ethnic and religious intolerance in the Western Balkans are deplorable and show that ethnic tensions remain, reactions by political leaders show that the political leadership in BiH is committed to peace. The RS continues to protect religious liberty and promote inter-ethnic reconciliation in the Entity.

Part V: BiH needs less foreign intervention, not more.

Part V of the report explains that foreign interference in BiH, though often well meaning, undermines BiH's development and stability. Many foreign diplomats, lacking understanding of BiH's history, cultures, and constitutional order, undertake their tour of duty in BiH seeking to micromanage the affairs of the country when what BiH really needs is for its peoples to work out their issues by themselves.

Foreign interference—especially by the OHR—stunts BiH's political maturation, preventing development of the spirit of compromise that is essential to progress, especially in a multinational country like BiH. A prominent example of the baleful effects of the OHR is the controversy over state property, which arose because of OHR meddling and which would have been settled by domestic parties a decade ago if not for additional OHR interference.

As Part V further explains, even former High Representatives have concluded that the OHR has become a key source of, rather than a solution to, BiH's problems. Former High Representative Carl Bildt recently reiterated that the OHR has long been "part of the problem" in BiH, and former High Representative Wolfgang Petritsch emphasized in a March 2023 interview that continued use of the OHR's claimed dictatorial powers is "a blueprint for disaster." As the *Frankfurter Allgemeine Zeitung's* Michael Martens recently wrote regarding BiH:

there are no political prisoners there, no one is tortured in the country's prisons, it is safe to criticize all parties in the country, there is a diverse media landscape and regular democratic elections . . . repeatedly lead to peaceful changes of government and new coalitions. By what right is there in such a country an untouchable governor with full powers, as if in British India he had to bear Rudyard Kipling's white man's burden?

Another topic explored in Part V is foreign interference in BiH's elections and politics. Statements by certain foreign diplomats suggesting, without evidence, that BiH's 2022 elections were fraudulently decided were deeply irresponsible and potentially destabilizing. Moreover, the tens of millions of foreign dollars being spent to affect politics and public opinion in BiH are counterproductive.

Part V also examines how diplomats from some countries have been brazenly violating their obligation of non-interference in the host country's internal affairs as required under the

Vienna Convention of Diplomatic Relations. Their total disregard for their obligations under international law demonstrates a cynical rejection of the rule of law, and their hypocrisy naturally introduces an element of distrust in diplomatic relations.

Lastly, Part V examines the reasons for the foreign-dominated BiH Constitutional Court's well-deserved crisis of legitimacy. The court's legitimacy suffers from the fact that it is controlled by its three foreign members, appointed under what was supposed to be a post-war transitional measure lasting just five years. The court's legitimacy is further undermined by the court majority's failure to uphold the BiH Constitution and its tendency to decide cases based on politics rather than law, often with inappropriate outside influence.

The RS remains firmly committed to the Dayton Accords, including the BiH Constitution, and is confident that BiH can succeed if the Accords are faithfully implemented.

I. For BiH to succeed, all parties must respect and adhere to the Dayton Accords.

1. The overarching principle guiding RS policy is strict adherence to the 1995 Dayton Accords, the treaty that ended BiH's 1992-1995 war, and an insistence that other actors inside and outside BiH adhere to the Accords as well. The RS is convinced that BiH can only succeed if the Dayton Accords are fully respected and adhered to as written. There is simply no viable alternative for BiH.

A. The RS is committed to BiH's territorial integrity and constitutional order.

2. The RS's commitment to the Dayton Accords includes a commitment to BiH's sovereignty, territorial integrity, and constitutional order. The RS does not plan to secede from BiH, and it has not taken any steps in that direction. The RS seeks only to protect its own governmental competences that are guaranteed in BiH's Constitution.

3. The RS's adherence to the Dayton Accords also includes an unshakable commitment to peace. The RS and its leadership have consistently ruled out any use of violence, even as some leaders of BiH's Bosniak community have engaged in bellicose rhetoric. As the Serb member and Chairperson of the BiH Presidency, Zeljka Cvijanovic, recently said, "Challenges in BiH are exclusively political, not security-related in nature, and they should be resolved through dialogue, as in all democratic countries."

B. BiH must be governed as set out in the Dayton Accords, including the BiH Constitution.

4. The 1995 Dayton Accords not only established a durable peace in BiH, but also, through the BiH Constitution, created a formula for stability and democratic governance in a country with three deeply divided ethnic groups (the predominantly Muslim Bosniaks, the predominantly Orthodox Christian Serbs, and the predominantly Roman Catholic Croats) and burdened by centuries of conflict most often driven by imperial powers fighting for control of the Balkans.

5. The Dayton Accords dealt with BiH's deeply rooted interethnic distrust by establishing both a decentralized constitutional system that leaves most governmental functions to the two Entities and constitutional mechanisms designed to give each of BiH's three constituent peoples reassurance that they will not be dominated by one or more of the other groups.

6. It is crucial that the decentralized BiH constitutional structure established under the Dayton Accords be honored by actors both inside and outside of BiH. There is simply no alternative to the Dayton formula for ensuring BiH's future stability and progress, and those who would recklessly suggest that the checks and balances established by the Dayton Accords should be jettisoned or revised offer no workable alternative.

7. The RS and its leadership will continue working to protect the RS's rights guaranteed under the BiH Constitution through political and legal means, understanding that that BiH can only succeed and prosper if the rights of the Entities and constituent peoples are respected.

C. Governance and administration at the Entity level is not destabilizing, but the contrary, as recognized by the drafters of the Dayton Accords.

8. Some opponents of the RS have claimed that the RS's insistence on the faithful implementation of the BiH Constitution threatens BiH's stability. This claim turns reality on its head. The BiH Constitution as agreed at Dayton has preserved peace and stability for more than 27 years—without a single major instance of ethnic violence—because it was tailored to BiH's political and historical reality, which is characterized by three peoples whose members fear domination by one or more of the others. There is nothing more stabilizing for BiH than insisting on the faithful implementation of its Constitution.

9. The RS has never proposed to exercise any competences that are not entrusted to it under the BiH Constitution. Nor is it proposing to exercise any competences that it did not perform without controversy in the years after the Dayton Accords were signed. Moreover, the RS has repeatedly made clear that it remains committed to BiH's sovereignty, territorial integrity, and constitutional order and has no plan whatsoever to secede, either de facto or de jure. Far from challenging BiH's constitutional order, the RS's efforts to resume exercising certain of its own constitutional competences are an effort to restore that order.

10. It is widely recognized that the RS government in Banja Luka is the most effective level of government in BiH—far more effective than either the BiH level of administration or the government of BiH's other Entity, the Federation of BiH ("Federation"). The RS has enacted far-reaching reforms to improve its business environment and otherwise promote economic development, and those reforms are showing results. Average wages in the RS, which for many years were lower than those in the more urbanized Federation, are now higher than those in the Federation. In February 2023, *FDI Intelligence*, published by the *Financial Times*, ranked the RS in the top ten "small European regions of the future" for foreign direct investment (FDI) strategy.¹ The publication also ranked the RS city of Laktaši as the best micro city in Europe for cost effectiveness and the RS city of Trebinje in the top ten micro European cities for FDI strategy.² The RS is also far ahead of the Federation with respect to harmonizing its laws and regulations with the EU's *acquis*.

¹ *European Cities and Regions of the Future 2023 – The winners*, FDI Intelligence, 16 Feb. 2023.

² *Id.*

11. Moreover, after elections, the RS is quick to form a new coalition government and begin working to solve problems. By contrast, the BiH Council of Ministers often takes many months—sometimes even a year or more—to form. The Federation, meanwhile, has not succeeded in forming a new government in eight years, meaning the victors of the 2014 elections remain in office in caretaker roles. The fact that the RS is the most effective level of government in BiH helps explain why it wants to exercise its own constitutional competences rather than relying on a dysfunctional BiH level for those services.

12. In a recent interview, German politician Mr. Christian Schmidt, who claims to have been appointed the High Representative (HR) in 2021, suggested that he supports a division of competences between the BiH level and the Entities, saying:

I know that the Dayton Constitution is very complicated, that it is an American-style separation of powers. If we could see that we need some simpler solutions in order to ensure functionality, if we could say ‘we do this, you do that, and we do the third one together’, I would be ready to support it. That way, for example, it would be possible to agree on finances.”³

13. Unfortunately, Mr. Schmidt, like some other uninformed observers, ignores the fact that this division of competences already took place when the Dayton Accords were carefully negotiated. The BiH Constitution provides, “All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.”⁴ Thus, the question of whether a competence belongs to the BiH level or the Entities is a rather simple one: Does the Constitution expressly assign the competence at issue to BiH institutions? Confusion and controversy have only arisen about the dividing line between BiH-level and Entity competences because the BiH Constitutional Court has refused to enforce the Constitution’s clear terms, and the HR, in any event, has declared that its decrees are not reviewable and are therefore the supreme law of the land.

D. No one has legal authority to enact BiH laws by edict.

14. Last year, Mr. Schmidt began issuing ill-considered edicts, claiming that they are immediately binding on BiH’s citizens and governments. For two reasons, these edicts are no more binding law than any other statement by a foreign politician. First, Mr. Schmidt is not the High Representative. The Dayton Accords require that the appointment to the an HR be approved by

³ *NIN: Interview with High Representative Christian Schmidt*, OHR, 9 Feb. 2023.

⁴ BiH Constitution, art. V(5)(a).

the UN 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. Second, as explained below, under the Dayton Accords, it is illegal for the HR (the position Mr. Schmidt claims to hold) to decree what is law.

15. The BiH Constitution, which was heavily and carefully negotiated as an integral part of the Dayton Accords, established a democratic constitutional order for BiH that does not, in any way, empower a foreign High Representative. The Dayton Accords did create the position of HR, but its mandate is strictly limited and does not include any authority at all to make decisions that are binding on anyone. 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."⁵

16. In a breathtaking power grab by foreign interests, however, HRs since 1997 have lawlessly asserted unlimited powers in BiH, the so-called "Bonn powers," to rule and punish by decree. Disregarding the strict limits of the HR's Dayton mandate and illegally seizing the powers of the democratic institutions established by the BiH Constitution, HRs have issued hundreds of such edicts enacting laws and punishing individuals. Successive HRs have even declared their edicts immune from review by any court. In so doing, they have made a mockery of the rule of law and thereby severely weakened civil society in BiH.

17. As former Swedish Prime Minister Carl Bildt, who served as the first HR, has said, "The legal basis for [the HR's alleged Bonn powers] was questionable in the extreme."⁶ A number of his successors as HR have likewise admitted as much, once they were no longer part of the illegal charade that the Office of High Representative had become. Indeed, the first HR to assert these dictatorial powers, Carlos Westendorp, later said, "It was not very legal, I have to admit."

18. 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."⁷

⁵ Matthew Parish, *A Free City in the Balkans* 86 (2010).

⁶ Carl Bildt, *Bosnia to war, to Dayton, and to its slow peace*, European Council on Foreign Relations, 28 Jan. 2021.

⁷ 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).

19. As a fig leaf to hide their illegal power grab, HRs have attempted to base their exercise of the Bonn powers on a grant of authority by the so-called Peace Implementation Council (PIC). As the European Court of Human Rights has explicitly recognized, however, the PIC is merely an “informal group of states.”⁸ It is an ad-hoc, self-appointed group of countries with no charter, no basis in any treaty, no legal authority, and, in fact, no legal existence of any kind. The PIC “welcomed” the HR’s assertion of executive powers in 1997, but, having no legitimate source of authority itself, 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 the HR’s strictly limited Dayton mandate.

20. Consequently, those who have likened the office of the HR to a colonial viceroy severely understate the case; a viceroy is at least answerable to the imperial power responsible for imposing the position. Mr. Schmidt is answerable to no one. In this respect, he claims the power of an absolute dictator, recognizing no limits whatsoever on his authority to rule over the citizens of BiH. When even former HRs have acknowledged that HRs’ attempts to impose their individual will on the citizens of BiH are illegal, it is shocking that an international community claiming to uphold the rule of law continues to support the Office of the High Representative (OHR). The claim of authority by successive HRs in BiH is patently contrary to everything that the United Nations claims to stand for, and it must be considered a source of shame for any country that continues to support the activities of the OHR.

21. Moreover, as further explained below, even if the HR’s imposition of edicts was not illegal, such actions are counter-productive and destabilizing. Instead of facilitating coordination and cooperation within BiH, the OHR stifles it.

II. Post-election political progress in BiH

A. Quick formation of BiH-level governing coalition

22. Last fall, BiH once again successfully held free and fair elections, selecting leadership at the BiH level, as well as in the Entities and Cantons. With unusual speed, parties representing each of BiH’s three constituent peoples on 15 December reached an agreement on formation of a BiH-level coalition.

23. The signatories to the agreement vowed to undertake all legislative and other activities necessary for meeting the conditions for BiH to become an EU member, while “respecting at the same time the constitutional structure and authorities of B&H, the entities and the constituent

⁸ *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%3A%22001-83109%22%7D>.

peoples and the constitutional mechanisms of decision-making and their protection.”⁹ The signatories, moreover, agreed to, within six months of government formation at all levels, adopt limited changes to the BiH Constitution and amendments to the BiH Electoral Law in accordance with the decisions of the BiH Constitutional Court and the European Court of Human Rights. In addition, the parties that signed the coalition agreement agreed to carry out a reform of BiH’s security-intelligence system to professionalize and depoliticize it. The parties also committed themselves to seeking compromises on disputed political questions.

24. After the coalition agreement was signed, Croatian Prime Minister Andrej Plenkovic said the agreement “shows that the situation after this election is substantially different than four years ago. Such functionality and reform ambitions will enable Bosnia and Herzegovina to make faster progress towards the European Union.”¹⁰

25. On January 26, 2023, the BiH Parliamentary Assembly’s House of Representatives officially appointed a new BiH Council of Ministers led by Borjana Krišto, the first woman to serve in that role. The appointment of the new Council of Ministers was completed in record time. Council of Ministers Chairman Krišto said the new Council of Ministers is firmly determined to accelerate BiH’s reform path.¹¹

26. There is good reason for optimism that the new Council of Ministers will be productive if the coalition members keep focusing on projects and reforms to improve the lives of people throughout BiH rather than dwelling on divisive issues that have slowed down progress in the past.

27. The new member of the Presidency elected by the voters of the RS, Presidency Chairman Željka Cvijanović, emphasized that she would go to Sarajevo “with outstretched arms.”¹² Presidency Chairman Cvijanović said on the day she was sworn in, “I want us to work in accordance with our constitutional competencies for the welfare of the people of both entities and all citizens of Bosnia and Herzegovina, and not to anyone’s detriment.” She emphasized the need for dialogue on all open issues and seeking solutions together.¹³

⁹ *Ovo je sporazum koji su potpisali SNSD, HDZ i Osmorka*, Dnevni Avaz, 15 Dec. 2022.

¹⁰ *Croatia’s PM welcomes decision to grant Bosnia EU candidate status*, N1/HINA, 16 Dec. 2022.

¹¹ *Krišto: New convocation of Council of Ministers Will Accelerate BiH’s Reform Path*, SRNA, 25 Jan. 2023.

¹² *Cvijanović: I will represent Srpska’s position in BiH Presidency*, SRNA, 15 Nov. 2022.

¹³ *Becirovic, Cvijanovic, Komsic sworn in as new Bosnia Presidency members*, N1, 16 Nov. 2022.

28. After a meeting in February with US senators, Presidency Chairman Cvijanović said that the preservation of peace and stability is a joint priority of all nations in BiH and that there is a desire for economic progress and cooperation.¹⁴

29. At another meeting in February, RS President Milorad Dodik and BiH Foreign Minister Elmedin Konaković said that they would work to unblock economic development projects that are currently in a stalemate, for the benefit of everyone in BiH.¹⁵ Dodik added, “Later on, we will try to reach a harmonised stance on the role of the international community in Bosnia and Herzegovina.”¹⁶

30. EU Enlargement Commissioner Oliver Varhelyi told the European Parliament in February that BiH has never seen such a quick government formation and that positive signals are emerging in BiH.¹⁷ He said, “I think that the offer that we have put on the table for Bosnia Herzegovina has been taken very seriously by the entire country, and that includes the Republika Srpska as well, because they have been also part of this formation of the government.”¹⁸

31. The US credit rating agency Standard and Poor’s in February adopted a “positive” outlook for BiH, saying in its report that BiH’s stability has improved in recent months and cutting “receding domestic political confrontation in BiH.”¹⁹ S&P further wrote, “We consider that the potential for EU membership could help accelerate some reforms and keep more confrontational politics in check given the apparent popular support for EU membership across both RS and FBiH.”²⁰

32. In March, the Council of Ministers adopted BiH’s 2023-2025 Economic Reform Programme, which was drafted according to European Commission guidelines. Development of the Economic Reform Programme was coordinated by BiH’s Directorate for Economic Planning, together with the RS Ministry of Finance of Republika Srpska and Federal Institute for

¹⁴ *Cvijanović met with US senators, preserving peace and stability is priority*, SRNA, 31 Jan. 2023.

¹⁵ *Bosnia FM, Republika Srpska entity president agree to unblock useful projects*, N1, 1 Feb. 2023.

¹⁶ *Id.*

¹⁷ EU Parliament Debates, 14 Feb. 2023, at https://www.europarl.europa.eu/doceo/document/CRE-9-2023-02-14_EN.html.

¹⁸ *Id.*

¹⁹ *S&P affirms Bosnia at 'B/B', revises outlook to positive*, SeeNews, 6 Feb. 2023.

²⁰ *Id.*

Development Programming, in accordance with their competences. During the same month, the Council of Ministers and BiH Presidency, and the BiH Parliamentary Assembly approved the annual budget for BiH institutions and BiH's international obligations.

33. Also in March, BiH took an important step toward achievement of full cooperation with EUROPOL when representatives of BiH-level, Entity, Cantonal, and District police agencies signed the Rulebook on the operation of the National/Joint Contact Point for cooperation with EUROPOL. The Head of the EU Delegation to BiH, Johann Sattler, welcomed the step, saying, "By fully implementing the Agreement on Cooperation with EUROPOL and later by signing the Agreement on EUROJUST and FRONTEX, Bosnia and Herzegovina will fully begin to use European instruments to strengthen the fight against serious forms of crime, which will be useful for BiH citizens, but also a step forward on the way to the EU."²¹

34. RS authorities will continue working with their partners in a spirit of compromise and cooperation.

B. The RS's new coalition government

35. As usual, the RS was quick to form a new coalition government in Banja Luka after the fall elections. In December, the RS National Assembly appointed the members of the new government, led by Prime Minister Radovan Višković. Addressing the National Assembly, Prime Minister Višković said that the new government would focus on economic growth, digitization, reform of public enterprises, health and social policy, and demographic renewal.²²

36. There are good prospects for productive cooperation between the governments of the RS and BiH's other Entity, the Federation of Bosnia and Herzegovina (FBiH), in the coming years. Prime Minister Višković has proposed that the RS government and FBiH government hold joint sessions at least twice a year to resolve issues and discuss joint projects.²³

C. SDA efforts to sabotage BiH-level functionality and inter-ethnic cooperation

37. The most important reason for the atmosphere of relative optimism among BiH-level officials is that, for the first time in many years, BiH's largest Bosniak political party, the SDA, is not represented in either the BiH Presidency or the Council of Ministers. The SDA is an Islamist

²¹ *BiH establishes full cooperation with EUROPOL*, N1/FENA, 21 Mar. 2023.

²² *Bosnia's Serb Republic new government takes office*, SeeNews, 22 Dec. 2022.

²³ *Request for joint session follows Federal government formation*, SRNA, 17 Jan. 2023.

party that has publicly and repeatedly committed itself to the abolition of the BiH constitutional structure guaranteed by the Dayton Accords in favor of a unitary state that would be utterly dominated by a single people, the Bosniaks. The party has consistently refused to abide by the Constitution's provisions requiring power-sharing among BiH's constituent peoples, and it has taken control of many BiH-level institutions as part of its drive to dominate all important levers of power. The SDA has also pursued a policy of spite against the RS, blocking, whenever possible, economic development projects in the Entity, even those that would benefit BiH as a whole, simply to impose hardships on the citizens of the RS.

38. Unfortunately, despite the SDA's relatively poor showing in the 2022 elections, it continues to retain substantial power. The SDA won the largest share of seats in the FBiH Parliament as well as the largest share of FBiH seats in the BiH Parliamentary Assembly's House of Representatives. The party is also closely connected to the leadership of BiH's Islamic Community. The SDA, moreover, has a close ally in Željko Komšić, the technically "Croat" member of the BiH Presidency whose base of support is almost entirely Bosniak voters.

39. Since the formation of the multiethnic BiH-level coalition, the SDA has frequently portrayed the coalition's Bosniak parties as betrayers of the Bosniak people for being willing to cooperate with Serb and Croat parties on initiatives that would benefit citizens throughout BiH. After Foreign Minister Konaković sitting on the BiH Council of Ministers met with President Dodik in Banja Luka, the SDA savagely attacked Minister Konaković in the press, accusing him of "humiliating himself by going to Banja Luka at Dodik's feet."²⁴ The SDA has also, in typical fashion, blocked the long-overdue formation of the new FBiH government with its unreasonable demands. Unfortunately, moreover, pressure from SDA cadres has caused the Foreign Ministry being within the BiH Council of Ministers to once again fall into the bad habit of announcing positions that have not been approved by the BiH Presidency, which has the sole constitutional responsibility for the establishment of BiH foreign policy.

III. EU and regional integration

A. EU candidate status

40. On December 15, 2022, the European Council voted to grant BiH EU candidate status, following a recommendation by the European Commission in October and votes by the EU Council and General Affairs Council.

²⁴ *BiH Foreign Minister in Banja Luka: Humiliation or responsible Politics?*, Sarajevo Times/DW, 7 Feb. 2023.

41. BiH's EU candidate status is an important milestone, and the RS hopes and expects candidate status will reenergize EU integration efforts at all levels of administration. One reason for optimism is the shared commitment of the Serb, Bosniak, and Croat parties that make up the BiH-level coalition to enacting the necessary reforms to advance to the next milestone of EU integration.

42. In a November 28 speech, EU Enlargement Commissioner Olivér Várhelyi praised the new Presidency members' commitment to accelerating the fulfillment of the 14 key priorities for BiH's EU integration.²⁵

43. Writing on his blog in February, EU Special Representative in BiH Johann Sattler praised the fact that the new BiH-level coalition "have made progress towards EU membership a central element of their programme."²⁶

B. RS commitment to BiH's EU integration

44. The RS is committed to implementing the necessary reforms on BiH's road to EU membership while ensuring that each level of administration's constitutional jurisdiction is respected. The RS has made important progress in meeting many of the objectives outlined by the EU in its reports on BiH. In accordance with its competences as guaranteed by the BiH Constitution, the RS has been harmonizing legislation with the EU *acquis* since 2007. Thousands of RS regulations have undergone the procedure of harmonization and assessment of conformity with the EU *acquis*. The RS is confident that implementing reforms to meet EU standards will strengthen the RS and BiH as a whole.

45. Achieving the next milestone of EU integration will not be easy; there will be disagreements along the way. But the shared goal of EU membership is important enough that all parties should be dedicated to doing the hard work that is necessary.

C. The agreed coordination mechanism must be applied consistently.

46. It is important that BiH's EU integration proceed in accordance with the System of Coordination in the Process of European Integration in Bosnia and Herzegovina, known as the "coordination mechanism." The coordination mechanism is a system agreed to by BiH's political leadership in 2016 that enables BiH to communicate with EU representatives with "one voice"

²⁵ Commissioner Olivér VÁRHELYI in Bosnia and Herzegovina: Joint press conference with the Presidency of Bosnia and Herzegovina, EU Delegation to BiH, 28 Nov. 2022.

²⁶ Blog by the EU Head of Delegation/EU Special Representative in BiH: "Progress is within reach", EU Delegation to BiH, 27 Feb. 2023.

while fully respecting the BiH constitutional structure and the competences of all levels of governance. It was approved by the RS National Assembly and the BiH Council of Ministers. Unfortunately, the coordination mechanism is not always followed. For BiH to advance on the path to EU membership, it is essential that the coordination mechanism be followed consistently.

47. The EU already includes member countries with highly decentralized constitutional systems, and the RS is confident that BiH can meet the requirements of EU membership while retaining the decentralized structure guaranteed in the Dayton Accords.

D. With BiH having attained EU candidate status, the country should be respected as fully sovereign.

1. For BiH to be sovereign, the OHR must close.

48. The EU is an organization not of colonies and protectorates but of fully sovereign states. Particularly with BiH having gained official status as a candidate for EU membership, it is past time for BiH to at last enjoy full sovereignty.

49. The continued presence in BiH of the OHR—a foreign intervenor claiming despotic powers over BiH and its citizens—is obviously incompatible with BiH’s sovereignty and, thus, incompatible with BiH’s EU integration.

50. In its 2019 Opinion on BiH’s application for EU membership, the EU recognized that the continued operation of the HR with sweeping autocratic powers hinders BiH’s progress toward EU integration. Regarding the HR, the EU Opinion said: “Such extensive international supervision is in principle incompatible with the sovereignty of Bosnia and Herzegovina and therefore with EU membership.”²⁷

51. The OHR also undermines EU efforts in BiH, and can only introduce confusion into the important dialog between BiH leaders and those EU officials given the task of assisting the country’s European path. As former HR Carl Bildt has written, “the continued existence of the OHR as the custodian of the push of Dayton has often tended to dilute the impact of the EU efforts.”²⁸ To put the matter plainly, on matters of importance to the EU, it is unclear who Mr. Schmidt speaks for, if it is not simply for himself. In an interview in March, former HR Wolfgang

²⁷ Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union, 29 May 2019, at p. 7.

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

Petritsch emphasized, “This is really my message: unless all of the external interventions stop, there is not going to be a European future for Bosnia and Herzegovina.”²⁹

2. For BiH to be sovereign, the BiH Constitutional Court must be composed of BiH citizens.

52. Another key barrier preventing BiH’s full sovereignty and standing between BiH and EU membership is the continued presence of foreign judges on the BiH Constitutional Court. 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. In practice, these three foreign judges have controlled the court by aligning themselves with the court’s two Bosniak members.

53. The EU 2019’s Opinion rightly included among its 14 “key priorities” for BiH, “addressing the issue of international judges” on the Constitutional Court.”³⁰ The RS appreciates the EC’s acknowledgement that the foreign judges on the Constitutional Court are inconsistent with EU integration.

54. BiH’s main Serb and Croat parties strongly favor replacing the Constitutional Court’s foreign judges with BiH citizens and have introduced legislation to do so, but Bosniak parties have so far refused to consider the legislation, thus standing in the way of BiH’s full sovereignty and its progress toward EU membership.

E. The EU’s blocking of funding for projects in the RS is counterproductive.

55. The EU is undermining BiH’s EU integration by withholding €600 million in funding from projects in the RS, part of a €3.2 billion package supporting investment projects in the Western Balkans.

56. The EU’s unjustified, selective financial sanctions against the people of the RS are contrary to BiH’s EU candidate status and threaten to weaken enthusiasm for EU integration on the part of the RS and its citizens. These sanctions leave RS citizens with the impression that the EU is trying to micromanage political affairs in BiH and, even worse, is taking sides against the RS in domestic

²⁹ *Id.*

³⁰ Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union, 29 May 2019.

political squabbles. Moreover, the sanctions raise the question of whether Brussels would continue to inflict selective punishments on the RS even once BiH was admitted into the EU.

57. The EU should immediately release the funding for projects in the RS that it has been withholding. Those who believe that punishments and threats of future sanctions will make the RS more submissive to the whims of foreign capitals completely misunderstand the history, culture, and character of the region; such measures only serve to stiffen the resolve of the RS to protect and assert its rights under the Dayton Accords.

F. Regional integration

58. In addition to its commitment to BiH's EU integration, the RS also strongly supports regional integration efforts, including the Open Balkans initiative and the Berlin Process. Open Balkans is a regional initiative launched by Albania, North Macedonia, and Serbia for the creation of an economic zone for the free movement of people, goods, capital and services. Now that the SDA party is no longer part of the BiH Council of Ministers, the RS is hopeful that BiH will join Open Balkans in the coming year.

IV. BiH is safe and secure.

A. The war in Ukraine has nothing to do with BiH.

59. Rhetoric suggesting that the war in Ukraine could somehow spread to BiH is utterly baseless. Those who claim that the fighting in Ukraine endangers BiH are stoking fear for political gain. They hope that by creating international alarm about BiH's security, they will spur foreign countries to intervene more forcefully to scrap the decentralized system guaranteed by the Dayton Accords. As EUFOR-Althea officials have consistently emphasized since the war in Ukraine began, there is no threat to peace in BiH. On 26 April 2023, EUFOR reaffirmed that it does not see any danger in BiH's security situation.³¹

60. Some foreign commentators who do not wish the RS well have ridiculously claimed that the RS is being used as a tool of Russian foreign policy, pointing to the strong historic and cultural ties between Serbs and Russians as a threat to peace. Anyone who has seen the way the RS reacts to pressure from foreign capitals knows how absurd this disinformation is. The reality is that the RS sets its own policies based solely on the interests and preferences of its own people.

³¹ *EU's Military Mission Says 'Closely Watching' Security Situation In Bosnia*, Radio Free Europe/Radio Liberty, 26 Apr. 2023.

61. The RS has been consistent, for many years, in demanding that the Dayton Accords, including the RS's constitutional autonomy and the limits of the OHR's mandate, be honored by all parties inside and outside of BiH. These demands reflect only the priorities of the RS's people and have nothing to do with the wishes of any foreign power—although the RS does believe that every witness to the Dayton Accords should support the treaty's faithful implementation.

62. The RS strongly supports BiH's EU integration, not because of the opinions of foreign powers, but because of the economic and other rewards that reforms and eventual EU membership will bring its people.

63. The RS considers the war in Ukraine to be a tragic conflict between two brotherly nations. The RS has stated unequivocally that Ukraine's territorial integrity must be respected and that perpetrators of any war crimes must be brought to justice. The RS, however, is not able to support BiH taking sides in the conflict, a step that would defy the will of the majority of the RS's citizens. For BiH, a country that is reliant on Russian natural gas, it would be reckless and irresponsible to risk economic ruin by imposing sanctions that would have no meaningful effect in Russia.

B. Acts and statements motivated by religious and ethnic hatred should be condemned by all.

1. Recent statements and acts of ethnic and religious intolerance

64. In a multi-national state like BiH, it is the duty of everyone—especially people in leadership positions—to speak and act responsibly and demonstrate ethnic and religious tolerance. Unfortunately, in recent months, there have been a number of hateful and intolerant actions and messages against Serbs in BiH.

65. For example, in January, after a Serb member of the BiH Council of Ministers used an ancient and common Serbian greeting (a gesture with three fingers representing the Holy Trinity) in front of the BiH Parliamentary Assembly, the Canton Sarajevo Assembly voted unanimously to strongly condemn the use of the Serbian greeting in front of BiH-level institutions. The Sarajevo resolution sends Serbs the unfortunate message that they are not welcome in BiH-level bodies or in Sarajevo.

66. In March, Šemsudin Mehmedović, an SDA member of the BiH Parliamentary Assembly, obscenely alleged a “relationship” between Adolf Hitler and Serbian President Aleksandar Vučić and President Dodik.³²

67. Also in March, the head of BiH’s Islamic Community, Grand Mufti Husein Kavazović, said that if state institutions fall, “we must be ready to defend this country with weapons, and no one should have any doubts about that.”³³

68. During a recent religious service in February, the chief imam in the RS town of Kozarac insulted the Serbian Orthodox Church and claimed that Saint Sava (1175-1236), an especially beloved Serb saint, was a promoter of fascism (roughly 600 years before the term “fascist” even existed).³⁴ Grand Mufti Kavazović responded by visiting Kozarac to offer his support.

69. Soon after the Kozarac chief imam’s inflammatory statements, another Muslim cleric in BiH used a sermon to call the RS a “genocidal creation” and to assert that “to every Bosniak, even the adjective ‘Serbian’ should be repulsive.”³⁵

70. In April, speaking at an SDA-organized iftar in Tuzla, SDA leader Bakir Izetbegovic also called the RS a “genocidal creation.”

71. Recently, the commander of 1st Infantry Battalion of the 5th Infantry Brigade of the Armed Forces of BiH awarded, on behalf of the BiH Armed Forces, a certificate of appreciation to the Seventh Muslim Knight Liberation Brigade, a notorious wartime unit of the Bosniak army in whose zone of responsibility many crimes against Serbs were committed. No relevant BiH-level institution gave consent for this shameful and provocative act.

72. During the most recent Christmas holiday season, as is often the case, there were numerous attacks and offensive acts against Christians in the Balkan region, and even an offensive act against Jews with a painting of a swastika in Sarajevo. Christians were beaten and even shot in some Balkan cities. In Sarajevo, Serb children and their parents were attacked by a dozen masked thugs at a hotel where they were staying for a youth football tournament. The attackers threw tear gas

³² Šemsudin Mehmedović *Izazvao Skandal: Uporedio Vučića i Dodika sa Hitlerom!*, Vecernje Novosti, 13 Mar. 2023.

³³ *Head of BiH’s Islamic Community under fire over “warmongering” statement*, 6 Mar. 2023.

³⁴ *Imam iz Kozarca pripisao Svetom Savi fašizam, a SPC sektaštvo*, ATV, 2 Feb. 2023.

³⁵ *Gadi im se i pridev “srpski”*, Politika.rs, 8 Feb. 2023.

and torches at the Serb children and their parents and attacked one of the parents with a knife. At the same tournament, a visiting group from Croatia were recorded chanting, “Kill the Serb!”

73. These violent incidents show us that the ethnic tensions in the region still remain. What they also show, however—or, rather, what the reactions to these incidents show—is that the large majority of people, and especially the leaders in BiH, are committed to peace. BiH is often portrayed by alarmists as a tinderbox ready to explode, but even after this rash of incidents there was no spiral of ethnic and religious reprisals and no inflammatory rhetoric from leaders.

74. On the contrary, in response to the violent attack in Sarajevo, Serb leaders reacted calmly, urging the local authorities to find and prosecute those responsible. Presidency Chair Cvijanović condemned the Sarajevo attack saying, “It is devastating and tragic for children to chant ‘Kill the Serb!’, and it would be equally tragic if children said that a Bosniak, a Croat or anyone else should be killed.”

75. The fact that people in Bosnia did not act in retaliation, and the responsibility and unity shown by public authorities in their responses to the Sarajevo attack, show that BiH is not set to explode in violence, but on the contrary that its citizens can live together in a peaceful and stable country under the decentralized constitutional system established in the Dayton Accords.

2. RS commitment to religious and ethnic reconciliation

76. The RS government is committed to religious and ethnic reconciliation in the RS and throughout BiH. The RS staunchly protects religious liberty and treats all its people as equal citizens, regardless of their ethnicity or religion. It also actively promotes religious and ethnic reconciliation. For example, in recent years, the RS government has helped fund the construction of a school for Islamic instruction and an Islamic kindergarten in Banja Luka. The RS government also helped fund the reconstruction of Banja Luka’s grand mosque.

V. BiH needs less foreign intervention, not more.

A. The most destabilizing influence in BiH is meddling from foreigners who seem not to have read the Dayton Accords.

77. Too often, foreign actors meddle in BiH’s politics, undermining the development of a mature political culture in BiH. BiH is one of the most complicated places in the world. And yet, in the long parade of well-intentioned foreign “experts” that pass through BiH—diplomats, international bureaucrats, foreign jurists, and various advisors for dozens of international organizations and NGOs—seldom do those doing a tour of duty in BiH have any facility at all in the local language, and most arrive with little more background in the exceedingly dense history of the region than what might be retained from a single afternoon’s briefing from an intelligence

service. Many seem to lack even a basic familiarity with the Dayton Accords and the constitutional order that they established.

78. Unfortunately, most of these foreign professionals arrive thinking that what BiH needs is more micro-managing from foreign “experts” like themselves, not less. Many believe that their efforts will somehow help to form a national “Bosnian” consciousness that has never before existed, and they meddle in the internal political affairs of a country that they poorly understand, among people to whom they show, in the best case, condescension, or, perhaps as often, outright contempt. Almost all move on to other postings cursing the benighted leaders in BiH who were not worthy of their efforts to straighten the place out.

79. It is abundantly clear to anyone who has carefully watched this parade over the past two decades that what is needed in BiH is not more meddling, more pressure, and more attempts at micro-management by foreign actors, but more understanding that the peoples of BiH must be left to work out their issues by themselves. Foreign support for the BiH Constitution and the development of a cooperative political environment in BiH is welcome, constructive, and, unfortunately, all too rare; foreign interference, pressure, threats, and dictates only serve to hinder the development of BiH as a mature, stable democracy.

B. International meddling has stunted BiH’s political maturation and prevented resolution of sensitive political issues such as the matter of state property.

80. Foreign interference in BiH’s domestic affairs prevents BiH from maturing into a country that can solve its own problems. The intervention of foreign powers in BiH, particularly through the OHR, undermines the spirit of compromise that is essential to progress in any democracy—and particularly a multinational country like BiH. As a dictatorial, extra-constitutional center of power, the OHR badly distorts the incentives necessary for settling disagreements among BiH’s Constituent Peoples and major political parties. The presence of a foreign diplomat who claims autocratic powers encourages parties to adopt maximalist positions in hopes of enlisting his help, whether through formal decrees, pressure, or other forms of interference.

81. As the International Crisis Group wrote in 2009, “The OHR has become more a part of Bosnia’s political disputes than a facilitator of solutions.” The HR’s presence hinders the negotiations and give-and-take necessary for democratic governance to function.

82. Some HRs have created conflicts that never existed prior to their ill-conceived meddling, and others have intervened directly to destroy domestic compromises. A case in point is the dispute over state property, which arose because of OHR meddling and which would have been resolved a decade ago if not for additional OHR interference.

83. As explained in detail in Attachment 2 to the RS's 23rd Report to the UN Security Council, the text of the BiH Constitution, as well as the post-Dayton practice of all relevant actors, make clear that state property belongs to the Entities. Initially the state property issue caused no political controversy in BiH and was understood to be finally resolved by the Constitution. Even the Ambassadors of the Peace Implementation Council's Steering Board understood and acknowledged the basic fact that the BiH level owned such property as was assigned to it by the Entities.³⁶ Unfortunately, ten years after the Constitution took effect, the HR at the time, Jeremy John Durham Ashdown, Baron Ashdown of Norton-sub-Hamdon (better known as Paddy Ashdown) opened a Pandora's box with the foolish issuance of ill-considered, poorly drafted edicts that threw the state property issue into hopeless confusion.

84. Baron Ashdown, a retired British military officer and politician with no background in constitutional law and no experience at all in the Balkans, grew up in Britain's colonial possessions in a family of soldiers and colonial administrators and was criticized at the time, even by his countrymen, for acting as a colonial viceroy. His illegal, reckless edicts, which were handed down without a single hearing, no local debate, no invited involvement of local leaders, and not even any input from constitutional scholars, are now declared by the OHR to be untouchable and incapable of review or correction, even by the BiH Constitutional Court.

85. Since Baron Ashdown's rash meddling, BiH's Bosniak parties have, contrary to the BiH Constitution, insisted that all state property belongs to the BiH level. Continued meddling by equally incompetent and inexperienced HRs has prevented the issue from being resolved reasonably by the local leaders in BiH. In November 2012, the Serb, Bosniak, and Croat parties then represented on the BiH Council of Ministers negotiated—without the OHR's help—an agreement on resolution of the state property issue. A draft law was prepared in 2013 to implement the agreement. Before the law could be passed, however, then-HR Valentin Inzko, citing vague "concerns" about the draft law, intervened to scuttle it. His failure to offer any reasonable substantive explanation for blocking the law would suggest that the only source of this "concerns" about the law was that the resolution was achieved not by his office, but by the local parties themselves, and that the resolution of the issue was one step toward closure of his office.

86. The constitution makes clear that any rights the BiH level has to state property must be given by the Entities, not vice-versa. Today, Mr. Schmidt, through his imprudent edicts and rhetoric, appears to have aligned himself with the aggressive and incorrect position on the state property issue taken by the Bosniak parties, as if to ensure that the Pandora's box opened by Baron Ashdown will remain open.

³⁶ Statement by the Ambassadors of the Peace Implementation Council's Steering Board, State Property: PIC Support For Functional And Territorial Compromise, 30 Oct. 2008.

C. The OHR is a major source of BiH's problems and must be closed.

87. For many years it has been abundantly clear—even to former HRs—that the OHR does more harm than good and must be abolished.

88. Former HR Carl Bildt has long called for the OHR to be abolished. As Mr. Bildt reiterated recently, “For at least a decade [the OHR] has been part of the problem in Bosnia.”³⁷ He also pointed out that no one at the end of the war in BiH would have expected the OHR to remain in existence a quarter century later.³⁸

89. Former HR Wolfgang Petritsch has also long urged the closure of the OHR. He said recently that the HR today is “part of the problem in every respect, not the solution.”³⁹ He explained that the HR’s “deeply undemocratic” powers

were originally intended as an emergency measure to prevent the state from falling back into the war. What was actually necessary back then has long since fallen out of date. As a state, Bosnia is more stable today than it was at the turn of the millennium, despite many problems.⁴⁰

90. In a March 2023 interview with N1, Mr. Petritsch called the continued use of the so-called Bonn powers “a blueprint for disaster.”⁴¹ He said the current deadlock in the Federation of BiH “is a sign and an indication that the Bosnian political system is utterly dysfunctional. And I’m afraid that by using endlessly the Bonn powers, you will not exit the situation.”⁴² Mr. Petritsch said that “because of the continued existence of the OHR,” the democratic process in BiH “doesn’t work.”⁴³

³⁷ Michael Martens, *Der König von Bosnien-Herzegovina*, Frankfurter Allgemeine Zeitung, 26 Feb. 2023.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Esmir Milavić, *Wolfgang Petritsch: Bosnia and Herzegovina needs a radical turning point*, N1, 28 Mar. 2023.

⁴² *Id.*

⁴³ *Id.*

He said the Bonn powers were “necessary immediately after the war, but now you cannot endlessly go on doing the same. It does not work.”⁴⁴

91. Another former HR, Miroslav Lajčak, has said that gone are the days when decisions were made by the international community instead of BiH politicians and reiterated that the goal is not to continue an international protectorate, but to help BiH become fully independent.⁴⁵ Mr. Lajčak also said that the international community should be in BiH to advise and mediate rather than make decisions.⁴⁶

92. A growing number of informed observers are publicly agreeing with the conclusions of former HRs Bildt, Petritsch, and Lajčak. For example, in a February 2023 article in the leading German daily *Frankfurter Allgemeine Zeitung*, correspondent Michael Martens wrote of Christian Schmidt:

His powers seem to have come from the toolbox of an autocracy: Schmidt can dismiss civil servants and democratically elected politicians, he can decree laws or declare them invalid with the stroke of a pen – and no local institution can prevent him from doing so. Theoretically, he could also end the career of an innocent public official by decree without the person concerned being able to defend himself against this in a local court, because the powers of the High Representative are withdrawn from domestic jurisdiction.

Cases in which which innocent people were released on false charges did indeed exist among Schmidt’s predecessors.⁴⁷

93. Martens explained that the OHR’s sweeping powers are totally inappropriate in today’s BiH, writing:

There have been no violent ethnic clashes in Bosnia for more than two decades. The brute powers of the High Representative no longer suit the country to which they apply. Despite this, it is pretended that every day in Sarajevo still begins with a gunshot wound. The High

⁴⁴ *Id.*

⁴⁵ Лажчак: Један народ не може бити прегласан, RTRS, 16 Sep. 2019.

⁴⁶ *Id.*

⁴⁷ Michael Martens, *Der König von Bosnien-Herzegovina*, *Frankfurter Allgemeine Zeitung*, 26 Feb. 2023.

Representative continues to wield powers as if Bosnia were a Caribbean sugar plantation at the turn of the last century.

94. After noting the controversy over Mr. Schmidt's October 2022 decree on electoral law, Mr. Martens wrote:

The real scandal, which strangely enough is often overlooked by left-wing critics, is that he was able to decree the changes at all. Because while the continent has been working through its colonial history in shame for several years, it is itself practicing a modern form of colonialism in the middle of Europe.

95. Mr. Martens further wrote:

Bosnia is far from a perfect state, but despite its shortcomings it is a democracy. The country has been a member of the Council of Europe for many years, there are no political prisoners there, no one is tortured in the country's prisons, it is safe to criticize all parties in the country, there is a diverse media landscape and regular democratic elections . . . repeatedly lead to peaceful changes of government and new coalitions. By what right is there in such a country an untouchable governor with full powers, as if in British India he had to bear Rudyard Kipling's white man's burden?

96. Similarly, in Europe's largest news weekly, *Der Spiegel*, columnist Maximilian Popp wrote last August, after Mr. Schmidt's rage-filled outburst 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. 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."⁴⁸

97. The OHR, Popp wrote, is "now an anachronism," and many BiH citizens "perceive [Schmidt] as a dangerous interference in the affairs of the country."⁴⁹

⁴⁸ Maximilian Popp, *Wie ein Kolonialherr*, *Der Spiegel*, 18 Aug. 2022.

⁴⁹ *Id.*

98. 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.”⁵⁰

99. The BiH branch of Transparency International advocates the immediate and unconditional closure of the OHR.⁵¹ As Chair Srđan Blagovčanin has said, the HR “is in every respect part of the problem, not the solution.”⁵²

100. In October 2022, 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.”⁵³

D. Foreign actors should stop interfering in BiH’s elections and politics.

1. Statements by foreign interests alleging, without evidence, that the election results were fraudulent were reckless.

101. Representatives of certain foreign powers have been making statements citing allegations that BiH’s 2022 elections were fraudulently decided, but without elaborating or providing any evidence of fraud. Such statements, initially made before any relevant evidence could even be thoroughly collected and analyzed, are deeply irresponsible and potentially destabilizing, and BiH’s friends should instead be applauding the elections in BiH, which experienced much fewer problems than are common even in some wealthier countries with a much longer history of holding elections.

2. Tens of millions of dollars spent trying to influence politics

102. Certain countries have been spending enormous amounts of money in an effort to influence politics and public opinion in BiH. A December 2022 report by the US State Department’s Inspector General revealed that a single US initiative called the “Countering Russian Influence

⁵⁰ *Bosnia and Herzegovina’s Hot Summer*, International Crisis Group Briefing No. 95, 26 Sep. 2022, p. 11.

⁵¹ Michael Martens, *Der König von Bosnien-Herzegovina*, Frankfurter Allgemeine Zeitung, 26 Feb. 2023.

⁵² *Id.*

⁵³ *Schmidt Says Bosnian Election-Night Decrees Have Country ‘On Right Track’*, Radio Free Europe/Radio Liberty, 6 Oct. 2022.

Fund” spent \$80.8 million in BiH alone during the period of 2017 to 2021.⁵⁴ Among the recipients of this largesse were media and civil society organizations. However, there is little transparency about where these funds went and exactly what messages were sponsored. The main effect of foreign efforts to influence politics and public opinion appears to be increasing cynicism and distrust, turning independent news outlets and political organizations into paid agents of a foreign power.

E. International law obligates diplomats to refrain from interfering in their host state’s internal affairs.

103. Under the Vienna Convention of Diplomatic Relations, a state party is obligated to extend a number of privileges and immunities to ambassadors and other diplomats. The Vienna Convention, correspondingly, includes certain obligations for diplomats. Among these obligations is the explicit “duty not to interfere in the internal affairs”⁵⁵ of the receiving state. Unfortunately, diplomats from certain countries have made a habit of interfering in purely internal matters of politics and public policy within BiH. Diplomats in BiH should understand that they have a legal obligation not to interfere in internal affairs and that it is not their place to tell authorities in the host state what domestic policies they must and must not adopt.

104. An egregious recent example of diplomats’ interference in BiH’s internal affairs was a 22 March 2023 joint statement issued by the ambassadors of the Steering Board of the Peace Implementation Council, an ad-hoc group of countries. In a flagrant violation of the Vienna Convention, the statement criticized purely domestic legislation being considered by the RS National Assembly that would establish criminal liability in the form of fines for certain forms of defamation. The statement was astoundingly hypocritical, given that seven of the eight countries represented on the Steering Board themselves have criminal defamation liability.⁵⁶ Laws in those countries—unlike the defamation legislation being considered in the RS—include imprisonment among the punishments.⁵⁷

⁵⁴ Sasa Dragojlo, *US Spent 621 Million Dollars Tackling Russian Influence in Balkans, CEE, V4*, Balkan Insight, 22 Dec. 2022.

⁵⁵ Vienna Convention on Diplomatic Relations, Done at Vienna, 18 Apr. 1961, , art. 41.

⁵⁶ France, Germany, Italy, and Turkey: International Press Institute Media Laws Database; USA (many states have criminal defamation laws): ACLU Map of States with Criminal Laws Against Defamation; Canada: Criminal Code of Canada, sec. 300 and 301; Japan: Mari Yamaguchi, *Japan toughens defamation penalties after wrestler’s suicide*, AP, 13 Jun. 2022..

⁵⁷ *Id.*

105. Because the embassies of the United States and the United Kingdom, in particular, have frequently been interfering in BiH's internal affairs in flagrant and cavalier violation of the Vienna Convention, the RS Government announced in March that it was suspending cooperation with the two embassies. This suspension applies only to the embassies and does not affect cooperation by the RS Government with other bodies and agencies of the US and UK governments.

F. BiH's foreign-dominated Constitutional Court is suffering from a well-deserved crisis of legitimacy.

106. 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, public officials and the populace at large will not accept court decisions that nullify legislation approved by democratically elected institutions.

107. The BiH Constitutional Court is mired in a crisis of legitimacy, as is evident from the routine disregard of Constitutional Court decisions by public bodies throughout BiH. Although RS authorities have unfairly come under the heaviest international criticism for not implementing some Constitutional Court decisions, it is far more common for authorities in BiH's other Entity, the Federation of BiH, to disregard the court's decisions.

108. The main reasons for the Constitutional Court's crisis of legitimacy are the court's domination by foreign judges, the failure to adhere to basic principles of judicial ethics, and the court majority's habit of issuing decisions based on politics and foreign influence rather than the BiH Constitution.

1. The Constitutional Court's control by foreign judges undermines the court's legitimacy.

109. BiH is the only sovereign state in the world in the bizarre and humiliating position of having foreigners on its constitutional court—foreigners who do not live in the country, cannot speak the local languages, and have no legal training in the local legal system. In what was supposed to be a post-war transitional measure lasting just five years, three of the nine seats on the BiH Constitutional Court are reserved for foreigners. The foreign judges are selected by a foreign official without even a requirement of BiH consent.

110. What is even worse, former members of the OHR and retired foreign judges have openly admitted what was long apparent but not discussed—that the OHR has unofficial contacts with the foreign judges and purposefully interferes in the judicial process to influence outcomes. In fact, the practice is so common that a former foreign judge on the court 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.”⁵⁸ As explained further below, this corruption of the judicial process by the foreign judges in league with the OHR has resulted in the issuance of numerous contorted judicial opinions that scholars know are not worthy of legitimacy or respect.

111. This shameful violation of the most basic principles of judicial ethics would disqualify judges in any well-governed polity, but in BiH the international community supports such behavior, all the while cynically demanding that absurd decisions issued by a corrupted court process must be respected. Unfortunately, it seems that the OHR and certain foreign powers do not want a proper, legitimate Constitutional Court in BiH, but rather one by which they can maintain influence in the internal affairs of BiH. The BiH Constitutional Court and its judicial opinions will always lack legitimacy so long the court’s membership includes judges who, in addition to lacking democratic legitimacy, are not BiH citizens, BiH residents, or even speakers of BiH languages, and who compromise judicial ethics by allowing themselves to be influenced by foreign powers instead of rendering independent judicial determinations based solely upon the Constitution.

112. The EU has rightly emphasized that judicial appointments in BiH should be based on merit. But the foreign judges—whatever their qualifications in their home countries—are poorly qualified to sit on the BiH Constitutional Court. They have no specialized understanding of the BiH Constitution, the local legal system, or the social and historical context in which they operate. Perhaps this lack of understanding and appreciation of BiH and its constitutional system helps explain why the foreign judges reliably vote, in alliance with the Bosniak members of the court, in favor of further centralization of BiH, even when the Constitution clearly forbids it.

113. Even the very careful and measured opinions of international legal scholars have confirmed that the presence of foreign judges on the BiH Constitutional Court undermines the court’s legitimacy and authority. For example, in a 2019 article reporting on a comprehensive study of the foreign judges’ role on the BiH Constitutional Court, the University of Hong Kong’s Dr. Alex Schwartz concluded that “the foreign judges appear to have contributed to the Court’s crisis of authority.”⁵⁹

114. In a 2016 article about the BiH Constitutional Court, Stefan Graziadei, then of the University of Antwerp, pointed 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

⁵⁸ Joseph Marko, *Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina*, European Diversity and Autonomy Papers (July 2004) at 17 and 18.

⁵⁹ Alex Schwartz, *International Judges on Constitutional Courts: Cautionary Evidence from Post-Conflict Bosnia*, 44 *Law & Social Inquiry* 1, 26 (Feb. 2019).

appear to be ill-equipped to uphold the supreme law of a country with which they share no bond of citizenship.”⁶⁰

115. Among the 14 “key priorities” the EU has identified for BiH is to “reform the Constitutional Court, including addressing the issue of international judges.”⁶¹ The EU is right; it is past time for the role of foreign judges on the BiH Constitutional Court to finally end. To this end, the RS National Assembly on 26 April 2023 called for members of the BiH Parliamentary Assembly from the RS to introduce legislation to define the composition of the Constitutional Court without foreign judges.

2. The lawlessness of the BiH Constitutional Court’s contorted decisions has further eroded the court’s legitimacy.

116. The BiH Constitutional Court’s legitimacy has been further undermined by the court majority’s habit of shirking its duty to uphold the BiH Constitution, exceeding its constitutional authority, and making decisions based on politics rather than law. A court majority composed of the three foreign judges and two Bosniak judges has ignored the dictates of the Constitution and endorsed the HR’s unconstitutional centralization of BiH and the weakening of constitutionally guaranteed protections for BiH’s constituent peoples, while showing subservience to the HR and hostility to the Entities’ rights under the BiH Constitution.

117. The court’s decisions regularly display the pressure of outside influences on the court that was noted above. Dr. Schwartz’s analysis of BiH Constitutional Court cases in which the foreign judges were pivotal found a “deferential approach to reviewing acts of the High Representative”⁶² and that the Court used “questionable legal reasoning” in order to uphold them.⁶³ Dr. Schwartz wrote of the Constitutional Court’s 2000 “Constituent Peoples Decision” that the “decision probably damaged the Court’s legitimacy by feeding the narrative that the foreign judges are too closely aligned with their Bosniak colleagues and the interests of the OHR.”⁶⁴

⁶⁰ 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 5.

⁶¹ Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union, 29 May 2019.

⁶² Schwartz at 22.

⁶³ Schwartz at 21.

⁶⁴ Schwartz at 23.

118. Matthew Parish, a former OHR attorney, has written of the same decision, “The whole episode smelled of a stitch-up between the international judges sitting on the Court and OHR to push through constitutional reform through the back door.”⁶⁵ Unfortunately, this decision was only one such illegitimate opinion among many others.

119. In a 2010 interview, Nedim Ademović, the former chief of staff of the Constitutional Court’s president, said approvingly, “[C]onstitutional-law development has been exclusively a consequence of international interventionism.”⁶⁶ In an arrogant, absurd boast he added, “The BiH Constitutional Court has granted legitimacy to a host of imposed laws and introduced a balance between BiH sovereignty and international governance.”⁶⁷ The notion that the foreign judges consider it their job to render opinions that will please foreign officials, and “balance sovereignty” against “international governance,” without regard to the dictates of the Constitution, is sufficient to destroy any credibility that the court’s decisions might otherwise have.

120. The Constitutional Court has frequently flouted the rule of law, ignored clear constitutional requirements, and acquiesced to the HR’s illegal imposition of laws by decree, which quite plainly violate the requirements for democratic enactment legislation established in the Constitution.

121. The Constitutional Court majority has also used constitutionally groundless cases brought by Bosniak officials to further diminish the autonomy granted to the RS under the Dayton Accords. An example of the Constitutional Court’s lawlessness is its decision banning RS Day, a holiday that marks the date of the RS’s foundation on January 9, 1992, about two months before the beginning of BiH’s civil war.

122. RS Day is a celebration of the RS’s existence—an existence the BiH Constitution fully embraces. The law establishing RS Day expressly states that it is to be “celebrated as a secular holiday” and makes observation of the holiday strictly voluntary. No attempt is made to impose any aspects of the holiday on citizens. Moreover, the holiday has been celebrated peacefully for many years.

123. Despite this, in 2019, a five-to-four majority of the BiH Constitutional Court ludicrously claimed that RS Day somehow violated the BiH Constitution. Four of the six BiH citizens on the

⁶⁵ Matthew Parish, *A Free City in the Balkans* (2010) at 153.

⁶⁶ Oslobodjenje interview with Nadim Ademović, 24 Apr. 2010.

⁶⁷ *Id.*

court voted to uphold the law establishing RS Day, but the votes of the court's three foreign judges, allied as usual with the two Bosniak judges, were decisive.

124. The court majority asserted implausibly that RS Day somehow violates anti-discrimination provisions of the BiH Constitution and human rights conventions. In reality, there is nothing remotely discriminatory about celebrating the birthday of the RS, an Entity recognized by the BiH Constitution. The law establishing RS Day in no way denigrates any ethnic group or other political entity, and it does nothing to prevent other groups or entities from establishing their own days of recognition.

125. The Constitutional Court majority's decision on RS Day was simply unprecedented. Throughout Europe, countries and their territorial units celebrate public holidays that mark days of special significance to members of a religious or ethnic group—almost always the country or territorial unit's predominant one. For example, the German state of Bavaria, Mr. Schmidt's home state, has ten public holidays marking religious feasts of the majority Christian community and zero public holidays marking feasts of state's significant Muslim minority.

126. In the history of Europe, the only holiday ever banned by a court based on anti-discrimination rules is RS Day. The Constitutional Court majority's notion that holidays marking days of special significance to certain religious or ethnic groups is discriminatory is totally unsupported in any European and international law.

127. A 2013 study by the European Parliament observed, "Several constitutional courts, in dealing with the supposedly discriminatory character of rules establishing Sunday and the most important festivities of the Christian religion as public holidays, have dismissed these cases, holding that a legislative choice as such is not unreasonable, having regard to the religious and historical traditions of each society, and to the fact that these festivities have acquired, over time, a secular meaning."

128. By the court majority's absurd reasoning, no European country could declare Christmas to be a national holiday. More to the point, Muslim holidays, which are currently public holidays in BiH's Bosniak-majority cantons, could not be recognized, because such holidays would somehow "discriminate" against non-Muslims. The fact that the Constitutional Court majority would never even consider a challenge to such holidays shows that its decision regarding RS Day was purely a political attack on the RS.

129. The Constitutional Court majority's utterly groundless and lawless decision against RS Day was an attack on the BiH constitutional order. No one—not even the Constitutional Court—is above the Constitution. RS authorities simply cannot collaborate with a foreign-dominated Constitutional Court majority when it flagrantly exceeds the constitutional limits of its authority,

seeks to impose absurd and arbitrary decisions, and moves, step by step, toward the extinction of the RS.

130. The Court's decision banning RS Day is far from the only time the Court has lawlessly tried to weaken the RS. For example, the court has also outlawed the RS's flag, anthem, and coat of arms. The court has also been trying to deprive the RS of its public lands. None of those decisions find any support whatsoever in the actual text of the BiH Constitution.

131. The Constitutional Court's previous decisions, along with its recent decision granting interim measures rendering ineffective the RS Law on Immovable Property Used for Functioning of Public Authority, are attempts to revise the Dayton Agreement and subvert the BiH Constitution, thus undermining the future stability and prosperity of BiH. As discussed above, implementing the BiH Constitution as agreed at Dayton is essential for a successful BIH.