



REPUBLIC OF SRPSKA  
PRESIDENT OF THE REPUBLIC

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01-010-3409/16  
Banja Luka, 27<sup>th</sup> of October 2016.

His Excellency Ban Ki-Moon  
Secretary General  
The United Nations  
1 United Nations Plaza  
New York, New York, USA 10017-3515

Dear Mr. Secretary-General,

To assist the Security Council in its upcoming debate on Bosnia and Herzegovina (BiH), Republika Srpska (RS), a party to the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) and the annexes that comprise its substance, presents the attached 16th Report to the UN Security Council. The report focuses primarily on the SDA party's efforts to undermine BiH's stability and functionality, Republika Srpska's defense of its constitutional and legal rights under the Dayton Accords, and the reforms necessary for BiH's EU integration.

In Section I, the report outlines how BiH's largest Bosniak party, the SDA, has tried to subvert security, functionality, and cooperation in BiH. The SDA has sought to create a crisis by attacking Republika Srpska's legitimacy, through the SDA's efforts to prevent the commemoration of Republika Srpska's date of creation, and by seriously threatening violence against the RS. These actions were part of the SDA's broader pattern of undermining BiH's stability and functionality and cooperation between BiH's Entities and constituent peoples. Section I also explains how the SDA has helped turn BiH into a sanctuary for jihadists who threaten BiH, Europe, and the world.

Section II of the report examines some of the ways in which Republika Srpska is defending its legal rights under the Dayton Accords and other law. RS voters recently gave a sweeping victory to the parties of Republika Srpska's governing coalition, sending a strong message of support for

the RS Government and its policies, including its economic reforms and its protection of Republika Srpska's rights under Dayton. RS voters also recently took part in a referendum about the date of the RS Republic Day holiday, voting overwhelmingly in favor of retaining the current date. Despite feverish claims by the SDA party, the referendum had nothing to do with BiH's territorial integrity and was fully in accord with applicable law. The referendum was a step toward implementing the BiH Constitutional Court's November 2015 decision on Republic Day, which, as the report explains, cannot reasonably be interpreted to forbid Republika Srpska from observing the date of its founding. Section II also explains why the recently published BiH census results are inaccurate and legally invalid.

Section III reiterates Republika Srpska's strong support for BiH's integration into the EU and examines the reforms that are necessary for continued progress. Republika Srpska continues its vigorous efforts to bring BiH closer to the EU, including by implementing the EU-sponsored Reform Agenda. Section III also examines the significant reforms to BiH judicial and prosecutorial institutions that will be required for EU integration. Among these are eliminating prosecutorial discrimination against Serb victims of war crimes, reforming the justice system through the EU Structured Dialogue, ending the role of foreign judges on the BiH Constitutional Court, and stopping the abuse of justice institutions for political advantage.

As the Republika Srpska implements reforms to promote economic growth and EU integration, it asks members of the international community to respect the Dayton Accords and support local reform initiatives in BiH. Republika Srpska believes that BiH can be a stable and successful part of Europe if the Dayton structure is respected.

I would ask that this letter, the report, and its attachment be distributed to the Security Council's members. Should you or any Security Council member require information beyond what is provided in the report or have any questions regarding its contents, I would be pleased to provide you with it.

Yours sincerely,

PRESIDENT OF REPUBLIKA SRPSKA



Milorad Dodik

**Republika Srpska's 16th Report to the UN Security Council**

**October 2016**



# Republika Srpska's 16th Report to the UN Security Council

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Attachment: How Bosnia and Herzegovina has become a Terrorist Sanctuary

# **Republika Srpska's 16th Report to the UN Security Council**

## **Introduction and Executive Summary**

Republika Srpska (RS), a party to all of the annexes that comprise the Dayton Accords, respectfully submits this 16th Report to the UN Security Council, which outlines the RS Government's views on key issues facing Bosnia and Herzegovina (BiH). Among the issues examined in this Report are the SDA Party's efforts to create a crisis in BiH, Republika Srpska's defense of its constitutional and legal rights, and reforms necessary for BiH's EU integration.

### **I. The SDA has sought to create a crisis in BiH and undermine security, functionality, and inter-Entity/inter-ethnic cooperation**

Section I of the report examines how the largest Bosniak party, the SDA, has tried to subvert security, functionality, and cooperation in BiH. The SDA has tried to provoke a crisis by attacking Republika Srpska's legitimacy through its effort to ban the commemoration of the date of Republika Srpska's founding (Republic Day) and by threatening violence. The SDA has also tried to use the BiH Chief Prosecutor for a political prosecution of RS President Milorad Dodik.

The SDA's recent attempt to provoke a crisis is part of a broader pattern of undermining BiH's security, functionality, and cooperation between Entities and ethnicities. For example, the SDA held much-needed IMF financing hostage in a baldly political effort to extract unrelated concessions from Republika Srpska. The SDA also exerts improper influence of the BiH Prosecutor's office and helps prevent prosecutions of war crimes with Serb victims. Moreover, the SDA is continuing to block judicial reforms necessary for EU integration. The SDA this year pressured the director of the BiH Statistics Agency into unlawfully imposing a program for the BiH census that inaccurately inflates census results for political objectives.

In addition, the SDA has helped turn BiH into a sanctuary for jihadists, who pose a serious threat to BiH, Europe, and the rest of the world. The SDA, an Islamist party, invited the mujahidin to Bosnia and Herzegovina during the war and has continued its close ties to radical Islamists. The BiH Prosecutor's Office has failed to seek justice for mujahidin atrocities against Serbs. In addition, BiH's SDA-dominated security apparatus is failing to curb the jihadist presence in BiH, and the international community's support of the SDA unintentionally increases the risk of terrorism.

### **II. Republika Srpska will continue to defend its rights under BiH's constitution and laws.**

Section II of the report explains some of the ways in which Republika Srpska is defending its legal rights under the Dayton Accords and other law in order to maintain the political structures and peace established by the treaties. On the 2 October 2016, RS voters gave a sweeping victory to the parties of Republika Srpska's governing coalition, sending a strong message of support for the RS Government and its policies, including its economic reforms and its staunch protection of Republika Srpska's rights under the Dayton Accords.

RS voters also took part, on 25 September 2016, in a referendum about the date of Republika Srpska's Republic Day holiday, voting overwhelmingly in favor of retaining the current date. The referendum, despite feverish claims by SDA officials, had nothing to do with BiH's territorial integrity and was fully in accord with applicable law. The referendum was a step toward implementing the BiH Constitutional Court's November 2015 decision on Republic Day, which, as this report explains in detail, cannot reasonably be interpreted to forbid Republika Srpska from observing the date of its founding. If the Court were to consistently apply such a position, every other public holiday in BiH would be unconstitutional. The RS National Assembly will soon enact amendments to the RS Law on Holidays to implement the BiH Constitutional Court's decision.

Section II also explains why the BiH census results published on 30 June 2016 are inaccurate and legally invalid. The results were published on the basis of a faulty program of data processing that was adopted unilaterally by the Director of the BiH Agency in direct violation of the BiH Census Law, under unlawful influence of the BiH Chief Prosecutor.

### **III. EU Integration**

Section III reiterates Republika Srpska's strong support for BiH's integration into the EU and examines the reforms that are necessary for continued progress. Republika Srpska continues its vigorous efforts to bring BiH closer to the EU, including by implementing the EU-sponsored Reform Agenda.

EU integration, however, also requires significant reforms to BiH's judicial and prosecutorial institutions. The BiH Prosecutor's Office must end its long pattern of discrimination against Serb victims of war crimes. A recent report by the Organization for Security and Cooperation in Europe helps explain how the BiH Chief Prosecutor controls war crimes prosecutions and protects his allies. The RS Government has continued to seek reforms to BiH's justice system through the EU's Structured Dialogue on Justice, but progress has been impeded because SDA members and other Bosniak officials have fiercely opposed reforms that EU experts have made clear are necessary. Another necessary judicial reform is to the BiH Constitutional Court, which has been plagued by political influence and, as currently constituted, is incompatible with BiH's EU membership. The presence of foreign judges on the court was only intended under the BiH Constitution as a provisional measure; their continuation is inconsistent with BiH's sovereignty and democracy and undermines the court's legitimacy. BiH, moreover, cannot become an EU member until its justice institutions are reformed to stop their abuse of power for political advantage.

EU integration also requires closing OHR and ending the UN Security Council's invocation of Chapter VII of the UN Charter.

As the RS continues to pursue reforms to improve its economy and advance EU integration, it asks members of the international community to respect the Dayton Accords and support local reform initiatives in BiH. The RS believes BiH can be a stable and successful part of Europe if the Dayton structure is respected.

**I. The SDA has sought to create a crisis in BiH and undermine security, functionality, and inter-Entity/inter-ethnic cooperation.**

1. This section examines how the Bosniak SDA Party is subverting security, functionality, and inter-entity/inter-ethnic cooperation in BiH. SDA President Bakir Izetbegovic and other Bosniak party leaders are threatening to use violence as a means of resolving political disputes. Mr. Izetbegovic ignited an unnecessary political crisis by seeking to prohibit commemoration of Republika Srpska's Day of the Republic, which has been peacefully observed for the past 20 years. The Bosniak Chief Prosecutor of BiH has wrongly deployed his powers to intimidate SDA political opponents and RS Government officials. SDA and other Bosniak judicial officials and judges continue to block EU-recommended judicial reforms. Such actions are harming BiH citizens, weakening the economy and threatening BiH's future.

**A. The SDA has sought to create a crisis by attacking Republika Srpska's legitimacy, through its efforts to prevent commemoration of Republika Srpska's Day of the Republic, and by threatening violence.**

**1. Challenge to Republika Srpska's Republic Day holiday**

2. Despite the BiH Constitution's recognition of Republika Srpska, the SDA has waged an unrelenting campaign to undermine Republika Srpska's legitimacy. SDA President Bakir Izetbegovic used his position as a member of the BiH Presidency to file a Constitutional Court complaint against Republika Srpska's celebration of the date of its creation, 9 January 1992, an observance that has occurred peacefully for the past 20 years. The SDA specifically claimed that the holiday violated the BiH Constitution because Republika Srpska's creation, in essence, was illegitimate and that the holiday is offensive to Bosniaks and thus should not be celebrated—notwithstanding Republika Srpska being a party to the treaty that created the BiH Constitution. It also claimed that Republika Srpska's holiday unlawfully discriminated against Bosniaks because the day of the celebration fell on an Orthodox Christian religious holiday.

3. The SDA has not, however, challenged religious or national holidays celebrated by Bosniaks or Croats.

4. Late last year, the BiH Constitutional Court's two Bosniak members—both of them former high SDA officials—joined with its three foreign members to outvote the court's Serb and Croat members to uphold Izetbegovic's complaint. This decision followed a long and troubling pattern of the Court politically outvoting in support of Bosniak political issues, with the backing of the High Representative, rather than following the rule of law. (See section III below for a more detailed explanation of the serious problems related to continuation of foreign judges on the Constitutional Court.)

5. The SDA hoped to provoke the citizens and political leaders of Republika Srpska to react in a way that the SDA could portray to the international community as hostile to the Constitutional Court and BiH. The RS National Assembly, with support of all Serb political parties, passed a resolution condemning the political outvoting of the Court and calling on the RS Government to organize an advisory referendum. Citizens of Republika Srpska also reacted strongly through the media and communication with their local officials, seeing the Bosniak



court action as a direct affront to their nationality and a provocative challenge to the very existence of Republika Srpska. Many believed that if the SDA could successfully nullify the celebration of their Republic, the SDA would seek to repress them further and delegitimize Republika Srpska in other similar ways.

6. Predictably, the SDA responded with an aggressive campaign to depict the actions of Republika Srpska as a direct assault on BiH-level institutions, a rejection of EU accession, and the first step in secession. By so doing, the SDA hoped for the international community to sanction Republika Srpska and its officials, especially Republika Srpska's President, thus further weakening the Entity and the Serb population.

7. Despite SDA's efforts, the RS National Assembly, with the unanimous support of all Serb parties, pressed forward with its plans to solicit the views of RS citizens through an advisory referendum, in accordance with the RS Law on Referendum and consistent with the RS and BiH constitutions. In a last-ditch effort to prevent the lawful referendum, the SDA President filed a claim with the Constitutional Court asserting that the referendum was unconstitutional. Because the court had not yet ruled on the case, the SDA President pressed the Court to issue an injunction order against the referendum. Just days before the scheduled referendum, the Court issued such an order. However, Republika Srpska pressed forward and held the referendum as scheduled on 25 September because of the political nature of the Court's decision, citizens' views that the issue was of vital national interest, and the fact that the referendum had already been prepared according to the law and had to be completed in accordance with regulations. As discussed below, the court's political nature is evident by this decision and more than 90 cases where parties have refused to implement its decisions. Participation in the referendum was similar to that in recent national and local elections, with 99.8 percent of the participants voting that the date of celebration of Republika Srpska's national day should remain 9 January.

## **2. Serious threats of violence by the SDA and Bosniak leaders and Republika Srpska's call for peace**

8. Key members of the SDA and other Bosniak parties responded to the advisory referendum by threatening the security of Republika Srpska and its President. For example, almost immediately after Republika Srpska held the referendum, SDA President Bakir Izetbegovic suggested that RS President Milorad Dodik would end up like Saddam Hussein, Muammar Gaddafi, or Slobodan Milosevic. Despite the referendum's narrow focus on the date of the Republic Day holiday, Izetbegovic warned before the referendum that it would "most probably lead to the collapse of peace in this part of Europe."<sup>1</sup> Former army commander Sefer Halilovic, who leads another Bosniak party, threatened war against Republika Srpska if it held its referendum about the Republic Day holiday and boasted that Republika Srpska could hold out for only 10 to 15 days.<sup>2</sup> No leaders of SDA or any other Bosniak party distanced themselves from these threats.

9. In response to these direct threats, RS leaders called for peace. President Dodik said Republika Srpska's "options are all political, without any war ones" and that Republika Srpska is

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<sup>1</sup> *Izetbegovic: Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

<sup>2</sup> *Bosnia's Republika Srpska to hold controversial referendum despite ban*, BNA Intellinews, 23 Sept. 2016.

“opening factories and building roads, not arming or preparing for war.”<sup>3</sup> President Dodik also repeatedly made clear that the referendum has nothing to do with secession and that secession is not on the RS Government’s agenda.<sup>4</sup>

### **3. The SDA’s Attempt to Use the BiH Chief Prosecutor to Punish the RS President**

10. In addition to threats of violence, within days after the referendum, the SDA then sought to have President Dodik arrested using its reliable servant, fellow Bosniak and BiH Chief Prosecutor Goran Salihovic. The Chief Prosecutor issued to President Dodik a summons for questioning and said the investigation of President Dodik over the referendum would be “a priority.”

11. The Chief Prosecutor failed to explain why the investigation of President Dodik’s role in a referendum that had already taken place should be a priority, particularly given that his office has never brought charges for any violation of a Constitutional Court decision. Since 2004, authorities have failed to implement 91 decisions of the Constitutional Court.<sup>5</sup> For example, the Constitutional Court’s 2010 decision declaring the Mostar electoral system unconstitutional remains to be implemented, preventing Mostar citizens from voting in local elections since 2008.

12. The real reason for the summons of President Dodik and the “priority” with which it was issued is that it was designed to interfere in the 2 October local elections, which were then less than a week away. The BiH Prosecutor’s actions are an example of flagrantly selective use of the criminal law for political ends.

13. The summons of President Dodik, moreover, was unlawful on both procedural and substantive grounds. The summons was procedurally invalid because the Chief Prosecutor issued it without a finding from the BiH Constitutional Court that there had been a failure to implement its decision and that President Dodik was responsible. Investigating President Dodik over the referendum is substantively unlawful because he did nothing more than provide rhetorical support for it. President Dodik did not enact the Decision providing for the 25 September referendum and had no authority to stop it from taking place. Namely, the Decision on the Referendum was initiated by the caucuses of all Serbian parties in the RS National Assembly. Hence, neither the President nor the RS Government initiated or enacted the Decision.

14. President Dodik agreed to submit to questioning by the Prosecutor’s Office, despite the illegitimacy of the request, only not in Sarajevo due to the threats on his life.<sup>6</sup>

15. Once the referendum made clear RS citizens’ views about the date of the Republic Day holiday, the RS National Assembly took those views into consideration when it drafted legislation to ensure that RS law is in compliance with relevant decisions of the Constitutional

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<sup>3</sup> *Dodik: Even Putin can't change our decision on referendum*, B92, 21 Sept. 2016.

<sup>4</sup> *Tensions Rise As Bosnian Serbs Vote In Banned Referendum*, Radio Free Europe/Radio Liberty, 25 Sept. 2016.

<sup>5</sup> Freedom House, *Nations in Transition 2016: Bosnia and Herzegovina*, p. 10.

<sup>6</sup> *Dodik “will respond to summons - but won't go to Sarajevo”*, B92, 27 Sept. 2016.

Court, as well as with the expressed views of RS citizens. On 25 October, the RS National Assembly approved a new law that retains the 9 January date of Republic Day, makes clear that the date is to be marked and celebrated as a secular holiday, and makes other modifications consistent with the Constitutional Court's decisions.<sup>7</sup>

16. The SDA tried—but failed—to create a crisis over Republika Srpska Republic Day and the referendum over the date of its observance. However, the SDA succeeded, to some extent, in falsely depicting Republika Srpska as violating the Dayton Accords, including the BiH Constitution. Republika Srpska has acted calmly despite the SDA's provocations and attacks and by so doing has averted what could have become a crisis. Unfortunately, there is no reason to believe that this will end the dangerous activities of the SDA and its supporters.

**B. The SDA's recent actions to create a crisis are part of a broader pattern of undermining security, functionality, and inter-Entity/inter-ethnic cooperation.**

**1. The SDA held much-needed IMF financing for Entities hostage for purely political purposes.**

17. IMF financing has been a vital form of assistance to both Entities in their efforts to address global economic challenges and the costs of reforming their post-war economies. IMF representatives have negotiated the details for these funding mechanisms on an annual basis with the leaders of both Entities. This was the case in 2016 as well, and in May, leaders of Republika Srpska, the Federation, and BiH reached consensus on a new letter of intent for the IMF. The agreement on the letter of intent came only after both Entities' enactment of difficult reforms and lengthy negotiations among the Entities, BiH, and the IMF. After agreeing to the text of the new letter of intent, however, Federation Prime Minister Fadil Novalić and BiH Council of Ministers Chairman Denis Zvizdić—both members of the SDA—refused to give their final signatures.

18. They did so in a dangerous attempt to coerce the RS Government to acquiesce to their demands on unrelated issues. First the two SDA leaders refused to sign the letter of intent until Republika Srpska accepted a proposed adaptation of the BiH's Stabilization and Association Agreement (SAA) with the EU, necessitated by Croatia's entry into the EU. Almost immediately after the disagreement over the SAA adaptation was resolved, SDA politicians continued to withhold their signatures on the letter of intent in a newly manufactured effort to coerce Republika Srpska to accept amendments to earlier agreed decisions on the Coordination Mechanism to be used in the EU accession process.

19. A Western diplomat called the SDA leaders' refusal to sign the letter of intent "a completely political decision."<sup>8</sup> An EU spokesperson told the Balkan Investigative Reporting Network (BIRN) "that the agreement on an IMF arrangement is a crucial element of Bosnia's

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<sup>7</sup> Gordana Katana, *Bosnian Serbs step back from confrontation over divisive national holiday*, REUTERS, 25 Oct 2016.

<sup>8</sup> *IMF delays new deal for Bosnia after authorities fail to sign*, REUTERS, 7 July 2016.

reform agenda, and that delays could jeopardize progress in all areas.”<sup>9</sup>

20. In order to fund Federation spending while continuing to hold hostage IMF financing, SDA officials helped to arrange for negative-interest loans from local banks for the Federation, causing Republika Srpska to bear most of the brunt of no IMF financing.<sup>10</sup> It is unusual for private banks to extend loans with such extraordinary favorable rates to a government that is not especially creditworthy.

21. The SDA leaders finally signed the letter of intent for the IMF on 31 July after Entity and BiH leaders came to a new agreement on the Coordination Mechanism. But the SDA’s reckless gamesmanship in withholding their final signatures from the letter of intent tarnished the reputation of BiH as a place to invest and caused financial hardship to the Entities and the citizens that rely on them. The SDA’s attempted coercion also risked prompting the IMF to require yet another new round of talks, which would have caused months of additional delays to IMF financing and greater hardship to citizens of both Entities.

## **2. Improper influence on the BiH Prosecutor’s Office**

22. The SDA, as explained further in section III, exerts improper influence on the BiH Prosecutor’s Office. The Prosecutor’s Office dutifully protects powerful SDA members and allies from prosecution and targets political rivals of the SDA. U.S. Deputy Chief of Mission Nicholas M. Hill observed in 2015 that the Chief Prosecutor is “largely believed to be heavily influenced by Bosniak political forces” and that there are “complaints that the prosecutor’s office has too many strong-willed SDA acolytes on its staff.”<sup>11</sup>

## **3. Biased war crimes prosecutions**

23. Under the SDA’s influence, the BiH Prosecutor’s Office has shown a pronounced bias against Serb victims of war crimes, particularly where Bosniak perpetrators are involved. This has not improved despite the RS’s efforts to report on this serious problem for the past several years. Such bias sows ethnic division and badly damages Serbs’ trust in BiH justice institutions. This issue is examined in section III, below.

## **4. Blocking BiH judicial reform**

24. Republika Srpska, as detailed in section III, has been pursuing vital reforms to the BiH justice system through the EU Structured Dialogue on Justice. But the SDA steadfastly blocked any real progress on these reforms, including those the EU has made clear are necessary for BiH’s justice system to meet European standards. Moreover, the SDA has blocked reforms to the BiH Constitutional Court that are necessary for BiH’s full sovereignty and EU accession.

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<sup>9</sup> Maja Garaca Durdevic, *Bosnians Trade Blame Over IMF Loan Holdup*, BALKAN INSIGHT, 8 July 2016.

<sup>10</sup> Drazen Simic, *Bosnian Banks Give Interest-Free Loan to Federation*, BALKAN INSIGHT, 25 Aug. 2016.

<sup>11</sup> Nicholas M. Hill, *Moving Beyond Narrow-Minded Politics*, MREŽA ZA IZGRADNJU MIRA 8 July 2015.

## 5. Unlawful imposition of census program

25. Under pressure from the SDA—including an apparent threat of prosecution from the BiH Chief Prosecutor—the director of the BiH Agency for Statistics unilaterally issued a decision purporting to adopt a unified processing program for the census that violated the BiH Law on Census. The director acted outside of his legal authority, and the program’s methodology was inaccurate and contrary to the specific requirements set forth in the law. The goal of the processing program the director purported to adopt was to artificially inflate the count of BiH’s Bosniak population. The director’s unlawful actions are examined further in section II, below.

### C. The SDA has helped turn BiH into a jihadist sanctuary.

26. In addition to undermining functionality and inter-ethnic cooperation in BiH, the SDA, as detailed in the attached paper, has helped turn BiH into a safe haven for jihadists. In a recent analysis, Germany’s *Der Spiegel* wrote of BiH, “It increasingly looks as though a new sanctuary for IS fighters, planners and recruiters has been established right in the middle of Europe. . . . German investigators believe there are around a dozen places in Bosnia where Salafists -- followers of a hardline Sunni interpretation of Islam -- have assembled radicals undisturbed by the authorities.”<sup>12</sup> BiH has provided more fighters to Iraq and Syria, per capita, than any other European country.<sup>13</sup>

#### 1. The SDA is an Islamist party.

27. SDA leader Bakir Izetbegovic’s father, Alija Izetbegovic, founded the SDA in 1990 as a pan-Islamist party. Izetbegovic’s *Islamic Declaration*, published in 1990, states, “There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions.”<sup>14</sup> The SDA’s manifesto, published in 1993, says, “Muslim ideology will aim to gradually abolish the duality between sacred and secular, religious and political, which has been imposed on us by the secularized Christian Europe against our will . . . .” These statements have never been retracted by the SDA. In other words, there can be no Islamic state without Islamic society. The same postulates existed in the Taliban state in Afghanistan and still exist in the Islamic State in Iraq and Syria.

#### 2. BiH’s deep ties to international terrorism

28. Since early in *the 1990s war*, Bosnia and Herzegovina has been a European training ground and sanctuary for jihadists. Khalid Sheik Muhammad, the mastermind of 9/11, and at least two of the 9/11 hijackers were veterans of the mujahidin in BiH.<sup>15</sup> Dozens of other terrorist

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<sup>12</sup> Walter Mayr, *Sharia Villages: Bosnia's Islamic State Problem*, DER SPIEGEL, 5 Apr. 2016.

<sup>13</sup> *Foreign Fighters in Iraq & Syria—Where Do They Come From?*, RADIO FREE EUROPE/RADIO LIBERTY, 29 Feb. 2016; John Schindler, *Operation CUT: Bosnia versus the Islamic State*, 22 Dec. 2015.

<sup>14</sup> ALIJA IZETBEGOVIC, ISLAMIC DECLARATION, p. 30.

<sup>15</sup> The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States, 22 July 2004 (“9/11 Commission Report”) at 147 (Khalid Sheikh Muhammad “spent some time fighting alongside the mujahideen in Bosnia and supporting that effort with financial donations.”); 9/11 Commission Report at 155.



acts and plots have been linked to individuals trained in BiH, including the 2004 Madrid train bombings, the 2008 Mumbai attacks, the 2005 London bombings, the 2002 Bali bombings, the 1998 bombings of U.S. embassies in East Africa, the 2000 bombing of the U.S.S. Cole, and the millennium plots against Los Angeles and U.S. facilities in Jordan. On 12 May 2016, RS anti-terrorism officials, working in cooperation with Swedish authorities, arrested five persons suspected of smuggling military-grade weapons to radical Islamists in Sweden.<sup>16</sup>

### **3. Terrorist acts in BiH**

29. Terrorists are also increasingly striking in BiH itself. For example, in November 2015, Enes Omeragic murdered two BiH soldiers in Sarajevo before blowing himself up. ISIS-related materials were later discovered at his apartment. On 27 April 2015, a man believed to be affiliated with the Wahhabi movement attacked the police station in Zvornik, Republika Srpska, during a shift change. Shouting, “Allahu Akbar,” he opened fire on RS police, killing Officer Dragan Djuric and wounding two others. After this terrorist act, the RS Ministry of Interior investigation of 32 members of the Wahhabi movement was publicly condemned by leaders of Bosniak parties; notably inappropriate was Bakir Izetbegović's offer of financial assistance for legal defense of the suspects.

30. In Mostar in 1997, a terrorist attack by an Al-Qaeda-linked group wounded 29 people. In June 2010, Haris Čaušević, a member of the Wahhabi movement, bombed the police station in Bugojno, which killed Tarik Ljubuškić, a police officer, and seriously damaged the police building and surrounding buildings. In October 2011, Melvid Jašarević, a member of the Wahhabi community located in the village of Gornja Maoča, attacked the U.S. Embassy in Sarajevo using firearms, hitting it with 105 bullets.

### **4. The SDA invited mujahidin to BiH and supported them during and after the war.**

31. Consistent with their Islamist ideology, the SDA invited mujahidin to BiH and cooperated closely with them during the war. SDA cofounder Mustafa Cerić said, “We invited the mujahidin to Bosnia. . . . We should all be grateful for the mujahidin.”<sup>17</sup> Alija Izetbegović personally ordered the creation of the El Mujahid Detachment of the so-called Army of the Republic of Bosnia and Herzegovina (ARBiH).<sup>18</sup> Under the Dayton Accords, all foreign fighters were required to leave BiH.<sup>19</sup> But many remained in BiH while the SDA protected them and used them to bolster their power.<sup>20</sup> During the war in BiH, the mujahidin committed horrendous atrocities against Serb civilians and treated prisoners of war with extreme cruelty. After the war, the mujahidin became the core of radical Islam in BiH, from which a radical Wahhabi and Salafi

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<sup>16</sup> *Police seize weapons 'en route to Swedish militants'*, THE LOCAL.SE, 13 May 2016.

<sup>17</sup> JOHN SCHINDLER, UNHOLY TERROR (2007) at 162.

<sup>18</sup> EVAN KOHLMANN, AL-QAIDA'S JIHAD IN EUROPE (2004) 91.

<sup>19</sup> Dayton Accords, Annex 1A, art. III (2).

<sup>20</sup> In 1996, the year after the war, *The Guardian* reported, “The Islamic fighters act as a kind of paramilitary guard for Mr. Izetbegovic's Muslim and increasingly nationalist Party of Democratic Action [SDA].” John Pomfret, *Iranians Form 'Terror Force' in Bosnia*, THE GUARDIAN, 9 July 1996.

movement would develop, whose members and supporters have been responsible for a series of terrorist acts in post-war BiH.

32. In December 1995, at a farewell ceremony for the mujahidin who had fought in the ranks of the so-called ARBiH, Rasim Delić, Commander-in-Chief, said: “This is just the first round, we do not know when the next or any other one will come. For this reason, your help and the assistance of the Islamic world for its people who are at the boundary between Islam and Christianity is still necessary and will be required until Islam wins on this soil.”<sup>21</sup> During his visit to Sarajevo, Porter Gross, CIA Director, openly said to the chiefs of the BiH Intelligence and Security Agency: “When in Saudi Arabia, Kuwait, Iraq, Egypt, Algeria, Morocco, or Chechnya, Al-Qaida's activists, often important local leaders, are killed or captured, at least two or three of them always have BiH passports.”<sup>22</sup>

## 5. The SDA today continues close ties to radical Islamists.

33. SDA Vice President Šemsudin Mehmedović was chief of police in one of the El Mujahid Detachment's key centers of activity. *The Guardian* described Mehmedović's relationship with the mujahidin after the war: “Mr. Mehmedovic has nurtured and protected these men as part of a plan to create a reserve force to terrorise potential political opponents, to harass Serbs and Croats, and to pressurise Muslims who might not support Mr. Izebegovic, local officials said.”<sup>23</sup> Osman Mehmedagić, who served as Alija Izetbegovic's chief of security during the mujahedin recruitment period, is now director of the BiH Intelligence-Security Agency. Hasan Čengić, who was member of the supervisory board of the Al-Qaeda-linked Third World Relief Agency,<sup>24</sup> remains a member of the SDA's main board. Alarming, certain supporters of radical Islam are often employed in many public agencies and institutions; this is, in particular, evident in the Federation at all levels: Federation, cantons and municipalities, even law enforcement agencies. The SDA looks approvingly at this dangerous permeation of public institutions by radicalized individuals, which undermines the capacities of the institutions to prevent and combat religious violence, extremism and terrorism.

34. A recent report published by the U.S. Army War College warned against the “danger of sharing classified information and decisionmaking with Bosnian politicians and representatives with ties to the Muslim Brotherhood and Iran.”<sup>25</sup> Based on the SDA's control BiH's intelligence service and other institutions, this warning is well justified.

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<sup>21</sup> *Potrebna nam je vaša pomoć do pobjede islama*, VEČERNJI LIST, 14 Sept. 2007

<sup>22</sup> Afterword of Fran Višnar, a military and political analyst, in EVAN KOHLMANN, AL-KAIDIN DŽIHAD U EUROPI, AFGANISTANSKO-BOSANSKA MREŽA [AL-QAIDA'S JIHAD IN EUROPE, THE AFGHAN - BOSNIAN NETWORK], Naklada Ljevak, Zagreb, 2005, p. 295

<sup>23</sup> John Pomfret, *Iranians Form 'Terror Force' in Bosnia*, THE GUARDIAN, 9 July 1996.

<sup>24</sup> John Pomfret, *Bosnian Officials Involved in Arms Trade Tied To Radical States*, WASH. POST, Sept. 22, 1996, at A26.

<sup>25</sup> Leslie S. Lebl, *Islamism and Security in Bosnia –Herzegovina*, Strategic Studies Institute and U.S. Army War College, May 2014, at 46.

## 6. Denial of justice for mujahidin war crimes

35. The BiH Prosecutor's Office, which is closely tied to the SDA, has failed to seek justice for the mujahidin's war crimes against Serbs. The office has been particularly protective of SDA members implicated in the mujahidin's atrocities. For example, after BiH's State Investigation and Protection Agency (SIPA) arrested Šemsudin Mehmedović, a mujahidin-linked SDA member of the BiH House of Representatives in connection with war crimes, the BiH Prosecutor's Office, abetted by the Court of BiH, successfully used the criminal justice system to attack and push aside SIPA's director.

## 7. BiH's failure to curb jihadism

36. BiH's SDA-dominated security apparatus is failing to root out the jihadist presence in BiH. The security services in Sarajevo and their domestic political and international supervisors are evidently not willing to respond to extremist threats so closely linked to the SDA and its war-time and post-war supporters. As Nenad Pejic of Radio Free Europe/Radio Liberty observed:

There are countless examples of local authorities in Bosnia failing to act properly against Islamic extremism. . . . There are some claims that 'inaction' in Bosnia had its roots nearly 20 years ago when Bosnian authorities granted 50 passports to foreign mujahideen, most of whom were Salafist/Wahhabis . . . . This 'inaction' is not related to the police or court capacity or poor equipment, but rather to the ethnically divided BiH police and judiciary that has political sponsorship.

Islamic community leaders and local politicians described terrorism acts in BiH as isolated "criminal acts" and not a consequence of growing Islamic extremism. Attempts to initiate police investigations of the Wahhabi movement were often defined as Islamophobic.<sup>26</sup>

37. When jihadists returning from Syria and Iraq have been prosecuted, they only receive nominal punishment, consisting of suspended one-year sentences or nominal fines. In March 2016, for example, the Court of BiH sentenced a man who fought for ISIS to just one year in prison or, alternatively, a fine.<sup>27</sup> Such lenient sentences, which are the norm, create no deterrent against BiH citizens joining ISIS (and other jihadist organizations) and returning to Europe as serious terrorist threats. They also send a message that BiH institutions consider joining ISIS to be neither grave nor unacceptable.

38. RS authorities are hamstrung in their efforts to protect against jihadist violence. BiH-level and Federation intelligence and security agencies often fail to share intelligence with RS authorities. Meanwhile, BiH's jihadist communities are located in the Federation and Brčko

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<sup>26</sup> Nenad Pejic, *Wahhabist Militancy in Bosnia Profits from Local and International Inaction*, JAMESTOWN TERRORISM MONITOR 9, Issue 42, 17 Nov. 2011.

<sup>27</sup> *Emin Hodžić sentenced to Prison for fighting in Syria*, SARAJEVO TIMES, 22 March 2016.

District, outside the reach of RS police jurisdiction.

39. Republika Srpska supports closer anti-terrorist cooperation between different levels of governance, and RS officials are participating actively in the Operational Group Against Terrorism, a recently activated body bringing together representatives of all of BiH's police agencies. But efforts to further centralize security decisions in Sarajevo are unlawful and counterproductive. The BiH Ministry of Security has proposed a new anti-terrorist coordination body to be chaired by himself.<sup>28</sup> There is no legal basis for this proposal, which would give the BiH Minister unprecedented authority over investigations.

## **8. The international community's support of the SDA unintentionally contributes to the spread of terrorism.**

40. Western policy makers unwittingly contribute to the spread of jihadism in BiH by supporting the SDA and its goal of centralizing authority at the BiH level in violation of the Dayton Accords. Entities with robust competencies, including over security, provide an important safeguard against radical Islam and terrorism.

## **II. Republika Srpska will continue to defend its rights under BiH's constitution and laws.**

### **A. Voters have sent a message of support for the RS Government and its defense of the Entity's rights under Dayton.**

41. Republika Srpska and the Federation held local elections on 2 October. The elections were conducted smoothly in Republika Srpska, but were cancelled in the Federation municipality of Stolac after the SDA's candidate for mayor physically attacked two Croat members of the local election commission, seriously injuring one of them. Residents of the Federation city of Mostar were once again not allowed to vote because of the continued failure to implement the BiH Constitutional Court's 2010 decision on the Mostar electoral system. Turnout in Republika Srpska was 59.5%, significantly higher than the turnout in the Federation, which was 50.6%.

42. Despite efforts by the SDA and its domestic and international allies to undermine the parties of Republika Srpska's governing coalition, voters gave those parties a sweeping victory. The parties in the RS coalition won the mayoral seats in 44 out of 64 cities and municipalities, including Banja Luka. The victory for the coalition parties in the 2 October election sends a strong message of support for the RS Government and its policies, including its economic reforms and its staunch defense of Republika Srpska's rights under the Dayton Accords. Going forward, the RS Government will focus on additional reforms to improve job creation and wage growth and to press ahead with EU accession.

43. Voters in Srebrenica elected a Serb candidate, Mladen Grujicic, who emphasized his respect and sympathy for victims of the war regardless of their nationality and his belief that Serbs and Bosniaks can live in peace in the municipality. After his election, Mr. Grujicic, who ran as a candidate of the Serbian coalition, said, "Serbs and Bosniaks respect each other

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<sup>28</sup> Rodolfo Toe, *Bosnian Serbs Oppose New Anti-Terror Body*, BALKAN INSIGHT, 29 July 2016.

extraordinarily and they look to the future together.”<sup>29</sup> He made clear that no changes would be made to the annual commemoration of the 11 July 1995 massacre.<sup>30</sup> The BiH Central Election Commission confirmed Grujicic’s election on 17 October 2016.<sup>31</sup> The SDA, unfortunately, refused to accept the election of a Serb as mayor and announced that it would call for the election to be annulled.<sup>32</sup>

## **B. Referendum on Republic Day**

44. On 25 September, Republika Srpska held a referendum to ascertain its citizens’ views about whether 9 January should be marked and celebrated as the Day of Republika Srpska. It is important to note that the holiday has been peacefully observed on 9 January for the past 20 years. The referendum was fully in accord with applicable law and concerned an issue of profound importance to RS citizens. RS citizens voted overwhelmingly in favor of retaining the 9<sup>th</sup> of January as the date of Republic Day.

45. The referendum was designed to inform the RS National Assembly as it considers how to implement the BiH Constitutional Court’s 26 November 2015 decision concerning Republic Day. That decision left to Republika Srpska the authority and responsibility to implement the decision to ensure that the celebration of the Day of Republika Srpska was in harmony with the BiH Constitution. The decision did not forbid Republika Srpska from celebrating the date of its founding.

### **1. The referendum had nothing to do with BiH’s territorial integrity.**

46. The SDA and its allies in the international community have tried to raise tensions by making the false claim that the referendum was a step toward secession of Republika Srpska from BiH. In reality, the referendum concerned the narrow question of the date of Republic Day and nothing else. President Dodik and other Republika Srpska leaders have repeatedly made clear their belief that BiH can be successful if the Dayton structure is respected.

### **2. The referendum was fully in accord with applicable law.**

47. On 15 July 2016, the Republika Srpska National Assembly voted, in accordance with the 2010 Republika Srpska Law on Referendum and Civic Initiative, to hold a referendum asking Republika Srpska citizens whether Republic Day should continue to be observed on 9 January. The Republika Srpska Constitution has long specifically provided for referenda at Articles 70 and 77. The Council of Europe’s Venice Commission has thoroughly scrutinized the consistency of Republika Srpska’s Constitution with the BiH Constitution,<sup>33</sup> and it has never objected to the

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<sup>29</sup> Ajla Gezo, *Serb Set to Oust Bosniak as Srebrenica Mayor*, BIRN, 3 Oct. 2016.

<sup>30</sup> Denitsa Koseva, *Anger in Srebrenica as recount confirms election victory for Serb mayor*, BNE INTELLINEWS, 12 Oct. 2016.

<sup>31</sup> *Results Show Bosnian Serb Elected Mayor Of Srebrenica For First Time Since 1999*, RADIO FREE EUROPE/RADIO LIBERTY, 17 Oct. 2016.

<sup>32</sup> *SDA traži poništavanje izbora u Srebrenici i Stocu*, NEZAVISNE NOVINE, 10 Oct. 2016.

<sup>33</sup> See, e.g., Venice Commission, *Compatibility of the Constitution of the Republika Srpska with the Constitution of Bosnia and Herzegovina following the Adoption of Amendments LIV – LXV by the National Assembly of*



Republika Srpska's Constitution's referendum provisions. Republika Srpska's 2010 Law on Referendum and Civic Initiative was drafted in light of the Code of Good Practice of the Venice Commission<sup>34</sup> and the Recommendations of the Council of Europe's Committee of Ministers on citizens' participation in public life at the local level.<sup>35</sup>

48. Referenda are fully consistent with the BiH Constitution and the practice of democratic states throughout Europe and around the world. The Dayton Accords contain no provisions that could reasonably be interpreted as prohibiting or restricting referenda.

49. Moreover, as the Council of Europe's Parliamentary Assembly said in a 2007 resolution, "Referendums are an instrument of direct democracy which belong to the European electoral heritage."<sup>36</sup> The Council of Europe's Congress of Local and Regional Authorities recognized in a 2007 resolution that "referendums, whether at national, local or regional level, constitute one of the main instruments of direct democracy giving citizens the possibility to take part in political decision making as well as in public matters which directly concern them . . . ."<sup>37</sup>

50. The referendum concerned an issue—Republika Srpska public holidays—that is squarely within the competence of Republika Srpska. Republic Day is deeply important to Republika Srpska citizens because the creation of Republika Srpska is widely seen as vital to the protection of Serbs' interests. Republic Day, as it marks the birth of Republika Srpska, is a celebration of Republika Srpska's existence—an existence that the BiH Constitution, Annex 4 of the Dayton Accords, welcomes and accepts. Confronted by the November 2015 decision of the Constitutional Court, the RS Government had a legitimate interest in obtaining RS citizens' views on when and how this important historical event should be celebrated. As Dragan Čović, the president of BiH's largest Croat party said on 21 October, "The referendum was the voice of the RS and it should be respected."<sup>38</sup>

### **3. The referendum was a step toward implementing the Constitutional Court's decision.**

51. Although Republika Srpska disagrees with the Constitutional Court's decision in important respects, the referendum was nonetheless intended as a step toward implementing it. The decision's only express order is that the RS National Assembly (RSNA) "harmonize" Article 3(b) of the Law on Holidays with the BiH Constitution. It does not state that the RSNA must abolish the 9 January holiday or otherwise specify what is required for harmonization. Republika Srpska is confident that Republic Day can be celebrated without discriminating

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Republika Srpska, Secretariat Memorandum on the basis of the Commission's opinion appearing in document CDL(96)56 final.

<sup>34</sup> CDI AD 2007-2008.

<sup>35</sup> Rec (2001) 19; Memorandum from Jasna Brkić, Minister of Economic Relations and Regional Cooperation, Republika Srpska, to Zoran Lipovac, Minister of Administration and Local Self-Government, Republika Srpska, 21 Jan. 2010.

<sup>36</sup> Council of Europe, Parliamentary Assembly Res. 1592 (2007), 23 Nov. 2007, para. 1.

<sup>37</sup> Council of Europe, Congress of Local and Regional Authorities Res. 235 (2007).

<sup>38</sup> Čović: *Referendum je bio glas RS i to treba poštovati*, NAP.BA, 21 Oct. 2016.

against any religion or ethnic group.

52. The first step toward harmonizing the law was for Republika Srpska to determine whether its citizens wish to retain 9 January as the date of the holiday. Once Republika Srpska's citizens expressed their views, the RSNA took those views into consideration. The RS National Assembly has now aligned the relevant legislation with related Constitutional Court decisions consistent with the results of the referendum. On 25 October, the RS National Assembly passed a new law that retains the 9 January date of Republic Day, makes clear that the date is to be marked and celebrated as a secular holiday, and makes other modifications consistent with the Constitutional Court's decisions.<sup>39</sup>

**4. The Constitutional Court's decision cannot reasonably be interpreted to forbid Republika Srpska's citizens to observe Republika Srpska's founding date.**

53. If the Constitutional Court's decision is interpreted to forbid Republika Srpska from celebrating 9 January as the anniversary of its founding, it would be in conflict with the BiH Constitution as well as long and consistent practice regarding holidays throughout BiH. The Constitutional Court's concerns about Republic Day stem, first, from the fact that it coincides with the Orthodox feast of St. Stephen's Day and, second, that the 9 January holiday, given the nature of the declaration that it commemorates, allegedly privileges Serbs over other ethnicities.

54. Yet if the Court were to consistently apply such a position, every public holiday in both Republika Srpska and the Federation would be unconstitutional.

**a) Religious feasts**

55. If the Constitutional Court's decision were to be interpreted as forbidding the January 9 Republic Day holiday because it coincides with the Orthodox feast of St. Stephen, that would require all public holidays that mark or coincide with religious feasts to be banned. For example, the public holidays marking Muslim feasts like Eid al-Fitr and Eid al-Adha, observed in Bosniak-majority cantons of the Federation, would have to be abolished. Public holidays marking Roman Catholic feasts like Christmas, observed in Croat-majority cantons of the Federation, would have to be abolished. Even holidays that are at least partially secular, such as New Year's Day, Independence Day, Labor Day, Statehood Day, Victory Day, and Dayton Day would have to be forbidden as well. Each of these days coincides with Orthodox and Catholic religious feasts.

**b) Secular holidays favoring certain ethnic groups**

56. If the Constitutional Court's decision were interpreted as forbidding the Republic Day holiday because it allegedly favors one ethnic group over others, it would certainly also require forbidding the Federation's 1 March celebration of "Independence Day."

57. The Federation's 1 March public holiday marks the anniversary of the 1992 referendum

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<sup>39</sup> Gordana Katana, *Bosnian Serbs step back from confrontation over divisive national holiday*, REUTERS, 25 Oct 2016.

through which Bosniaks and Croats voted for Bosnia and Herzegovina to unilaterally secede from Yugoslavia. Serbs strongly objected to the referendum and did not participate in the referendum itself. Today, Serbs consider 1 March to be the anniversary of an illegitimate referendum that tore the Serbs of Bosnia and Herzegovina away from their country, Yugoslavia, and led to the outbreak of war. The Federation's 1 March holiday "favors" Bosniaks and Croats at least as much as Republika Srpska's 9 January holiday "favors" Serbs.

58. To the extent that the Constitutional Court's decision places a stigma on the date of the RS's founding it stigmatizes the Republika Srpska's very existence. Given that the BiH Constitution, Annex 4 of the Dayton Accords, accepts Republika Srpska as one of the two Entities that comprise BiH, that cannot possibly be what the decision means. The RS was indeed a party, recognized by international law, to Annex 4 and all Annexes that comprise the Dayton Accords. Stigmatizing the Serbs' creation of Republika Srpska while not equally stigmatizing the Bosniaks and Croats' unilateral declaration of independence from Yugoslavia would constitute unlawful discrimination against Serbs. SDA President Bakir Izetbegovic's challenge to Republic Day was a baldly political effort to humiliate Republika Srpska and manufacture a crisis. Republika Srpska has been observing Republic Day for 20 years, just as Bosniak-majority cantons have been observing holidays of special significance to Bosniaks and Croat-majority cantons have been observing holidays of special significance to Croats. As *Balkan Insight* editor Marcus Tanner recently wrote:

[T]he obscure issue on the Republika Srpska's "National Day" should never have reached the front pages of the newspapers, let alone the courts, let alone the country's highest court. It is hard to see what business judges have in ruling on whether people should celebrate January 9th, 10th, 11th, or any other day.

Almost every national holiday is "discriminatory" once it is examined under some sort of constitutional microscope.

Viewed from that absurd angle, Ireland's national holiday, St Patrick's Day, discriminates against the entire Protestant community – who do not acknowledge Catholic saints – not to mention the country's growing non-Christian community. Does anyone there care? Of course not.<sup>40</sup>

59. In a recent report, the U.S.-based NGO Freedom House said the Constitutional Court's decision on Republic Day "exemplified the judiciary's politicization."<sup>41</sup> The Constitutional Court's two Bosniak judges, who are both former high SDA officials (General Secretary and Vice President), vote consistently according to the SDA's political interests rather than each case's legal merits. Meanwhile, the court's foreign judges vote according to the wishes of the High Representative, which usually align with the SDA's agenda.

60. The Constitutional Court's political nature is one reason why many of its decisions have

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<sup>40</sup> Marcus Tanner, *The Bosnians Have Made a Mess of This Referendum*, BALKAN INSIGHT, 27 Sept. 2016.

<sup>41</sup> Freedom House, *Nations in Transition 2016: Bosnia and Herzegovina*, p. 9.

never been implemented.

**C. The BiH Census as published in June is unlawful and inaccurate.**

61. On 30 June 2016, the BiH Agency for Statistics published BiH Census results that are inaccurate and legally invalid. The results were published on the basis of a faulty program of data processing that was adopted unilaterally by the Director of the BiH Agency in direct violation of the BiH Census Law.

62. That law requires cooperation and consensus between the BiH Agency and the Entity statistics institutes. For example, Article 20 obligates the BiH Agency to “[c]ooperate with the entity statistical institutes and other competent institutions involved in the Census in preparing, organizing and carrying out of the Census.” No provision in the law empowers the BiH Agency to unilaterally define the program of data processing.

63. Moreover, the director’s decision was issued outside the scope of his legal authority as director. It also appears that the BiH Prosecutor illegally pressured the director into the decision through threat of prosecution. The publication of the census on the basis of the director’s unlawfully adopted program of data processing has resulted in a deeply flawed census that is being rejected in Republika Srpska and considered biased and illegitimate by a large portion of BiH citizens. The director’s program, for example, allowed the BiH Agency to supply answers to questions that census respondents left blank, a practice that is blatantly unlawful, inaccurate, and inconsistent with international practice. It also allows residents to be counted based on clearly invalid questionnaires.

64. The erroneous data processing program will result in erroneous data, which will constitute a faulty basis for all short-term and long-term projections. In particular, they will prevent foreign firms from participating in public calls for the drafting of strategic plans. Information on the number of children not in school, the number of unemployed persons, the number of persons not covered by social welfare programs, and construction of strategic facilities will all be based on incorrect data.

65. A lawful and accurate census would have to be the result of consensus between the BiH and Entity institutions the law has authorized to organize, conduct and publish it. Only an accurate census could serve as a reliable basis for the drafting of strategic documents and plans for development of certain regions and society as a whole.

**III. EU Integration**

**A. Republika Srpska is playing a leading role to promote EU integration.**

66. The Republika Srpska Government is committed to BiH’s integration into the EU. Republika Srpska has been implementing the EU-sponsored Reform Agenda and continuing to push forward with economic reforms. For example, in December 2015 Republika Srpska fulfilled a key element of the EU-sponsored Reform Agenda by enacting a new Labor Law in the face of fierce opposition from Republika Srpska’s main opposition party. In February 2016,

Republika Srpska enacted a new bankruptcy law, which won the praise of the World Bank.<sup>42</sup> Of 74 measures from the Reform Agenda, the RS has fully implemented 38 and is implementing another 35; the only remaining measure will be implemented in the forthcoming period. In a statement after the high-level meeting with the representatives of the European Commission held in Sarajevo in September 2016, the RS Prime Minister confirmed an “implementation level of 98.6%, which is a remarkable progress.”<sup>43</sup> Also, Republika Srpska has continued to harmonize its laws and regulations with the EU’s *acquis communautaire* and regulations of the Council of Europe. Republika Srpska has already subjected more than 2,170 laws, regulations, and general acts to this procedure since 2007. Republika Srpska will continue to its strong support and efforts to help promote BiH’s EU integration.

67. With the adoption of the Coordination Mechanism, i.e., Decision concerning the System for Coordination of the EU Integration Process in BiH, which was agreed at the highest political and expert levels on 17 August 2016, BiH met the last condition for the EU’s acceptance of its membership application. The Council of the EU’s positive September decision with respect to BiH’s application brings BiH to the next step: the EU Commission is to send a questionnaire requesting detailed information on BiH’s capacities and readiness for the accession process to follow. RS institutions are already set up for the serious task of providing answers to those important questions, which will represent a very complex activity, given that over 70% of the matters concerned fall under the competencies of the Entities.

**B. EU integration requires reforms of BiH’s judicial and prosecutorial institutions.**

**1. The BiH Prosecutor’s Office continues to discriminate against Serb victims of war crimes.**

68. Justice, human rights, and reconciliation require that war crimes be punished without regard to the ethnic identity of their perpetrators or victims. But more than 10 years after the Court of BiH began trying war crimes cases, the BiH justice system is continuing to discriminate against Serb victims of war crimes. Indeed, there are indications that this longstanding pattern of bias is getting worse. War crimes discrimination denies Serbs the equality before the law to which they are entitled under Protocol 12 of the European Convention on Human Rights. It also impedes reconciliation.

69. This discrimination is made possible because the BiH Prosecutor’s Office controls all investigations irrespective of whether they are conducted at a lower level of governance or at the BiH level and exercises discretionary powers with regard to the selection of sensitive cases. In this way, certain cases of war crimes committed by Bosniaks against Serbs are prevented from ever getting to court.

70. The International Crisis Group has criticized the Prosecutor’s Office for its failure to

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<sup>42</sup> *Resilient Growth Amid Rising Risks*, South East Europe Regular Economic Report No. 10, World Bank, Fall 2016, at p. 14.

<sup>43</sup> *Predstavnicu EU impresionirani napretkom BiH u provođenju Reformske agende*, BHRT.BA, <http://www.bhrt.ba/vijesti/bih/sarajevo-sastanak-o-provedbi-reformske-agende/>



prosecute some of the war's worst war crimes against Serbs. Even U.S. Deputy Chief of Mission Nicholas M. Hill observed in 2015 that the Chief Prosecutor is "largely believed to be heavily influenced by Bosniak political forces" and that there are "complaints that the prosecutor's office has too many strong-willed SDA acolytes on its staff."<sup>44</sup> In 2012, a former international advisor to the BiH Prosecutor's Office observed that many prosecutors there are highly reluctant to prosecute Bosniaks for crimes against Serbs and that they fail to vigorously pursue those cases. This failure is apparent in the BiH Prosecutor's Office's record, details of which the RS has provided in many of its prior reports to the Security Council.

71. Statistics indicate that the office's discrimination against Serbs is getting worse. For example, since the beginning of 2016, around 22% of new indictments have been for crimes committed, even in part, against Serbs. By comparison, over 75% of indictments in this period have been for crimes committed, at least in part, against Bosniaks. These figures are even more lopsided against Serb victims than the figures for indictments before 2016, when indictments for crimes against Serbs were raised in 24% of the cases, and indictments against crimes against Bosniaks in 68%. Out of the total number of final and binding decisions of the Court of BiH imposing the sentence of imprisonment, only 10% accounted for crimes against Serbs, whereas more than 84% accounted for crimes committed, at least partially, against Bosniaks.

## **2. A new OSCE report explains how the Chief Prosecutor controls war crimes prosecutions, protecting political allies.**

72. The Organization for Security and Cooperation in Europe's (OSCE) June 2016 report the prosecution of war crimes in BiH reinforces Republika Srpska's longtime concerns about the nontransparent, political, and biased nature of the BiH Prosecutor's Office. Judge Joanna Korner of the United Kingdom prepared the analysis at the request of ICTY Prosecutor Serge Brammertz and OSCE Ambassador to BiH Jonathan Moore.

### **a) Chief Prosecutor's Refusal to Cooperate**

73. Judge Korner made multiple unsuccessful attempts to persuade the BiH Prosecutor's Office to cooperate with her study.<sup>45</sup> The High Judicial and Prosecutorial Council (HJPC) approved the OSCE Mission's access to the Prosecutor's Office's documents concerning war crimes cases and threatened sanctions against the Prosecutor's Office if it failed to cooperate.<sup>46</sup> The Prosecutor's Office then finally agreed to give the OSCE Mission access to certain files (only those of cases for which indictments had been lodged) and to interview prosecutors. But such interviews had to be in the presence of the Deputy Chief Prosecutor.

74. Judge Korner observed that "this condition may have inhibited some of those being interviewed from providing completely frank responses . . . ."<sup>47</sup> The Prosecutor's Office also

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<sup>44</sup> Nicholas M. Hill, *Moving Beyond Narrow-Minded Politics*, MREŽA ZA IZGRADNJU MIRA 8 July 2015.

<sup>45</sup> Judge Joanna Korner, *Processing of War Crimes at the State Level in Bosnia and Herzegovina*, OSCE (17 June 2016) at para. 18.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at para. 19.

broke its promise to give the OSCE Mission access to case files.<sup>48</sup> Because of the “refusal by the [Chief Prosecutor] to allow access to investigation files,” it was impossible to examine the evidence that led to indictments.<sup>49</sup>

75. The OSCE Report highlights the continued lack of transparency in the BiH justice system. This lack of transparency makes it impossible to properly evaluate the fairness with which war crimes are being prosecuted and adjudicated.

**b) Micromanagement by the Chief Prosecutor**

76. The OSCE Report also shows how the Chief Prosecutor has been able to protect Bosniak suspects—and particularly political allies from the SDA—from war crimes prosecution. The Report makes clear that individual prosecutors have no independence and that the Chief Prosecutor micromanages prosecutorial decisions. “When instructed by management to indict a particular person and/or indict for a particular charge,” the report says, prosecutors “do as they are told.”<sup>50</sup> The Report explains:

Notwithstanding the assertions by the [Chief Prosecutor] that “there are no new and old prosecutors, they are all completely equal” and “I do not have the right to tell the prosecutors what to do,” the over-riding impression received, from the vast majority of interviewees, was that the [Prosecutor’s Office] was micro-managed with approval required for any decision whether it related to indictments or more mundane administrative activities.<sup>51</sup>

77. The Report further explains:

[The Deputy Chief Prosecutor] stated that ‘all indictments are sent to the CP’s office where they are reviewed by him or his closest associates’. She did not elaborate on who were his closest associates and later stated that ‘I do not know for sure who reviews the indictments. I get an approval from the CP.’”<sup>52</sup>

78. In 2014, the Chief Prosecutor replaced war crimes section heads with prosecutors who had no war crimes experience.<sup>53</sup> This lack of experience, the report notes, leaves them susceptible to pressure from the Prosecutor’s Office’s senior management.<sup>54</sup>

79. Although the Chief Prosecutor’s noncooperation with the OSCE Mission limited what

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<sup>48</sup> *Id.* at para. 21.

<sup>49</sup> *Id.* at para. 6.

<sup>50</sup> *Id.* at para. 39.

<sup>51</sup> *Id.* at para. 40.

<sup>52</sup> *Id.* at para. 54.

<sup>53</sup> *Id.* at para. 41.

<sup>54</sup> *Id.* at para. 42.

could be discovered, Judge Korner's report nonetheless casts light on how the Chief Prosecutor imposes political control on war crimes prosecutions.

80. The BiH Prosecutor's Office, which treats all criticism of its work as illegitimate assault on the judiciary, reacted to Judge Korner's report with anger, calling it "an attack on judicial institutions."<sup>55</sup> The Prosecutor's Office's resistance to evaluation and criticism is one of many obstacles that must overcome for BiH to make reforms necessary to meet European standards.

### **3. Bosniak Obstruction of the Structured Dialogue on Justice**

81. The RS Government has continued to seek reforms to BiH's justice system through the EU's Structured Dialogue on Justice, which began in 2011, but progress has been slow because SDA members and other Bosniak officials have fiercely opposed necessary reforms.

82. There were signs of progress during the second half of 2015. On 13 July 2015, the participants in the Structured Dialogue agreed on a change of format that narrowed the Structured Dialogue sessions to EU officials and experts and ministers of justice of BiH, RS, and Federation, and the President of the Brčko District Judicial Commission, with a broader set of participants involved in working groups that support the Structured Dialogue's decision-makers.<sup>56</sup> Subsequent to these changes participants in the Structured Dialogue signed a protocol in September establishing a framework for some much-needed judicial reforms. Among the important reforms foreseen in the protocol are changes to the laws on the BiH Court and Prosecutor's Office, the Criminal Code, and the Law on the High Judicial and Prosecutorial Council.

83. However, since the signing of the Protocol, Bosniak leaders have acted to stall further progress. In response to the Protocol, the Bosniak-led Court of BiH has sought to derail the agreed-to reforms. A key part of the reforms foreseen in the Protocol includes correcting the Court's ability to arbitrarily extend its own jurisdiction, which EU experts and officials have repeatedly made clear is contrary to EU standards. Despite consensus among the Ministers of Justice of BiH, the Federation and RS and the President of the Brčko District Judicial Commission, as well as the EU, that the extended jurisdiction practices of the BiH Court must be reformed, Bosniak officials oppose them. With respect to such reforms, the Bosniak President of the Court of BiH, Meddžida Kreso stated, "This cannot be allowed."<sup>57</sup> Since then, Judge Kreso and other Bosniak participants from BiH institutions have continued to denounce reform efforts.

84. The Structured Dialogue's EU sponsors recently tried to bridge the gap between the participants by asking them to propose new and more moderate positions on the Court of BiH's extended jurisdiction. The Republika Srpska's Justice Ministry responded with a good-faith compromise proposal. Unfortunately, the BiH Deputy Minister of Justice, an SDA member, responded with an even more extreme version of extended jurisdiction, completely ignoring the

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<sup>55</sup> Erna Mackic, *Bosnian Prosecution Angered by Judge's Criticism*, BIRN JUSTICE REPORT, 19 June 2016.

<sup>56</sup> Members of the HJPC, BiH Court, BiH Prosecutors Office and other officials are not part of the Structured Dialogue, but may participate in working groups as requested by the Structured Dialogue members, where they are able to provide their views; however, they do not have decision-making competencies.

<sup>57</sup> Denis Dzidic, *Justice Reforms Fail to Halt Bosnian Serb Referendum*, BIRN, 14 Sept. 2015.

concerns about extended jurisdiction shared by Republika Srpska and EU experts.

85. Despite these actions, Republika Srpska continues to participate in good faith in the Structured Dialogue and hopes that agreement can be reached on key reforms, including in particular on a new draft BiH Law on Courts. BiH's elected officials at all levels, with the EU's help, should push forward these reforms notwithstanding Bosniaks' intransigence.

#### **4. The Needed Reform of the BiH Constitutional Court**

86. The BiH Constitutional Court, as currently constituted, is incompatible with BiH's EU membership. The presence of foreign judges on BiH's Constitutional Court is inconsistent with BiH's sovereignty and democracy and undermines the court's legitimacy. In private meetings, EU officials have made clear that BiH cannot become an EU member as long as it has foreign judges sitting on its Constitutional Court. It is time for participation of foreign judges on the court to end, as should have happened 15 years ago according to the terms of the BiH Constitution.

##### **a) A Constitutional Court with foreign members is inconsistent with sovereignty and democracy.**

87. The presence of foreign judges on the BiH Constitutional Court is incompatible with BiH's sovereignty. In a recent article about the Court of BiH, Stefan Graziadei of the University of Antwerp observed:

Even more at odds with national sovereignty is the idea that international judges may sit in national apex courts: "Because of the doctrine of state sovereignty, it sounds almost inconceivable that a foreign citizen should serve on the bench of a national supreme court or a separate constitutional court of another country." This is particularly true because such courts operate at the boundary between politics and law: they have the power to review legislation, which is based on the will of the people, for conformity with the national constitution.<sup>58</sup>

88. Even one of the current foreign judges, Judge Grewe, admits that the presence of foreign judges "can be seen as an intrusion into the national affairs" or "as an attempt at supervision."<sup>59</sup> That is exactly what it is.

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

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<sup>58</sup> Stefan Graziadei, *Six models for Reforming the Selection of Judges to the BiH Constitutional Court*, Centre for Southeast European Studies, Working Paper No. 14 (Jan 2016) at 4 (quoting Joseph Marko, 'Foreign Judges: A European Perspective', in *Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong*, ed. by Simon Young and Yash Ghai (New York: CUP, 2014), pp. 637-65 (p. 637)). (footnotes omitted).

<sup>59</sup> Constance Grewe and Michael Riegner, *Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared*, MAX PLANCK YEARBOOK OF UNITED NATIONS LAW, Vol. 15, p. 41.

others is in stark contradiction to the principle of democracy.”<sup>60</sup>

**b) The Constitutional Court lacks legitimacy.**

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

91. Graziadei points out that foreign judges “are not trained in the domestic legal system, often do not understand the local language(s), and as citizens of another country they appear to be ill-equipped to uphold the supreme law of a country with which they share no bond of citizenship.”<sup>61</sup> In addition, as Tim Potier has pointed out, the use of foreign judges in a country’s highest court prevents a society’s ownership of its constitution and system.<sup>62</sup>

92. The Constitutional Court’s legitimacy deficit is exacerbated by its political nature, including an alliance between the bloc of three foreign judges and the two Bosniak judges, which has often outvoted the majority of BiH citizens on the Court. Judge Constance Grewe, one of the current foreign members of the BiH Constitutional Court, has observed that “the group of international judges allied to one ethnic group can outvote the two others.”<sup>63</sup> The ethnic group allied to the foreign judges is the Bosniaks. As *Balkan Insight* recently reported, “The three votes wielded by the foreign judges, together with the two Bosniak judges on the court, have often proved to be decisive, outvoting the two Serb and two Croat judges.”<sup>64</sup> Similarly, the International Crisis Group has explained, “The BiH Constitutional Court has repeatedly ordered the RS to amend its constitution over the objections of both Serb (and, often, both Croat) judges . . . .”<sup>65</sup>

93. The alliance between the foreign and Bosniak judges has resulted in many of the Constitutional Court’s most political and legally baseless decisions, handed down over the objections of the four Croat and Serb judges. As the U.S.-based NGO Freedom House recently wrote, the Constitutional Court’s November 2015 decision on Republic Day “exemplified the judiciary’s politicization.”<sup>66</sup> But that decision is only one example of the alliance of foreign and

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<sup>60</sup> International Expert Panel Convened By The Committee For A European Solution In Cyprus, *A principled basis for a just and lasting Cyprus settlement in the light of International and European Law*, 2005 (quoted in Graziadei at 4).

<sup>61</sup> Graziadei at 5 (footnotes omitted).

<sup>62</sup> See Tim Potier, *Making an Even Number Odd: Deadlock-Avoiding in a Reunified Cyprus Supreme Court*, *JOURNAL ON ETHNOPOLITICS AND MINORITY ISSUES IN EUROPE*, Vol. 7 (2008), at 4.

<sup>63</sup> Constance Grewe and Michael Riegner, *Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared*, *MAX PLANCK YEARBOOK OF UNITED NATIONS LAW*, Vol. 15, p. 42.

<sup>64</sup> Rodolfo Toe, *Bosnian Croats, Serbs Unite Against Foreign Judges*, *BALKAN INSIGHT*, 2 Dec. 2015.

<sup>65</sup> International Crisis Group, *What Does Republika Srpska Want?*, 6 Oct. 2011, p. 16.

<sup>66</sup> Freedom House, *Nations in Transition 2016: Bosnia and Herzegovina*, p. 9.

Bosniak judges turning the Court into a political instrument of the SDA and other Bosniak parties.

94. Another prominent example is the Court's 5-4 decision upholding the High Representative's creation of the Court of BiH, despite that court's manifest unconstitutionality. As the International Crisis Group has written, the BiH Constitution "allotted judicial matters to the Entities, apart from a state Constitutional Court."<sup>67</sup> Four out of the six judges from BiH rightly found the law creating the Court of BiH unconstitutional. The law was only upheld because the three foreign judges voted as a bloc, along with the two Bosniak judges, to protect the High Representative's creation.

95. The Constitutional Court's legitimacy is also undermined by the foreign judges' lack of independence from the High Representative. One of the foreign judges that voted to uphold the High Representative's creation of the Court of BiH, Joseph Marko, later admitted that there was a "tacit consensus between the Court and the High Representative that the Court . . . *will always confirm the merits of his legislation . . .*"<sup>68</sup> A 2010 study of the Constitutional Court called it the "usual practice" for the Constitutional Court to "seek the opinion of the High Representative prior to making a decision."<sup>69</sup>

96. Perhaps the clearest example of the High Representative's pervasive interference with the Constitutional Court is the High Representative's standing order that the Court must not challenge any of the High Representative's decisions. After a 2006 Constitutional Court verdict held that individuals must have an opportunity to appeal extrajudicial punishments decreed by the High Representative, the High Representative responded by handing down a decree nullifying the court's verdict. The decree, which remains in effect today, also banned any proceeding before the Constitutional Court or any other court that "*takes issue in any way whatsoever with one or more decisions of the High Representative.*"<sup>70</sup>

97. As recently as October 2015, the High Representative went so far as to declare itself, and not the court, as the final interpreter of the Constitution.

### **c) Politically motivated case prioritization**

98. The BiH Constitutional Court demonstrates clear political motivation in its prioritization of applications filed before it, giving priority to applications brought by Bosniak officials targeting Republika Srpska and neglecting other applications. The Constitutional Court, for example, has still not put on its agenda the 29 June application of the Chairman of the BiH House of Representatives challenging a decision of the director of the BiH Agency for Statistics (discussed in Section II-C, above) that caused a deep political crisis. The legal nature of this

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<sup>67</sup> International Crisis Group, *Bosnia's Future*, 10 July 2014, p. 27.

<sup>68</sup> JOSEPH MARKO, FIVE YEARS OF CONSTITUTIONAL JURISPRUDENCE IN BOSNIA AND HERZEGOVINA, European Diversity and Autonomy Papers (July 2004) at 17 and 18 (emphasis added).

<sup>69</sup> Christian Steiner and Nedim Ademovic, *Constitution of Bosnia and Herzegovina Commentary* (2010), p. 821.

<sup>70</sup> Office of the High Representative (OHR), Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, March 23, 2007 (emphasis added).

application—which was submitted against a unilateral decision, issued contrary to firm opposition of the RS Institute of Statistics—is such that it demands an urgent procedure, following the Rules of the Court, because it also requested the Court to decide on an interim measure to suspend the BiH Agency for Statistics director’s decision and delay publishing the results of the census. Not only has the Constitutional Court failed to consider the application, according to the Court Registrar’s statement it cannot be confirmed whether this case will be included in the Court’s agenda for a December session.<sup>71</sup> In contrast to the fate of that application, immediately upon submission of a referendum-related application dated 24 August by the Chairman of the BiH Presidency, Bakir Izetbegovic, the Constitutional Court urgently convened to deliberate on Izetbegovic’s application and decided on an interim measure on 17 September.

**d) All Serb and Croat leaders support ending the role of foreign judges on the Constitutional Court.**

99. No other sovereign state in the world has seats on its constitutional court reserved for foreign judges, let alone judges appointed by a foreign individual judge—President of the European Court of Human Rights—without any requirement of domestic consent. The foreign judges were a transitional measure that was never intended to be in place for the long term. Thus, the BiH Constitution authorizes the Parliamentary Assembly to pass a new law replacing the foreign judges five years after their initial appointment, which occurred in 1996.<sup>72</sup>

100. A 29 November 2015 joint declaration of political leaders from the RS, signed by, among others, the RS Prime Minister, the RS Member of the BiH Presidency, and the Deputy Chairman of the BiH Council of Ministers, demands that BiH enact legislation to reform the Constitutional Court, including through the abolition of foreign judges.

101. All of the Serb and Croat political parties in BiH are united in support of replacing the foreign judges on the Constitutional Court with BiH citizens.<sup>73</sup> As the president of the Croat National Council, which represents all of the Croat parties, recently said, “Twenty years after the war, Bosnians are ready to take full control of this court.” On 21 October 2016, leaders of the SNSD and HDZ, the largest Serb and Croat parties in BiH, announced that experts from both parties will soon prepare a joint Draft Law on Constitutional Court of BiH that all Serb and Croat parties will support.<sup>74</sup> Unfortunately, the SDA is refusing to reform the Constitutional Court by passing a new law because it does not want to break up the alliance of former SDA leaders and foreign members that controls it.

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<sup>71</sup> *Izetbegovićev zahtev rešen hitno, a Bosićev kupi prašinu*, BLIC.RS, <http://www.blic.rs/vesti/republika-srpska/izetbegovicev-zahtev-resen-hitno-a-bosicev-kupi-prasinu/4g2qe72>

<sup>72</sup> BiH Constitution, Art. VI(1)(d).

<sup>73</sup> Rodolfo Toe, *Bosnian Croats, Serbs Unite Against Foreign Judges*, BALKAN INSIGHT, 2 Dec. 2015.

<sup>74</sup> *HDZ i SNSD zajednički predlažu zakon o Ustavnom sudu BiH*, FEDERALNA.BA, 21 Oct. 2016.

## **5. BiH justice institutions are abusing power for political advantage.**

102. BiH cannot become an EU member until its justice institutions are reformed to stop their abuse of power for political advantage.

### **a) Political investigations by the BiH Prosecutor's Office**

103. The BiH Chief Prosecutor has engaged in a pattern of conducting investigations and prosecutions of different criminal offences for political purposes. A recent example, as discussed in more detail in section I above, is Chief Prosecutor Goran Salihović's targeting of RS President Milorad Dodik for criminal prosecution over Republika Srpska's holding of the referendum on Republic Day.

104. This was a flagrantly selective use of the criminal law for political ends that was designed to punish him for the referendum and interfere in the 2 October elections. The elections were then less than a week away. The summons of President Dodik, moreover, was unlawful on both procedural and substantive grounds.

### **b) Suspension of BiH Chief Prosecutor**

105. As discussed in section I above, On 28 September 2016, a disciplinary panel of the High Judicial and Prosecutorial Council, suspended Chief Prosecutor Goran Salihović pending dismissal proceedings against him. The Office of Disciplinary Council listed a number of possible charges in its press release to the public. These included:

failure to ask for his recusal in cases where conflict of interest was present; engaging in inappropriate contacts with judges or parties in a case; allowing persons not legally authorized to act as prosecutors; interfering in the work of judges or prosecutors with the goal of obstructing or disparaging their activities; deliberately providing false, deceitful, or incomplete information regarding job applications, disciplinary matters, issues related to promotions in service, or any other issues that are within the jurisdiction of the [HJPC].

### **c) Abuses by SIPA**

106. In its previous report to the UN Security Council, Republika Srpska described how the former director of BiH's State Investigation and Protection Agency (SIPA) was forced from office using dubious charges after SIPA arrested a powerful SDA politician in connection with war crimes. Under its newly installed director, SIPA carried out a series of provocative armed raids on police stations and commercial facilities in Republika Srpska in coordination with the BiH Court and Prosecutor's Office. SIPA continues to be a serious concern because of its disregard for the rule of law.

## **6. Ethnic discrimination in hiring by BiH justice institutions**

107. In addition to discriminating against Serb victims of war crimes, BiH justice institutions



also engage in ethnic discrimination in their employment decisions. For example, in nine senior management positions at the Court of BiH, there is not a single Serb.<sup>75</sup> The only Croat in a senior management position has been subject to years of harassment.<sup>76</sup>

**C. EU integration requires closing OHR and ending the invocation of Chapter VII of the UN Charter.**

**1. The High Representative has violated and undermined the Dayton Accords.**

108. In order to qualify for EU membership, BiH must become a self-governing country whose sovereignty is fully respected. This is impossible as long as the High Representative remains in BiH and claims authority to decree laws, constitutional amendments, and punishments completely outside the Dayton constitutional system. If BiH is to become a fully sovereign state and an EU member, the High Representative's presence in BiH must come to an end.

**2. The UN Security Council should end its unjustified application of Chapter VII of the UN Charter to BiH.**

109. The Security Council has authority to take certain measures under Chapter VII of the UN Charter "to maintain or restore international peace and security" only where there is "the existence of any threat to the peace, breach of the peace, or act of aggression."<sup>77</sup> BiH, though burdened with political divisions like so many countries, has been peaceful and secure for many years; there is no security threat that could possibly justify the Security Council acting under Chapter VII of the UN Charter. The Security Council should thus end the application of Chapter VII measures. Continuing to act under Chapter VII casts an unwarranted stigma on BiH and is detrimental to BiH's progress toward EU membership.

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<sup>75</sup> Kako je Medždžida Kreso sa funkcija u Sudu BiH "skinula" srpske kadrove, RTRS.TV, 7 Oct. 2016.

<sup>76</sup> *Id.*

<sup>77</sup> *See* Chapter VII of the UN Charter.

## **How Bosnia and Herzegovina Has Become a Terrorist Sanctuary**

Bosnia and Herzegovina is becoming a European safe haven for potential terrorists, and BiH-level institutions are unable or unwilling to eradicate the problem. In a recent analysis, Germany's *Der Spiegel* wrote of BiH, "It increasingly looks as though a new sanctuary for IS fighters, planners and recruiters has been established right in the middle of Europe. . . . German investigators believe there are around a dozen places in Bosnia where Salafists -- followers of a hardline Sunni interpretation of Islam -- have assembled radicals undisturbed by the authorities."<sup>1</sup> According to John Schindler, a former intelligence analyst and counterintelligence officer at the U.S. National Security Agency, BiH "is considered something of a 'safehouse' for radicals, a permissive environment for their clandestine activities."<sup>2</sup> BiH has provided more fighters to Iraq and Syria, per capita, than any other European country.<sup>3</sup>

How did a country in the heart of Europe—whose Muslim population largely rejects jihadism—become a sanctuary for Islamic extremists?

It was not an accident. BiH's SDA party, which was founded on ideas of Islamic supremacy, invited the mujahidin and other radicals to BiH and gave them sanctuary thereafter. It is the same SDA that today dominates BiH-level institutions, including institutions charged with dealing with the jihadist threat.

### **BiH's deep ties to international terrorism**

Since early in the 1990s war, Bosnia and Herzegovina has been a European training ground and sanctuary for jihadists. A former Al Qaeda deputy commander has testified, "When they joined in the war in Bosnia al Qaida's primary objective was not to help the Bosnian Muslims, but rather to establish a base of operations in Bosnia to support al Qaida's future operations in Europe and the West."<sup>4</sup> BiH has served this function well in the years since the war.

According to the 9/11 Commission Report, Khalid Sheik Muhammad, the mastermind of 9/11, and at least two of the 9/11 hijackers were veterans of the mujahidin in BiH.<sup>5</sup> Dozens of other terrorist acts have been linked to individuals trained in BiH. Among the terrorist acts and plots planned or perpetrated by BiH mujahidin since the war are the 2004 Madrid train bombings, the

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<sup>1</sup> Walter Mayr, *Sharia Villages: Bosnia's Islamic State Problem*, DER SPIEGEL, 5 Apr. 2016.

<sup>2</sup> John Schindler, *Operation CUT: Bosnia versus the Islamic State*, 22 Dec. 2015.

<sup>3</sup> *Foreign Fighters in Iraq & Syria—Where Do They Come From?*, RADIO FREE EUROPE/RADIO LIBERTY, 29 Feb. 2016; John Schindler, *Operation CUT: Bosnia versus the Islamic State*, 22 Dec. 2015.

<sup>4</sup> *Documents: Financial Links between Saudi Royal Family and Al Qaeda*, Witness Statement of Ali Ahmad Al Hamad, NEW YORK TIMES, 23 June 2009 at p. 84 ("Witness Statement of Ali Ahmad Al Hamad") (available at [documents.nytimes.com/evidence-of-financial-links-between-saudi-royal-family-and-al-qaeda](http://documents.nytimes.com/evidence-of-financial-links-between-saudi-royal-family-and-al-qaeda)) at p. 2.

<sup>5</sup> The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States, 22 July 2004 ("9/11 Commission Report") at 147 (Khalid Sheikh Muhammad "spent some time fighting alongside the mujahideen in Bosnia and supporting that effort with financial donations."); 9/11 Commission Report at 155.

2008 Mumbai attacks, the 2005 London bombings, the 2002 Bali bombings, the 1998 bombings of U.S. embassies in East Africa, the 2000 bombing of the U.S.S. Cole, and the millennium plots against Los Angeles and U.S. facilities in Jordan.

### **Terrorist acts in BiH**

Although BiH has mostly served as a sanctuary for jihadists operating abroad, terrorists are also increasingly striking in BiH itself. For example:

- On 12 May 2016, RS anti-terrorism officials, working in cooperation with Swedish authorities, arrested five persons suspected of smuggling military-grade weapons to radical Islamists in Sweden.<sup>6</sup>
- In November 2015, Enes Omeragic murdered two BiH soldiers in Sarajevo before blowing himself up. ISIS-related materials were later discovered at his apartment.
- On April 27, 2015, a man believed to be affiliated with the Wahhabi movement attacked the police station in Zvornik, Republika Srpska, during a shift change. Shouting, “Allahu Akbar,” he opened fire on RS police, killing Officer Dragan Djuric and wounding two others.
- In October 2011, another terrorist, armed with an AK-47 and hand grenades, attacked the U.S. Embassy in Sarajevo, hitting it with 105 bullets.
- In 2010, jihadist terrorists bombed a police headquarters in the town of Bugojno in central Bosnia, killing police officer Tarik Jubuskić and injuring six others.

### **The SDA is an Islamist party.**

Alija Izetbegovic founded the SDA in 1990 as a pan-Islamist party. Izetbegovic’s *Islamic Declaration*, published in 1990 and distributed to Muslim soldiers during the war, states, “There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions.”<sup>7</sup> The Islamic Declaration also says that “the Islamic movement should and can start to take over power as soon as it is morally and numerically strong enough to be able to overturn not only the existing non-Islamic government, but also to build up a new Islamic one.”<sup>8</sup> This statement illustrates why Serbs, Croats, and moderate Bosniaks can take little comfort in any signs of moderation by the SDA. The SDA’s manifesto, published in 1993, lays out the party’s vision of a Muslim state:

The Muslim ideology will be the basis for the complete state and legal system of the future Muslim state, from the state and national symbols, over the ruling national policy, to educational system, social and economic institutions, and of course, the Muslim family as the unit on which the whole state is based.

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<sup>6</sup> *Police seize weapons 'en route to Swedish militants'*, THE LOCAL.SE, 13 May 2016.

<sup>7</sup> ALIJA IZETBEGOVIC, ISLAMIC DECLARATION, p. 30.

<sup>8</sup> *Id.* at p. 56.

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No state has ever assisted its opposition, nor has it deliberately offered the possibility for the promotion of the opposing ideas and political interests. . . . People who prove to be true Muslims, aware nationalists and good believers, will naturally have higher social privilege than those who persist in their opposition . . . . Good Muslims and nationalists will be promoted to presidents and directors and be given preferential access to education (scholarships etc.). . . . [T]he spirit of the ideology will be systematically promoted and infuse the society in all possible ways.

\* \* \*

Muslim ideology will aim to gradually abolish the duality between sacred and secular, religious and political, which has been imposed on us by the secularized Christian Europe against our will . . . . In its nature, Islam does not recognize the difference of religious and social. After all, Islam is not a “religion” but a religious-political ideology, an all encompassing approach to living. . . . True Islam always aims to encompass the society in which it exists, and with it its political and state structures.<sup>9</sup>

Subsequent to the manifesto’s publication, SDA officials including current officials have never renounced it despite its clear opposition to fundamental democratic principles and human rights, including those enshrined in the Dayton Peace Accords.

### **The SDA invited mujahidin to BiH and supported them during the war.**

Consistent with their Islamist ideology, the SDA invited Al Qaeda mujahidin to BiH and cooperated closely with them during the war. As Schindler observes, “The SDA did all it could to recruit mujahidin and get them to Bosnia.”<sup>10</sup> Mustafa Cerić, the grand mufti of Sarajevo and an SDA cofounder, said, “We invited the mujahidin to Bosnia. . . . We should all be grateful for the mujahidin.”<sup>11</sup> The ICTY found that “the advent of foreign Mujahedin was endorsed by the political leadership of the RBiH.”<sup>12</sup> As Clinton Administration anti-terrorism official Richard A. Clarke recognized, the mujahidin activities in BiH were “an al Qaeda jihad.”<sup>13</sup>

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<sup>9</sup> Adnan Jahic, *Virtuous Muslim State*, translation published by Centre for Peace in the Balkans, available at [balkanpeace.org/index.php?index=/content/balkans/bosnia/bos01.incl](http://balkanpeace.org/index.php?index=/content/balkans/bosnia/bos01.incl).

<sup>10</sup> JOHN SCHINDLER, *UNHOLY TERROR* (2007) at 130.

<sup>11</sup> *Id.* at 162.

<sup>12</sup> Judgment, *Rasim Delić* (Trial Chamber), 15 Sept. 2008, para. 166 (“*Delić*”).

<sup>13</sup> RICHARD A. CLARKE, *AGAINST ALL ENEMIES: INSIDE AMERICA’S WAR ON TERROR* (2004), p. 138.

The diary of mujahidin leader Anwar Shaban, which was seized by the Bosnian Croat Army, discussed regular meetings between senior members of Al Qaeda and the SDA leadership.<sup>14</sup> As Schindler writes, “The diary, which named virtually every Islamist notable in Bosnia, left no doubt of Alija Izetbegovic’s regular and deep involvement in the activities of the holy warriors; the mujahidin rightly saw Izetbegovic as their ‘real commander.’”<sup>15</sup> In November 1993, Sarajevo radio reported that Izetbegovic had visited the mujahidin and told them to “be merciless towards the enemy.”<sup>16</sup>

Alija Izetbegovic personally ordered the creation of the El Mujahid Detachment of the so-called Army of the Republic of Bosnia and Herzegovina (ARBiH).<sup>17</sup> The El Mujahid, a unit of the 3rd Corps of the ARBiH, was originally composed of foreign mujahidin, but it came to be composed primarily of local Bosniaks.<sup>18</sup> The El Mujahid Detachment routinely tortured and beheaded Serb prisoners during the 1990s war. The ICTY found in its 2008 *Rasim Delić* judgment that the El Mujahid had committed widespread and sadistic war crimes against Serbs. For example, the ICTY found that the El Mujahid murdered 52 Serb prisoners at the Kamenica camp between September and December 1995.

The ICTY also found that the El Mujahid Detachment engaged in “direct consultations with President Izetbegovic.”<sup>19</sup> The ICTY, moreover, found that the El Mujahid Detachment as a unit and some of its individual members were given awards by the Republic of Bosnia and Herzegovina.<sup>20</sup> After one engagement, the El Mujahid Detachment sent the heads of 28 Serb soldiers to Izetbegovic.<sup>21</sup> On December 10, 1995, after the war’s end, Alija Izetbegovic “rendered a public tribute” to the El Mujahid.<sup>22</sup>

The SDA freely distributed Bosnian passports to jihadists, including Osama bin Laden.<sup>23</sup> A German journalist twice encountered Bin Laden at Alija Izetbegovic’s office.<sup>24</sup> In 1995, Khalid Sheikh Mohammed, the mastermind of 9/11, also became a Bosnian citizen.<sup>25</sup> Al Qaeda’s current

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<sup>14</sup> SCHINDLER at 217.

<sup>15</sup> *Id.* at 217.

<sup>16</sup> *Id.* at 167.

<sup>17</sup> EVAN KOHLMANN, *AL-QAIDA’S JIHAD IN EUROPE* (2004) 91.

<sup>18</sup> Judgment, *Rasim Delić* (Trial Chamber), 15 Sept. 2008, para. 412 (“*Delić*”).

<sup>19</sup> *Delić* at para. 439.

<sup>20</sup> *Id.* at para. 455.

<sup>21</sup> SCHINDLER at 224.

<sup>22</sup> GILLES KEPEL, *JIHAD 151* (2002).

<sup>23</sup> SCHINDLER at 160.

<sup>24</sup> *Id.* at 124.

<sup>25</sup> Matt Olchawa, *From Brussels to Sarajevo: Why Belgium and Bosnia and Herzegovina Are Home to Islamic terrorists*, HUFFINGTON POST, 24 Nov. 2015.

leader, Ayman al-Zawahiri also visited Bosnia and Herzegovina multiple times in support of the jihadist cause.<sup>26</sup>

During the war in Bosnia and Herzegovina, top SDA officials also created, as a front for illegal activities, an organization with the misleading title, Third World Relief Agency (TWRA). Investigation showed that in fact this “aid organization” was a conduit for billions of dollars in arms and money from Islamic countries. It is well established that the TWRA was a source of financial and other support for Al Qaeda’s operations in BiH.<sup>27</sup> In cooperation with Al Qaeda, TWRA arranged for the transportation of foreign Al Qaeda members to Bosnia.<sup>28</sup> TWRA employees received foreign fighters upon their arrival in the region and arranged for their travel into Bosnia to meet up with Muslim fighters.<sup>29</sup> The U.S. 9/11 Commission concluded that the TWRA provided support for Osama Bin Laden’s terrorist activities.<sup>30</sup> According to counterterrorism expert Thomas Joscelyn, a senior fellow at the Foundation for Defense of Democracies, “TWRA was run by senior Bosnian government officials, and sponsored the relocation of hundreds, if not thousands, of jihadists to Bosnia to fight in the 1990s. While carrying out some legitimate humanitarian functions as a cover, TWRA was really a front for global terrorist operations.”<sup>31</sup> In 1996, Izetbegovic’s government awarded the TWRA a gold medal for “services to Bosnia.”<sup>32</sup> That same year, the CIA found that the TWRA “employ[s] members or otherwise facilitate[s] the activities of terrorist groups operating in Bosnia.”<sup>33</sup>

The purpose of the mujahidin in BiH went beyond military support. As Schindler explains, “the mujahidin were in Bosnia because the SDA wanted them there for ideological effect more than military purpose.”<sup>34</sup> The mujahidin

served as an ideological vanguard for the regime, as well as a powerful symbol of international support for their cause. The foreign fighters used Bosnia as a training base, a place to learn battle skills and establish jihadi networks—a new Afghanistan, in other words—while the thousands of Bosnians who served in ABiH mujahidin units were to be the cornerstone of the SDA’s all-Muslim ministate in Bosnia . . . .”<sup>35</sup>

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<sup>26</sup> SCHINDLER at 123.

<sup>27</sup> See, for example, Witness Statement of Ali Ahmad Al Hamad at p. 3.

<sup>28</sup> Witness Statement of Ali Ahmad Al Hamad at pp. 2-3.

<sup>29</sup> *Id.* at pp. 2-3.

<sup>30</sup> 9/11 Commission Report at 58.

<sup>31</sup> Thomas Joscelyn, “ISNA Gave \$100K to Terrorist Front Group,” *The Weekly Standard*, 24 June 2009.

<sup>32</sup> Gordon N. Bardos, *Al Qaeda’s Balkan Ties: The Bosnian Connections*, American Center for Democracy, 22 Aug. 2014.

<sup>33</sup> *Id.*

<sup>34</sup> SCHINDLER at 170.

<sup>35</sup> *Id.* at 170.

The International Criminal Tribunal for the Former Yugoslavia was investigating Alija Izetbegovic for war crimes, but the investigation was closed upon his death in 2003.

### **The SDA continued to support and utilize the mujahidin after war.**

After the war, as Schindler describes:

the SDA leadership decided to issue Bosnian citizenship en masse to any foreigners who had assisted the jihad. . . . Subsequent investigation revealed that 741 mujahidin were known to have been granted citizenship in late 1995 and early 1996, most illegally. However, as citizenship was also granted to at least hundreds of mujahidin who never actually lived in Bosnia, the mass naturalization after Dayton involved thousands of foreign fighters. The Muslim secret police was circumventing the rules and ensuring that terrorists were given citizenship at a frantic pace, in many cases on the spot; 103 imported mujahidin received citizenship on one day, December 28, 1995, alone.<sup>36</sup>

Under the Dayton Accords, all foreign fighters were required to be expelled from BiH, but Izetbegovic resisted evicting the mujahidin.<sup>37</sup> Clinton Administration anti-terrorism official Richard A. Clarke wrote in his memoir that the United States threatened Izetbegovic with “a cessation of all assistance . . . if he did not fully and faithfully implement Dayton by evicting the muj.”<sup>38</sup> Even after this, Clarke wrote, “Izetbegovic never did expel everyone.”<sup>39</sup>

Many mujahidin remained in BiH while the SDA protected them and used them to bolster their power. In 1996, the year after the war, *The Guardian* reported, “The Islamic fighters act as a kind of paramilitary guard for Mr. Izetbegovic's Muslim and increasingly nationalist Party of Democratic Action [SDA].”<sup>40</sup>

According to a recent report published by the U.S. Army War College, Izetbegovic “openly supported supposedly disbanded mujahideen military units, while numerous murders and other acts of violence, particularly against Bosnian Croats living in the Federation, were carried out by those same mujahideen and their Bosnian accomplices. These were not just random acts of violence in a lawless post-war period. Rather, the SDA was using the mujahideen ‘as powerful leverage in a struggle to maintain an ethnic majority in previously mixed regions of Central Bosnia and Sarajevo. . . .’”<sup>41</sup>

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<sup>36</sup> *Id.* at 239.

<sup>37</sup> Dayton Accords, Annex 1A, art. III (2).

<sup>38</sup> RICHARD A. CLARKE, *AGAINST ALL ENEMIES: INSIDE AMERICA’S WAR ON TERROR* (2004), p. 139.

<sup>39</sup> *Id.*

<sup>40</sup> John Pomfret, *Iranians Form 'Terror Force' in Bosnia*, *THE GUARDIAN*, 9 July 1996.

<sup>41</sup> Leslie S. Lebl, *Islamism and Security in Bosnia –Herzegovina*, Strategic Studies Institute and U.S. Army War College, May 2014, at 24, quoting Azinović, Bassuener, and Weber, *A Security Risk Analysis, Democratization Policy Council*, Oct 2011, p. 65 (footnotes omitted).

## The SDA today continues close ties to radical Islamists.

The SDA has never renounced its jihadist ties. Indeed, many of the SDA's current political leaders have close ties—both past and present—with radical Islamists and jihadists. These include, for example, SDA President Bakir Izetbegovic, SDA vice presidents Šemsudin Mehmedović and Šefik Džaferović, SDA board member Hasan Čengić, and Osman Mehmedagić, who served as Alija Izetbegovic's chief of security during the mujahedin recruitment period and is now director of the BiH Intelligence-Security Agency.

The SDA's leader—and the Bosniak member of the BiH Presidency—Bakir Izetbegovic, shares his father Alija's Islamist ideology. Bakir Izetbegovic was a close aide to his father during the war, and thus was well aware of his father's close associations with the mujahedin. A former SDA member has said that Bakir Izetbegovic was one of the main protectors of mujahedin who stayed in BiH after the war.<sup>42</sup> The younger Izetbegovic also aided in the construction of the King Fahd Mosque, which is the main power center of Wahhabism in BiH.<sup>43</sup> According to a leaked intelligence report by Stratfor, Bakir Izetbegovic tried to sell surface-to-air missiles to Al Qaeda in Iraq, the precursor to ISIS.<sup>44</sup> According to one analyst, Bakir Izetbegovic “has admitted to personally being in touch with leading mujahedin figures in Bosnia such as Imad al-Husin, a.k.a Abu Hamza, and offering ‘to help in any way.’”<sup>45</sup>

More recently, Izetbegovic has demonstrated close ties with Egypt's Islamist Muslim Brotherhood. In 2014, he invited Muslim Brotherhood leaders to meet with him at the BiH Presidency Office and was photographed displaying the Brotherhood's four-fingered “rabia” sign.<sup>46</sup> The Egyptian Foreign Ministry summoned BiH's charge d'affaires to protest Izetbegovic's actions. In 2013, Bakir Izetbegovic spoke in favor of BiH becoming a full member of the Organisation of Islamic Cooperation.<sup>47</sup>



Bakir Izetbegovic giving the Muslim Brotherhood's "rabia" sign

That would require BiH to sign the Cairo Declaration of Human Rights in Islam, which restricts universal human rights based on Islamic *sharia*.<sup>48</sup>

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<sup>42</sup> *Id.* at 17.

<sup>43</sup> *Id.*

<sup>44</sup> Gordon N. Bardos, *Al Qaeda's Balkan Ties: The Bosnian Connections*, American Center for Democracy, 22 Aug. 2014.

<sup>45</sup> Gordon N. Bardos, “Our Goal is Jerusalem” – *Militant Islamists in Southeast Europe*, American Center for Democracy, 8 Feb. 2014.

<sup>46</sup> *Optužbe protiv ideologa Muslimanskog bratstva: Interpol traži El-Karadavija!*, DNEVNI AVAZ, 8 Dec. 2014; Goran Maunaga, *Izetbegović izazvao diplomatski skandal*, GLASS SRPSKE, 6 Feb. 2014.

<sup>47</sup> Lebl at 35.



Another prominent member of the SDA is Šemsudin Mehmedović, who is currently a member of the BiH Parliamentary Assembly and vice president of the party, who was chief of police in one of the El Mujahid Detachment's key centers of activity. *The Guardian* described Mehmedović's relationship with the mujahidin after the war:

Sources said they are particularly close to Semsudin Mehmedovic, the main Bosnian police official in the region and an influential hardliner in Mr. Izetbegovic's party.

Mr. Mehmedovic has nurtured and protected these men as part of a plan to create a reserve force to terrorise potential political opponents, to harass Serbs and Croats, and to pressurise Muslims who might not support Mr. Izebegovic, local officials said.<sup>49</sup>

Hasan Čengić, who was member of the supervisory board of the Al-Qaeda-linked TWRA, described above,<sup>50</sup> remains a member of the SDA's main board. The U.S. Treasury Department has blocked Čengić's property under an executive order targeting "Persons Who Threaten International Stabilization Efforts in the Western Balkans,"<sup>51</sup> but he remains an SDA board member in good standing.

As award-winning Sarajevo journalist Esad Hećimović has said, "Terrorists have their protectors at the summit of power . . . Some politicians clearly think that at a given moment the terrorists will be useful."<sup>52</sup>

A recent report published by the U.S. Army War College warned against the "danger of sharing classified information and decisionmaking with Bosnian politicians and representatives with ties to the Muslim Brotherhood and Iran."<sup>53</sup> Based on the SDA's control BiH's intelligence service and other institutions, this warning is well justified.

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<sup>48</sup> Jonathan Russell, *Human Rights, The Universal Declaration vs The Cairo Declaration*, London School of Economics and Political Science, Middle East Centre Blog, 12 Oct. 2010.

<sup>49</sup> John Pomfret, *Iranians Form 'Terror Force' in Bosnia*, THE GUARDIAN, 9 July 1996.

<sup>50</sup> John Pomfret, *Bosnian Officials Involved in Arms Trade Tied To Radical States*, WASH. POST, Sept. 22, 1996, at A26.

<sup>51</sup> U.S. Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List, 11 Oct. 2016, available at [www.treasury.gov/ofac/downloads/sdnlist.pdf](http://www.treasury.gov/ofac/downloads/sdnlist.pdf).

<sup>52</sup> Gordon Bardos, *The Balkans ISIS Training Grounds*, American Center for Democracy, 16 Sept. 2016 (quoting comments carried in *Esad Hećimović: Teroristi imaju zaštitnike u vrhu vlasti i to je problem ove države*, POSTAJA.BA, 17 Nov. 2011).

<sup>53</sup> Lebl at 46.

| <b>Leading SDA Figures, Past and Present</b> |  |  |
|--|--|--|
|  | <b>Ties to Radical Islam</b>   | <b>Present Official Positions</b>  |
| <b>Bakir Izetbegovic</b>                     | <ul style="list-style-type: none"> <li>• Close aide to his father, Alija Izetbegovic, during his recruitment of mujahidin</li> <li>• Protected mujahidin after war</li> <li>• Aided in construction of King Fahd Mosque, the center of Wahhabism in BiH</li> </ul> | <ul style="list-style-type: none"> <li>• President of SDA</li> <li>• Member of BiH Presidency</li> </ul>                         |
| <b>Šemsudin Mehmedović</b>                   | <ul style="list-style-type: none"> <li>• Chief of police in El Mujahid stronghold of Tesanj during war</li> <li>• Nurtured and protected mujahidin after war</li> <li>• 2013 war crimes arrest by SIPA led to SIPA director's ouster</li> </ul>                    | <ul style="list-style-type: none"> <li>• Vice President of SDA</li> <li>• Member of BiH Parliamentary Assembly</li> </ul>        |
| <b>Hasan Čengić</b>                          | <ul style="list-style-type: none"> <li>• Member of Board of Al-Qaeda-linked TWRA</li> <li>• Property blocked by U.S. Treasury Department</li> </ul>  | <ul style="list-style-type: none"> <li>• SDA Board Member</li> <li>• Remains under U.S. Treasury Department sanctions</li> </ul> |
| <b>Šefik Džaferović</b>                      | <ul style="list-style-type: none"> <li>• Head of Criminal Police Department of Zenica, El Mujahid headquarters</li> <li>• Not investigated despite evidence against him</li> </ul>   | <ul style="list-style-type: none"> <li>• Dep. Speaker of BiH House of Representatives</li> </ul>                                 |
| <b>Osman Mehmedagić</b>                      | <ul style="list-style-type: none"> <li>• Chief of Security for Alija Izetbegovic during mujahidin recruitment and activities during war</li> </ul>   | <ul style="list-style-type: none"> <li>• Director of BiH Intelligence Service (OSA-OBA)</li> </ul>                               |

### **Denial of justice for mujahidin crimes**

The SDA has also blocked prosecutions for war crimes committed by the mujahidin. The BiH Prosecutor's Office, which—especially under its current Chief Prosecutor—is closely tied to the SDA, has failed to seek justice for the mujahidin's war crimes against Serbs. The office has been particularly protective of SDA members implicated in the mujahidin's atrocities. Even U.S. Deputy Chief of Mission Nicholas M. Hill observed in 2015 that the Chief Prosecutor is “largely believed to be heavily influenced by Bosniak political forces” and that there are “complaints that the prosecutor's office has too many strong-willed SDA acolytes on its staff.”<sup>54</sup>

On 19 July 2013, BiH's State Investigation and Protection Agency (SIPA) arrested Šemsudin Mehmedović, an SDA member of the BiH House of Representatives (whose close ties with the mujahidin are described above) in connection with war crimes against Serb civilians. After the arrest, the BiH Prosecutor's Office, abetted by the Court of BiH, successfully used the criminal justice system to attack and push aside SIPA Director Goran Zubac. Soon after Mehmedović's arrest, the BiH Prosecutor Office's website began to feature threats and virulent attacks against Zubac. Then, in June 2014, the BiH Prosecutor's Office issued a baldly political indictment of

<sup>54</sup> Nicholas M. Hill, *Moving Beyond Narrow-Minded Politics*, MREŽA ZA IZGRADNJU MIRA 8 July 2015.

Zubac based on the allegation that he failed to prevent damage to government buildings during the February 2014 unrest in FBiH cities.<sup>55</sup>

As if to remove all doubt as to the political nature of the indictment against Zubac and Bosniak influence over the Prosecutor's Office, SDA leader and presidency member Bakir Izetbegovic, in August 2014, said "[w]e will likely send [Zubac] to prison."<sup>56</sup> The Court of BiH issued and confirmed a verdict on the dubious charge, sentencing Zubac to one year's probation. In August 2015, the BiH Council of Ministers removed Zubac from office based on his conviction.

Additional evidence of the Chief Prosecutor's protection of SDA legislator Šemsudin Mehmedović arose on 14 January 2014 when the BiH Prosecutor's Office transferred a case concerning the illegal concealment of a large stock of weapons—in which Mehmedović was the prime suspect—to the SDA-controlled prosecutor's office of Zenica-Doboj Canton.

The BiH Prosecutor's Office is also refusing to investigate evidence linking SDA Vice President Šefik Džaferović, the current deputy speaker of the BiH House of Representatives, to war crimes by the El Mujahid Detachment. Mirsad Kebo, a former Vice President of the Federation of BiH and former member of the SDA, submitted to the BiH Prosecutor's Office evidence that Džaferović was complicit in El Mujahid atrocities. During the war, Džaferović was head of the Criminal Police Department for State Security in Zenica, which was the El Mujahid's headquarters. The evidence submitted by Kebo, for example, includes documents indicating that Džaferović and ARBiH Third Corps Commander Sakib Mahmuljin were just ten meters away when El Mujahid members beheaded a Serb civilian in Vožuća.<sup>57</sup> On 11 March 2015, however, the BiH Prosecutor's Office determined that it would not even investigate evidence implicating Džaferović.

### **BiH's failure to curb jihadism**

The evidence makes it clear that BiH's SDA-dominated security apparatus is failing to root out the jihadist presence in BiH. The security services in Sarajevo and their domestic political and international supervisors are evidently not willing to respond to extremist threats so closely linked to the SDA and its war-time and post-war supporters. Many ISIS recruits are former fighters of the El Mujahid detachment created by Alija Izetbegovic,<sup>58</sup> including at least one of six BiH natives the United States indicted in 2015 for sending ISIS money and supplies.<sup>59</sup>

As Nenad Pejic of Radio Free Europe/Radio Liberty observed:

There are countless examples of local authorities in Bosnia failing to act properly against Islamic extremism. The majority of

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<sup>55</sup> Denis Dzidic, *Bosnia Investigative Agency Chief's Protest Charge Confirmed*, BALKAN INSIGHT, 20 June 2014.

<sup>56</sup> *Izetbegovic: SDA must "win well" in elections*, OSLOBODENJE, 27 Aug. 2014.

<sup>57</sup> *Kebo: Džaferović i Mahmuljin bili 10 metara od mjesta likvidacije srpskog civila*, DNEVNI AVAZ,

<sup>58</sup> See Timothy Holman, *Foreign Fighters from the Western Balkans in Syria*, CTC Sentinel (Combating Terrorism Center at West Point), June 2014, at p. 9.

<sup>59</sup> *Ramiz Hodžić Siki bio u odredu 'El-Mudžahid'*, DNEVNI AVAZ, 10 Feb. 2015.

these criminal cases have not been resolved and when the terrorists are identified the trials take years. There are some claims that “inaction” in Bosnia had its roots nearly 20 years ago when Bosnian authorities granted 50 passports to foreign mujahideen, most of whom were Salafist/Wahhabis . . . . This “inaction” is not related to the police or court capacity or poor equipment, but rather to the ethnically divided BiH police and judiciary that has political sponsorship.

Islamic community leaders and local politicians described terrorism acts in BiH as isolated “criminal acts” and not a consequence of growing Islamic extremism. Attempts to initiate police investigations of the Wahhabi movement were often defined as Islamophobic.<sup>60</sup>

Some BiH citizens fighting for ISIS will die. Many others will return to Europe even more dangerous than when they left. But BiH-level officials are doing little to prevent the flow of recruits to Syria and Iraq or to deal with those who return.

When jihadists returning from Syria and Iraq have been prosecuted, the BiH Prosecutor's Office has generally assigned their cases to inexperienced prosecutors, and the returnees have received suspended one-year sentences or nominal fines. In March 2016, for example, the Court of BiH sentenced a man who fought for ISIS to just one year in prison or, alternatively, a fine.<sup>61</sup> Such lenient sentences create no deterrent against BiH citizens joining ISIS (and other jihadist organizations) and returning to Europe as serious terrorist threats and send a message that BiH institutions consider joining ISIS to be neither grave nor unacceptable.

The illegal actions of High Representatives reallocating competences from Entity to BiH level have left both Muslim and non-Muslim populations at risk. In particular, the centralization of intelligence—forced on BiH by the Office of the High Representative—has concentrated authority into a single, SDA-dominated agency. In 2004, High Representative Paddy Ashdown ordered BiH to centralize intelligence collection in the OSA-OBA and ban all other civilian intelligence-security structures. The agency’s current director, Osman Mehmedagić, was chief of security for Alija Izetbegovic during the period in which Izetbegovic imported mujahedin into BiH, cooperated closely with them, and then gave them sanctuary. It is inconceivable that Mehmedagic would not have—at the very least—known about Izetbegovic’s jihadist activities. This might be why the U.S. Central Intelligence Agency (CIA), according to news reports, opposed Mehmedagic’s appointment as director. The CIA sent a letter to the Chairman of the BiH Presidency stating that the new director should not be an Islamist,<sup>62</sup> but Mehmedagic was appointed nonetheless.

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<sup>60</sup> Nenad Pejic, *Wahhabist Militancy in Bosnia Profits from Local and International Inaction*, JAMESTOWN TERRORISM MONITOR 9, Issue 42, 17 Nov. 2011.

<sup>61</sup> *Emin Hodžić sentenced to Prison for fighting in Syria*, SARAJEVO TIMES, 22 March 2016.

<sup>62</sup> *Analyst on reasons behind CIA chief's visit to Sarajevo*, TANJUG, 22 Apr. 2016.

Commenting on the reasons for an April 2016 visit to BiH by CIA Director John Brennan, a BiH-based terrorism expert explained, “The U.S. wants concrete action that involves finding a sizeable amount of storage of weapons and equipment used by Islamists, cutting off the flow of funds in Bosnia-Herzegovina, more adequate measures of control over Islamist groups and prevention of propaganda that is unfolding here undisturbed.”<sup>63</sup> The expert also cited U.S. concerns about “increased activity of Turkey accompanied by the increased activity of the Iranian service, which also has some support from the top of the SDA (party) and specifically from its president, Bakir Izetbegovic . . . .”<sup>64</sup>

Authorities in the RS are doing everything in their power to stop terrorism in BiH and abroad. But RS authorities are hamstrung in their efforts to protect against jihadist violence. BiH-level and Federation intelligence and security agencies often fail to share intelligence with RS authorities. Meanwhile, BiH’s jihadist communities are located in the Federation and Brčko District, outside the reach of RS police jurisdiction.

It has only heightened the legitimate concern of RS citizens that senior SDA and BiH officials so readily resorted to threats of violence against Republika Srpska in connection with the RS referendum about its Republic Day holiday. SDA President Bakir Izetbegovic threatened that RS President Milorad Dodik would end up like Saddam Hussein, Muammar Gaddafi, or Slobodan Milosevic and warned that the referendum would “most probably lead to the collapse of peace in this part of Europe.”<sup>65</sup> Former army commander Sefer Halilovic, who leads another Bosniak party, threatened war against Republika Srpska if it held its referendum and boasted that Republika Srpska could hold out for only 10 to 15 days.<sup>66</sup> No leaders of SDA or any other Bosniak party distanced themselves from these threats. Senior officials should never threaten the use of force to resolve political disputes, but such threats are even more disruptive of peaceful inter-community relations when the presence of armed radical groups under SDA protection is widely known to the public.

### **The international community is contributing to the problem.**

Western policy makers have contributed—and continue to contribute—to the spread of jihadism in BiH by supporting the SDA and its goal of centralizing authority at the BiH level. The RS wants to preserve the Dayton Accords, which allocate significant authority to the Entities. Entities with robust competencies, including over security, provide an important safeguard to radical Islam and terrorism. By contrast, the SDA and its allies in the international community want to disrupt the post-war settlement by shifting authority to an SDA-dominated centralized government and thus remove these important safeguards. Without such safeguards provided by the Dayton Accords, the jihadist presence and activities in BiH will only increase.

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Izetbegovic: Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

<sup>66</sup> *Bosnia’s Republika Srpska to hold controversial referendum despite ban*, BNA Intellinews, 23 Sept. 2016.

With Europe's highest per capita number of people having left BiH to fight alongside ISIS and other radical Islamist forces in Syria and Iraq, BiH undoubtedly faces a heightened terrorist threat. Nevertheless, in a 24 April 2015 interview, the High Representative's top deputy, when asked about whether there is a particular risk of violent extremism in BiH, said that "[t]here is nothing that makes [BiH] more susceptible to certain threats than in any other state."<sup>67</sup>

As explained above, Bosnia and Herzegovina has long been used as a training ground and sanctuary for major acts of terrorism against Western interests. ISIS has become more and more dangerous in recent years, as shown by the recent attacks in Paris, Brussels, and elsewhere in Europe. If BiH's jihadist presence is allowed to continue festering, Europe and the United States will become even harder to defend against terrorism.

## **Conclusion**

BiH requires determined action to confront and uproot its extraordinary jihadist presence. But that will not happen as long as its centralized security institutions are dominated by a party closely associated with the mujahidin. If BiH's friends in the international community want to reduce the threat of terrorism from BiH, they should cease their support for the SDA's agenda of centralizing intelligence and security authorities in Sarajevo-based agencies and blocking the anti-terrorist activities of Entity and local police authorities.

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<sup>67</sup> *Interview with PDHR David M. Robinson, DNEVNI AVAZ, 24 Apr. 2015.*