



**REPUBLIC OF SRPSKA  
GOVERNMENT**

**OFFICE OF THE PRIME MINISTER**

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**His Excellency Mr. António Guterres  
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 meeting 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 24<sup>th</sup> Report to the UN Security Council. As the RS prepares to mark the 25<sup>th</sup> anniversary of the Dayton Accords, it reaffirms its support for the Accords and looks forward to BiH's continued progress on the path toward EU membership.

Part I of the report emphasizes the need for all interested actors to show their commitment to the Dayton Accords. The heart of the Dayton Accords, the BiH Constitution, has been highly successful in maintaining peace, stability, and democratic governance in BiH. BiH's dysfunction is a result not of any deficiency in the Dayton Accords, but of the refusal by some actors to respect the fundamental principles and protections agreed in the Accords. In Part II, the report examines challenges to the Dayton Accords from within BiH, including those from BiH's main Bosniak party, which has never accepted the Dayton compromise. Part III of the report examines the need for leaders in BiH to promote cooperation and reconciliation with BiH's neighbors, emphasizing that improving relations is not a zero-sum game. In Part IV, the RS reiterates its commitment to BiH's EU integration and outlines progress on EU integration, as well as obstacles to integration like the continued presence and unauthorized actions of the High Representative and the presence of foreign judges on the BiH Constitutional Court. Finally, Part V examines the continued migrant crisis in BiH, which is both a humanitarian and a security issue.

We ask that this letter and the report 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, we would be pleased to provide additional information.

Sincerely Yours,



**Prime Minister of the Republic of Srpska  
Radovan Višković**

**Republika Srpska's 24th Report to the UN Security Council**

**October 2020**

# Republika Srpska’s 24th Report to the UN Security Council

## Table of Contents

I.	The Dayton Accords at 25.....	3
A.	The Dayton Constitution has been a great success.....	3
B.	Comments from certain members of the international community claiming there is a need to revise Dayton are unhelpful and destabilizing. ....	5
1.	The Dayton Constitution is not preliminary.....	5
2.	Threats to change the Dayton structure have a destabilizing influence within the Bosnian political dynamic. ....	5
3.	Disparagement of the Dayton formula by members of the international community does not promote respect for the Constitution and the rule of law generally.....	6
C.	The High Representative continues to claim dictatorial powers in defiance of Dayton. ....	6
II.	Destabilizing threats to Dayton from within BiH.....	7
A.	The SDA has never accepted Dayton. ....	7
B.	Calls for a “civic” BiH are in reality calls for Bosniak domination of BiH. ....	8
C.	The SDA’s illegal and dangerous efforts to dismantle Dayton’s ethnic protections .....	8
1.	The SDA is trying to back out of its June agreement with the HDZ. ....	9
2.	The SDA is threatening to take control of Croat representatives at other levels of government.....	10
3.	Bosniaks are trying to take control the Federation House of Peoples or reduce its power.....	10
D.	The SDA’s illegal takeover and misuse of the Central Election Commission .....	11
III.	Leaders in BiH should promote regional cooperation. ....	12
IV.	The RS is committed to BiH’s EU path. ....	14
A.	RS progress on EU integration.....	15
B.	BiH-level progress on EU integration .....	16
C.	Obstacles on BiH’s path to the EU .....	18
1.	The High Representative.....	18
2.	Foreign judges on the BiH Constitutional Court .....	19
V.	The migrant crisis .....	21

Attachment 1: The SDA’s Foreign Minister

Attachment 2: The SDA’s Intelligence Chief

## **Republika Srpska's 24th Report to the UN Security Council**

### **Introduction and Executive Summary**

Republika Srpska (RS), a party to the treaties that make up the 1995 Dayton Peace Accords and one of the two Entities that make up Bosnia and Herzegovina (BiH), is pleased to submit this 24th Report to the UN Security Council.

This December, the RS will celebrate the 25<sup>th</sup> anniversary of the Dayton Accords—and there is much for everyone to celebrate. The Dayton Accords not only ended a cruel and bloody war, but also established a mechanism—the BiH Constitution—to ensure lasting peace, stability, and democratic government in BiH.

Part I of this report reiterates the RS's commitment to the Dayton Accords and emphasizes the need for other interested parties to show the same commitment. The Dayton Accords are among the most successful peace agreements in history because of the design of the BiH Constitution, which protects BiH's two Entities and three constituent peoples. BiH is often dysfunctional, but the main reason for its dysfunction is not the Dayton Accords, but the refusal by important actors to accept and abide by them. BiH can only be fully successful when actors inside and outside BiH adhere to Dayton.

Members of the international community undermine BiH when they push for changes to BiH's Dayton structure, failing to understand that it is crucial to BiH's future stability and success. The BiH Constitution has already been changed—illegitimately and informally—through the centralization of power forced on BiH by the international High Representative (HR). In violation of the Dayton Accords, which is the source of his lawful authority as HR, Ambassador Valentin Inzko continues to claim legally absurd dictatorial powers over BiH and has even threatened to begin using them again.

Part II of this report examines challenges to the Dayton Accords coming from within BiH. BiH's main Bosniak party, the SDA, has made clear that it does not accept the Dayton compromise. It has demonstrated its rejection of Dayton often, including with its September 2019 declaration openly calling for the abolition of BiH's Dayton structure. Calls for a so-called "civic" BiH are really calls for a state governed by and for BiH's most populous constituent people.

In the 2018 election, Bosniaks elected not just the Bosniak member of the Presidency, but also a nominally "Croat" member—thus depriving Croats of their representation in the Presidency. In its 2016 *Ljubic* decision, the BiH Constitutional Court held that Bosniaks similarly selecting "Croat" members of the Federation House of Peoples is unconstitutional. However, the SDA has resisted implementing the *Ljubic* decision or making the necessary changes to the election law to ensure the legitimate representation of Croats. Instead of eliminating the disenfranchisement of Croats, the SDA has threatened to expand it to other levels of government, while also reducing Croat checks in the Federation against Bosniak domination.

This year, the SDA has also illegally taken control of BiH's Central Election Commission and has been misusing the commission for political purposes. For example, the commission unlawfully tried to ban a Serb party from participating in November's elections, only to be overruled by the Court of BiH.

Part III of the report examines the need for leaders in BiH to promote regional cooperation and reconciliation. While the RS and its leaders have been working to build bridges with BiH's neighbors, the SDA and many other elements of the Sarajevo political establishment have been doing the opposite.

In Part IV, the RS reiterates its commitment to BiH's EU path and outlines progress on EU integration, as well as obstacles standing in the way. The RS has made significant progress in harmonizing RS legislation with the EU acquis and otherwise implementing reforms aimed at advancing EU integration. BiH has also been moving forward with reforms and has made progress in implementing the 14 key priorities identified by the European Commission in its Opinion on BiH's membership application. However, the continued presence of the HR and foreign judges on the BiH Constitutional Court remain as impediments to EU integration. The EU has rightly identified the HR as "incompatible" with EU membership and said BiH must address the issue of foreign judges.

Finally, part V of the report examines the continued influx of migrants to BiH, which, in addition to being a humanitarian crisis, is also a threat to BiH's security.

As BiH marks 25 years since the Dayton Accords, the RS reaffirms its support for the Accords, including the BiH Constitution, and looks forward to continued progress on the road to EU membership.

## Republika Srpska's 24th Report to the UN Security Council

### I. The Dayton Accords at 25

1. As BiH marks the 25<sup>th</sup> anniversary of the Dayton Accords, all parties who want BiH to succeed should recommit themselves to respecting the Accords, including the constitutional structure they established.

2. None of BiH's peoples got everything it wanted in the Dayton compromise. Nevertheless, the Dayton Accords, through the BiH Constitution, provided a structure to enable a sustainable peace and a functioning union of three peoples that have great distrust of each other. The success of the Dayton formula must not be taken lightly, or taken for granted, and should be celebrated by all parties interested in securing peace in BiH and the region.

3. The RS remains committed to the Dayton Accords, and it is confident that BiH can thrive if the Accords are implemented as written. The RS calls for other interested parties to share that commitment, and to reconfirm their support for the Dayton Accords at this momentous anniversary.

#### A. The Dayton Constitution has been a great success.

4. The Dayton Accords brought peace to BiH in 1995, but the heart of the Accords—and what has sustained BiH's peace for 25 years—is the BiH Constitution. Contrary to many predictions, BiH has neither returned to war nor seen any significant ethnic violence since Dayton was signed. Although BiH politics is marked by divisive rhetoric—as in most open democracies—differences are resolved peacefully and lawfully. BiH has rebuilt and recovered from the war, joined the Council of Europe, and entered into a Stabilization and Association Agreement with the European Union. The country's GDP per capita more than quadrupled between 2000 and 2018, and it was continuing to grow steadily until the Covid-19 crisis.

5. The key reason for Dayton's success is the BiH Constitution's respect for BiH's two Entities and three constituent peoples. The Constitution reserves most governmental competences to the Entities and includes various mechanisms carefully designed to protect the interests of the Entities and constituent peoples. As Richard Holbrooke, the chief U.S. negotiator of Dayton, said in 2007, "Bosnia is a federal state. It has to be structured as a federal state. You cannot have a unitary government, because then the country would go back into fighting. And that's the reason that the Dayton agreement has been probably the most successful peace agreement in the world in the last generation, because it recognized the reality."<sup>1</sup>

6. Some have criticized the BiH Constitution because of its protections for the Entities and constituent peoples, which can operate to check the will of the BiH-level majority. But unchecked democracy is not the same thing as liberty. It has been said that "democracy is two wolves and a sheep voting on what to have for dinner." The constitutions of democratic states do not simply

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<sup>1</sup> Holbrooke: *Kosovo Independence Declaration Could Spark Crisis*, Council on Foreign Relations, 5 Dec. 2007 (available at [cfr.org/kosovo/holbrooke-kosovo-independence-declaration-could-spark-crisis/p14968](https://www.cfr.org/kosovo/holbrooke-kosovo-independence-declaration-could-spark-crisis/p14968)).

empower majorities to impose their will on the rest of the electorate. Rather, a sound constitution is tailored to a country's political reality. Constitutions constrain the power of state-level majorities in a variety of ways, such as enshrining human rights, reserving powers to federal units, requiring qualified majorities, and providing for judicial review.

7. Many constitutions constrain the will of majorities by providing state-level representation to territorial units or other constituencies. The U.S. Senate, for example, is composed of two senators representing each state, regardless of its population. The German Bundesrat gives each state 3 to 6 votes. Spain's Senate is composed of four representatives elected from each province and senators appointed by the autonomous communities. Belgian senators are appointed by the parliaments of Belgium's regions and language communities, and some legislation in Belgium's House of Representatives requires a majority vote of each linguistic group.

8. Similarly, the BiH Constitution provides representation and qualified majority requirements to protect the interests of the Entities and constituent peoples that make up BiH. The BiH Constitution has been successful at preserving peace and stability because it is tailored to BiH's political reality, which is characterized by three peoples whose members fear domination by one or more of the others. BiH will only flourish when actors inside and outside BiH accept the Dayton compromise and abide by the Dayton Accords.

9. That is not to say BiH is functioning smoothly. The BiH level of administration, in particular, has become extremely dysfunctional. The reason for that dysfunction, however, is not the Dayton Constitution. On the contrary, the reason is the refusal by key members of the international community as well as BiH's main Bosniak party, the SDA, to accept the Dayton principles. Once the international community and the SDA finally accept BiH's Dayton structure, so that the Dayton Constitution is faithfully implemented, BiH will become a much more functional and successful polity.

10. Difficulties in achieving state-level consensus are inherent in a multinational democracy like BiH. As in numerous other countries with identifiable groups and regions, the BiH Constitution ameliorated that problem by strictly limiting the BiH level's competences, thus minimizing the scope of contentious decisions required at the BiH level. The BiH Constitution enumerates the responsibilities of BiH institutions and provides, "All governmental functions and powers not *expressly assigned* in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities."<sup>2</sup>

11. Unfortunately, the unconstitutional centralization of competences, resulting in large part from the illegal and misguided actions of the High Representative (HR), sabotaged the Dayton design. It is not the BiH Constitution that has caused dysfunction in BiH, but rather it is the violence done to that Constitution; it is the unconstitutional centralization of governance that has been the source of many of the frequent and most contentious deadlocks that have marked BiH-level governance.

12. Not only has experience demonstrated that the Dayton formula can succeed in maintaining peace and fostering progress in BiH, but there is no viable alternative. Even a half century of

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<sup>2</sup> BiH Constitution, Art. III (3)(a) (emphasis added).

repressive government in the former Yugoslavia failed to extinguish Yugoslavia's separate ethnic identities and rivalries. Proposals that ignore the troubled history and complex ethnic make-up of BiH in favor of unrealistic and utopian visions of a unified and centralized state represent either cynical attempts to gain an advantage for the majority Bosniaks, or the foolish triumph of hope over experience.

**B. Comments from certain members of the international community claiming there is a need to revise Dayton are unhelpful and destabilizing.**

**1. The Dayton Constitution is not preliminary.**

13. Members of the international community sometimes fail to understand the crucial importance of the Dayton compromise. At times, they speak as if the Dayton constitutional system is merely a series of temporary expedients. For example, in an interview with Voice of America in August, the U.S. ambassador to BiH, Eric Nelson, called BiH's Constitution a "beginning" constitution and said it needs to be reformed.<sup>3</sup>

14. The BiH Constitution contains adequate mechanics for its own amendment, and all constitutions may be in need of amendment from time to time; however, the Constitution is less in need of reform than it is in need of respect. That is, the political problems in BiH are not a result of an inflexible Constitution, but rather the harmful tampering with the Dayton system by the HR, the approval of such changes by a Constitutional Court bloc composed of foreign and Bosniak judges, the failure of the international community to support the Dayton framework, and the blocking of the implementation of constitutional protections by the SDA.

15. The fact is, the Constitution has already been changed—though illegally and informally—in significant ways, and not for the better. The HR, working entirely outside of BiH's constitutional and legislative structures, has imposed on BiH many laws that centralize competences in direct violation of the Constitution. As explained above, those changes have only increased BiH's dysfunction and discord. The changes Ambassador Nelson has in mind for BiH's Constitution are likely more of the same: centralizing competences at the BiH level and eliminating protections for BiH's constituent peoples, simply in order to facilitate temporary accommodations to current U.S. policies.

**2. Threats to change the Dayton structure have a destabilizing influence within the Bosnian political dynamic.**

16. The Dayton Constitution's protections for the constituent peoples are necessary not just to ensure peace and stability, but also to allow BiH's peoples to break down inter-ethnic barriers and work cooperatively together. Only when BiH's peoples each feel secure from domination by the others are they able to build trust and work across ethnic lines toward common goals. Attempts to remove the protections for the constituent peoples cause distrust and discord. Inter-ethnic cooperation becomes almost impossible when a people feels under siege.

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<sup>3</sup> *Ambassador Nelson za Glas Amerike: Daytonski Ustav treba reformu a građani da konačno krenu naprijed*, VOA News, 17 Aug. 2020.

17. When the HR and the international community support efforts by the SDA to further centralize governance in BiH, and publicly suggest that changes to the BiH Constitution are needed for politically expedient ends, these actions only serve to destabilize the political climate by causing groups that are guaranteed a measure of protection and autonomy under Dayton to feel threatened, and to react accordingly.

**3. Disparagement of the Dayton formula by members of the international community does not promote respect for the Constitution and the rule of law generally.**

18. Too often, cavalier comments by foreign officials or technical specialists in international organizations active in the Western Balkans have disparaged the BiH Constitution and other elements of the Dayton Accords. In many cases, these statements are made by officials with little or no legal background in constitutional or international law, and sometimes even by officials who have almost no familiarity at all with the detailed text of the Constitution and the other key documents making up the Dayton Accords.

19. These officials should remember that those who intend to openly disregard the law often justify their lawless behavior by suggesting that the law itself is unworthy of respect and obedience. Uninformed disparagement of the Dayton Accords, and particularly those protections built into the BiH Constitution to recognize and preserve the rights of the constituent peoples, does nothing to engender respect for the Constitution or for those laws and institutions implementing it.

20. Remarkably, certain officials who complain most vociferously about insufficient respect for the rule of law in BiH may be found among those who are most vocal in attacking the constitutional basis for that very law. All members of the international community should recognize that the formula enshrined in the Dayton Accords has successfully provided the citizens of BiH peace, democratic institutions, economic stability—and even economic growth—through numerous election cycles, changes in government, and difficult economic circumstances. Respect for the rule of law in BiH would be encouraged with more respect for the structure of the Dayton Accords, which provides the constitutional basis for BiH's laws and institutions.

21. Comments like those of Ambassador Nelson, quoted above, even if made with the best intentions, only serve to embolden those who seek abolition of the Entities and the other Dayton protections for BiH's constituent peoples; those who would highlight supposed deficiencies in the Constitution provide excuses to those who disregard it.

22. Instead of criticizing the Dayton Accords and the BiH Constitution, members of the international community would be much more helpful if they urged that the Accords be implemented faithfully and called to account those actors in BiH who are seeking to dismantle the Dayton structure.

**C. The High Representative continues to claim dictatorial powers in defiance of Dayton.**

23. In violation of the Dayton Accords, Ambassador Valentin Inzko, the international High Representative in BiH, continues to claim legally absurd dictatorial powers to decree laws, nullify

decisions of the Constitutional Court, and remove elected officials from office. He has even recently threatened to renew his illegal use of these so-called “Bonn Powers.”

24. As explained in detail in the attachment to [Republika Srpska’s 22nd Report to the UN Security Council](#), entitled, *The Illegality of the Bonn Powers*, the HR’s claimed authority to impose laws and punish public officials by simple edict is manifestly unlawful. The HR is an institution authorized by the parties to Annex 10 of the Dayton Accords, including the RS, to be a coordinator of international activities involved in the civilian aspects of the Dayton Accords and a facilitator of the parties’ efforts. The HR’s mandate does not include any authority, explicit or implicit, to decree laws or otherwise make decisions binding on governments and citizens of BiH. Annex 10 defines a strictly limited mandate, authorizing the HR to engage in such activities as to “[m]onitor,” “[m]aintain close contact with the Parties,” “[f]acilitate,” “[p]articipate in meetings,” and “[r]eport.” As international relations scholar and former OHR attorney Matthew Parish has written, the HR’s “functions were limited to coordinating other international organisations’ work and monitoring and exhorting domestic officials to comply with their Dayton obligations.”<sup>4</sup>

25. The Dayton Accords, which are the sole source of the HR’s lawful authority, cannot reasonably be interpreted to give the HR the dictatorial power he claims. The Peace Implementation Council (PIC), an ad hoc group of countries with no legal power, had no authority to bestow additional powers on the HR, and it never purported to do so. Nor did the UN Security Council ever bestow additional powers on the HR beyond its mandate under the Dayton Accords.

26. The HR’s use of the Bonn powers was lawless, weakened respect for civic institutions and the rule of law, sowed seeds of discord, and is a major cause of the dysfunction that prevails at the BiH level today.

## **II. Destabilizing threats to Dayton from within BiH**

### **A. The SDA has never accepted Dayton.**

27. In contrast to the RS, which unreservedly accepts the Dayton Accords and merely seeks the implementation of the BiH Constitution as written, the dominant Bosniak party, the SDA, has never accepted the Dayton compromise.

28. The SDA’s rejection of Dayton has been illustrated numerous times, including by the party’s 14 September 2019 declaration openly calling for the complete abolition of the Dayton structure. The SDA declaration’s call for a “regionalized” state “called the Republic of Bosnia and Herzegovina, with three levels of government: state, regional and local” is, of course, nothing less than a call for elimination of the RS and the Federation—which are a crucial part of BiH’s constitutional framework that prevents BiH’s domination by a single ethnic group—as well as the Federation’s cantons, which are essential for ensuring that Croats have a voice in governance.

29. The “Republic of Bosnia and Herzegovina” was a Bosniak-dominated unitary regime that, like the RS, was a party to the agreements that make up the Dayton Accords, including the BiH Constitution. The BiH Constitution superseded the Constitution of the Republic of Bosnia and

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<sup>4</sup> Matthew Parish, *A Free City in the Balkans* 86 (2010).

Herzegovina and made clear that the country's name is "Bosnia and Herzegovina." The SDA's call for revival of the "Republic of Bosnia and Herzegovina," then, makes clear that it wants to tear up the heart of the Dayton Accords, the BiH Constitution.

30. The very foundation of the Dayton Accords is the balance of interests that it establishes for peace in BiH, which is manifested in a two-Entity confederal organisation and consociational governance by legitimate representatives of three constituent peoples and others. It is important not just that Serb and Croat representatives are elected to different offices, but also that the Bosniak majority is prevented from always outvoting them in the governing institutions of BiH and the Federation. This is a particularly relevant issue when it comes to the Federation's parliament and government. SDA leader Bakir Izetbegović has often reiterated that the "minority" (Croats) must not be allowed to block the will of the majority Bosniaks. For example, in October 2020, Izetbegovic, referring to Croats in the Federation Parliament, decried what he called the "domination of a minority over a majority."<sup>5</sup> Izetbegović accuses RS representatives along similar lines. These positions that reject the constitutional protections for the other constituent peoples are utterly contrary to the foundations of consociational democracy, utterly contradict the very principles agreed at Dayton, and have only been made possible by the misguided meddling of the HR through his unlawful imposition of amendments to the Entity constitutions.

**B. Calls for a "civic" BiH are in reality calls for Bosniak domination of BiH.**

31. Some advocates of doing away with the BiH constitutional order call for a "civic" BiH without protections for the constituent peoples. The word "civic" is meant to suggest a transcending of BiH's ethnic divisions. In reality, however, the word is a smokescreen for Bosniak nationalism. Because Bosniaks are the most numerous constituent people and, according to the most recent census figures, make up a majority of BiH's population, calls for a "civic" BiH are calls for a state governed by Bosniaks and for Bosniaks.

**C. The SDA's illegal and dangerous efforts to dismantle Dayton's ethnic protections**

32. The SDA has acted to undermine protections for BiH's constituent peoples and thereby distort and degrade the Dayton principles. For example, one reason politics in BiH's Federation Entity are in crisis is the 2018 election of Željko Komšić as the "Croat" member of the BiH Presidency. Komšić, who was elected almost entirely with Bosniak votes, is a nominally Croat politician who advocates the SDA and Bosniak political agenda and has almost no support among Croats. Bosniak politicians disenfranchised Croat voters by encouraging Bosniaks to vote for Komšić instead of voting for a candidate for the Bosniak seat in the Presidency. This manipulative tactic effectively gave the Bosniaks two seats on the Presidency and the Croats zero.

33. Similarly, the means by which members of the Federation House of Peoples are chosen allows Bosniak-dominated areas to choose most "Serb" members and at least one-third of the

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<sup>5</sup> *Izetbegović: Ne pristajemo na ucjene HDZ-a*, Vijesti.ba, 8 Oct. 2020.

“Croat” members. In its 2016 decision in the *Ljubic* case, the BiH Constitutional Court held that this violates the Croats’ rights as a constituent people.<sup>6</sup> The court wrote:

The Constitutional Court reminds that according to the general principles of democracy the right to democratic representation is realized through legitimate political representation which must be based on *the democratic choice of those whose interests are represented*. In this sense the connection between those who are represented and their political representatives at all administrative political levels is that which makes possible the legitimacy of the community representatives.<sup>7</sup>

Nonetheless, the SDA has ignored the Constitutional Court and the principles recited in the *Ljubic* decision in an effort to disenfranchise Croats in the Federation and to seize dominance for the SDA.

### **1. The SDA is trying to back out of its June agreement with the HDZ.**

34. Changes to the election law are necessary to prevent one people from electing another people’s representative in the BiH Presidency, as well as the BiH and Federation Houses of Peoples. The SDA purported to agree to such changes as part of a 17 June agreement the SDA reached in Mostar with BiH’s main Croat party, the HDZ. Under the agreement “On the Principles of Changing and Amending the Electoral Law of Bosnia & Herzegovina,” the parties agreed to “implement all the decisions of the Constitutional Court of BiH,” including the *Ljubic* decision.

35. The agreement also called for

changes and amendments to the electoral law of BiH, so as to *guarantee the legitimate election and legitimate political representation of the constituent peoples and citizens at all administrative-political levels, in the Presidency of BiH and the Houses of Peoples*, as well as guaranteeing the active and passive electoral rights of citizens on the entire territory of Bosnia & Herzegovina.<sup>8</sup>

36. Since the Mostar agreement was signed, however, the SDA has been backing away from its implementation and adding new conditions. SDA leader Bakir Izetbegović now demands that local elections be held and a new government be formed in the Federation before work begins on the new electoral law, despite the Mostar agreement providing that work on the electoral law was supposed to begin within 30 days, without any such conditions.

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<sup>6</sup> BiH Constitutional Court, Case No. U-23/14.

<sup>7</sup> Emphasis added.

<sup>8</sup> A Political Agreement On the Principles of Changing and Amending the Electoral Law of Bosnia & Herzegovina, 17 Jun. 2020 (emphasis added).

37. The SDA is also contradicting the Mostar agreement's requirement that the electoral law be changed to guarantee the "legitimate political representation of the constituent peoples," Izetbegović in recent comments mischaracterized the Mostar agreement, rejected its agreed principles, and made it clear that the SDA has no intention of implementing the Ljubic decision or otherwise honoring the rights of the Croats in the Federation.<sup>9</sup>

**2. The SDA is threatening to take control of Croat representatives at other levels of government.**

38. Far from eliminating the disenfranchisement of Croats in the Presidency, the SDA is threatening to expand it to other levels of government, in both the Federation and in BiH as a whole. In September, SDA leader Bakir Izetbegović explicitly threatened to "break all the mechanisms" set out in Dayton for the protection of the constituent peoples and "make Bosnia into a normal country."<sup>10</sup> The SDA persistently fails to acknowledge that it is not the Dayton Accords that render BiH a unique political entity; rather, the Dayton Accords merely recognized the uniqueness of Bosnia's history and set out protective mechanisms based upon the recognition of the legitimate rights of the constituent peoples of BiH to avoid the very hegemony that the SDA demands.

39. In large part because the HR and the international community have too often failed to defend the important principles underlying the Dayton Accords, Bosniak politicians are even comfortable brazenly expressing their intentions and their strategy for overturning the delicate balancing of interests worked out in the Dayton Accords. In an opinion piece in *Faktor.ba*, which is considered to be an unofficial mouthpiece of the SDA, Bosniak politician Reuf Bajrovic wrote:

[We must] exploit every chance to impose the will of the democratic and demographic majority by taking over key institutions, the [High Judicial and Prosecutorial Council], the House of Peoples in the Federation of BiH, the government of the Federation of BiH, and other institutions at the Federation level must be taken over after the 2022 elections by removing the HDZ from power for all time. By doing so, we would create the preconditions for a long-term process of suffocating the autonomy of the RS through economic and demographic means.

**3. Bosniaks are trying to take control the Federation House of Peoples or reduce its power.**

40. Instead of implementing the *Ljubic* decision to ensure legitimate representation of each constituent people, the Sarajevo political establishment wants to increase the practice of Bosniaks electing "Croat" representatives. In the next national elections, Bosniak parties are seeking to elect

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<sup>9</sup> Izetbegović said, "The legitimate representation of citizens is an axiom of democracy. [HDZ leader Dragan] Covic reduces this to an ethnic group. We signed [an agreement] that everyone will have the right to be a candidate for every position. That is what Covic signed." *Bosniak leader: SDA will do everything to break up Covic and Dodik's cooperation*, N1, 9 Sep. 2020.

<sup>10</sup> *Id.*

6 out of 17 Croat members of the Federation House of Peoples. That would also enable Bosniak parties to select two out of the five Croat members of the BiH House of Peoples. In this way, Croats would be marginalized at both the Federation and BiH levels.

41. At the same time, Bosniak parties are trying to neutralize the Federation House of Representatives as a center of power should they eventually be forced to implement the *Ljubic* decision, thus ensuring the election of legitimate representatives of each constituent people. In case this happens, the Bosniak parties want to reduce the competences of the Federation House of Peoples, shifting authority to the Federation House of Representatives, in order to diminish the Croats' ability to have a say in the Federation's governance.

#### **D. The SDA's illegal takeover and misuse of the Central Election Commission**

42. Not content to merely manipulate voting in BiH, the SDA has also plotted to usurp and manipulate the very mechanisms of the electoral processes in BiH. In March of 2020, the SDA illegally took control of the Central Election Commission, and it has misused the commission for political purposes ever since. The BiH House of Representatives, led by the SDA and Željko Komšić's DF party, removed two of the seven members of the BiH Central Election Commission (CEC) and replaced them with their own preferred candidates, while also reappointing the two SDA members of the CEC. The two Serb members that were appointed are RS opposition political figures rather than election law experts. The illegal moves violated the rules of procedure for election of CEC members, because the legally-required public competition for members was never held.

43. The chairwoman of the commission for election and appointment of members of CEC, Borjana Kristo, warned that the illegitimate appointments would not lead to the rule of law.<sup>11</sup> The Croat National Council (HNS), an umbrella organization of major Croat parties and groups, rightly called the SDA's maneuvers unconstitutional and illegal, resulting in a "crude destruction of the functioning of a legal state in BiH." The SDA, the HNS wrote is "crudely violating agreements and attempts to stabilize BiH [and through its] unilateral actions is destroying the foundations and future of Bosnia & Herzegovina. [The SDA] is showing that it does not want partnership and does not want progress in this country . . . [The SDA] just wants BiH for itself and for the Bosniacs."

44. The SDA's moves to gain control of the CEC brought condemnation not just from the largest Serb and Croat parties, but even from a major Bosniak party, the SBB. SBB President and then-BiH Security Minister Fahrudin Radoncic said, "While we are expending our health and the last atom of our strength to help citizens in the migrant crisis, and corona pandemic, and in other ways, [the SDA] is already planning how to again compromise the electoral process and manipulate the will of the citizens." Radoncic added that if the SDA's grave abuses are allowed to stand, the upcoming elections will have no validity.

45. Since it took control of the CEC, the SDA has been abusing the commission for political ends. In May, the CEC postponed BiH's local elections from 4 October to 15 November. This

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<sup>11</sup> Кришто: Незаконит избор чланова ЦИК-а не води владавину права, ВХРТ, 16 Jul. 2020.

violates the clear provisions of the electoral law, which only gives the CEC authority to “postpone the elections at a particular polling station or constituency” by no more than 30 days.<sup>12</sup>

46. Perhaps the most outrageous example of the CEC’s abuse is its decision in October to ban the United Srpska party from taking part in the November elections, citing an allegedly chauvinistic United Srpska promotional video. The decision was later annulled by the Court of BiH, which pointed out that because the alleged violation took place before the election campaign period, the CEC had no authority to find that the video violated the Election Law.<sup>13</sup> The disqualification of rival parties is a key way authoritarian regimes engineer their elections. Friends of a democratic BiH should condemn this brazen abuse by the CEC.

47. Considering the tremendous efforts and expense of resources invested by the international community in bringing about the Dayton Accords 25 years ago, it is inexplicable that there is not more effort expended now to uphold the Dayton principles and prevent their distortion, degradation, and outright rejection by the SDA’s illegal tactics, even when those tactics are so illegal and egregious as to threaten the very viability of the country.

### **III. Leaders in BiH should promote regional cooperation.**

48. It is important that leaders in BiH promote improved relations in the region and avoid unnecessary misunderstandings. The RS and its leaders have been working to improve cooperation with BiH’s neighbors, but the SDA and many other elements of the Sarajevo political establishment have been doing the opposite.

49. The RS, of course, has warm relations with Serbia, but it and its leaders have also reached out to other countries in the region in an effort to improve relations and foster cooperation. The Serb member of the BiH Presidency, Milorad Dodik, recently proposed to the Presidency that BiH join the mini-Schengen initiative, a project to lift barriers in the Western Balkans that has so far been joined by Albania, Serbia, and North Macedonia.<sup>14</sup> The RS hopes that BiH will join mini-Schengen and other efforts to deepen ties in its neighborhood.

50. The RS also supported the U.S.-brokered deal for normalization of economic relations between Belgrade and Pristina.

51. On 16 September, Dodik visited Zagreb as a Serb representative and met with Croatian President Zoran Milanovic and Prime Minister Andrej Plenković. The visit was an important symbol of Serbs and Croats putting old ethnic animosities behind them and looking to a future of friendly relations and cooperation. Dodik and Milanovic, according to Milanovic’s office, discussed BiH’s EU integration, the implementation of the Dayton Accords, and the position of BiH’s three constituent peoples.<sup>15</sup> Dodik and Plenković reached an agreement on the construction

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<sup>12</sup> BiH Electoral Law, art. 14.2(4).

<sup>13</sup> *Bosnian Court says United Srpska can take part in election, watchdog was wrong*, N1, 15 Oct. 2020.

<sup>14</sup> *Dodik requests Presidency session to discuss Bosnia joining 'Mini Schengen'*, N1, 9 Sep. 2020.

<sup>15</sup> *Croatian President: We can not support one-sided revision of Dayton Agreement*, N1, 16 Sep. 2020.

of a vital bridge over the Sava River on Croatia's border with BiH and discussed regional issues such as migration and environmental matters.<sup>16</sup> Dodik expressed gratitude to Croatia for its support for BiH's EU path.<sup>17</sup>

52. Milanovic's cabinet issued a strong statement of support for the Dayton Accords, saying, "Croatia cannot remain passive and will not support initiatives towards a unilateral revision of the Dayton Agreement that would endanger peace and stability in Bosnia and Herzegovina and Southeast Europe."<sup>18</sup> BiH has much to learn from Croatia about EU integration, especially because Croatia is the most recent country to achieve accession. Moreover, reconciliation between Serbs and Croats is important for the region's future stability and progress, which are important to all ethnic groups.

53. Unfortunately, most elements of the Sarajevo political establishment reacted to the meeting with anger, as if reconciliation between Serbs and Croats must mean a threat to Bosniaks. The SDA explicitly condemned the meeting, saying it could further destabilize the situation in BiH.<sup>19</sup> The nominally "Croat" member of the BiH Presidency, Zeljko Komsic, put forward a ludicrous and offensive conspiracy theory regarding the talks, saying, "Milosevic and Tudjman's plan from Karadjordjevo will never be realized,"<sup>20</sup> alluding to an alleged secret wartime plan to partition BiH between Serbia and Croatia.

54. The SDA and its allies need to accept that good relations between Serbs and Croats are not a threat to Bosniaks—that ethnic reconciliation is not a zero-sum game. Meetings like Dodik's talks in Zagreb should be encouraged, because they reinforce ethnic reconciliation, strengthen regional cooperation, and help BiH deal with the rigors of EU integration. Indeed, it is difficult to understand how the SDA leadership imagines that BiH can ever succeed and prosper, or indeed ever successfully progress with efforts toward EU integration, if such dialogs among neighboring counties are to be condemned and banned.

55. The Bosniak political establishment has shown similar hostility toward Serbia. After a court in Belgrade convicted a Bosniak of war crimes for abusing Serb prisoners in 1992, BiH Foreign Minister Bisera Turković—an SDA member—sent Serbia a note of protest and recalled

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<sup>16</sup> *President: Croatia will not support unilateral revision of Dayton Agreement*, HRT, 16 Sep. 2020.

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

<sup>18</sup> Danijel Kovacevic, *Croatian Leaders Criticised for Inviting Dodik to Zagreb*, Balkan Insight, 17 Sep. 2020.

<sup>19</sup> *Bosnia's strongest Bosniak party condemns Dodik's visit to official Zagreb*, N1, 16 Sep. 2020.

<sup>20</sup> *Komsic: Dodik to tell Zagreb that RS and Serbia will be one*, N1, 16 Sep. 2020.

BiH's ambassador for consultations.<sup>21</sup> As explained in the Attachment 1 to this report, entitled *The SDA's Foreign Minister*, Turković has represented not BiH, but rather her party.<sup>22</sup>

56. In August, the SDA issued a statement groundlessly accusing Serbian President Aleksandar Vučić of “aggression against Bosnia and Herzegovina, with the aim of endangering its integrity,”<sup>23</sup> despite President Vučić's consistent support for BiH's territorial integrity under the Dayton Accords. As President Vučić said in reaction to the SDA statement, “They are forcibly trying to make an enemy out of a friend, which is a big mistake. And they have been doing it for a long time, not just since yesterday. I will not be their enemy no matter what they do and how they behave and I will always work on the best possible relations with Bosniaks.”<sup>24</sup>

57. The Bosniak political establishment has also reacted with angry insults to the results of Montenegro's 30 September parliamentary elections, in which a coalition opposed to Montenegrin President Milo Đukanović prevailed. In his *Faktor.ba* opinion piece, Bajrović characteristically demonized the winners of Montenegrin election, calling the results “the greatest geopolitical catastrophe for BiH of this century” and asserting that the transfer of power in Montenegro to “pro-Chetnik forces” means that BiH is now surrounded by “three enemy states.”

58. Finally, a recent meeting in Belgrade between President Vučić, Dragan Čović and Milorad Dodik resulted in additional hostile statements from the Bosniak political establishment implying that any good relations between Serb and Croat political figures in the region must be attacked as representing threats against the Bosniaks.

59. In fact, Serb and Croat leaders—whether in BiH, in Croatia, or in Serbia—have continually and consistently stressed their commitment to the Dayton Accords as the best formula for maintaining political stability in BiH and the region. The most serious threat to the stability of BiH and the region is not friendly relations among Serbs and Croats, but the SDA's refusal to accept the Dayton principles that protect and balance the rights of all constituent peoples in BiH.

#### **IV. The RS is committed to BiH's EU path.**

60. The RS is committed not just to honoring, abiding by, and implementing the Dayton Accords, but is also committed to BiH's integration into the European Union. Indeed, the RS views those two objectives as not only compatible, but mutually reinforcing.

61. Throughout 2020, the RS has continued working diligently to advance BiH's EU aspirations. Within the RS government as well as at the BiH level, RS officials continue to work constructively and cooperatively in pursuit of reforms necessary for BiH to progress on the road to EU candidacy and, eventually, membership. Progress is continuing to be hindered, however, by

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<sup>21</sup> Admir Muslimović, *Sarajevo Slams Belgrade for Convicting Bosnian of War Crimes*, Balkan Transitional Justice, 8 July 2020.

<sup>22</sup> Similarly, as explained in Attachment 2, entitled *The SDA's Intelligence Director*, the head of the Intelligence-Security Agency of BiH, Osman Mehmedagić, serves the interests of the SDA instead of BiH.

<sup>23</sup> *Vucic: Bosniak political leadership is trying to turn a friend into an enemy*, N1, 22 Aug. 2020.

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

infringements on BiH's sovereignty in the form of the illegal interventions by the HR, and the continued presence of the foreign judges on the BiH Constitutional Court.

#### **A. RS progress on EU integration**

62. The RS has already made significant progress toward meeting many of the objectives outlined by the European Commission in its reports. The RS's commitment to EU integration has been demonstrated time and time again, and it will continue to demonstrate its determination in the future at all levels, working with the EU's constructive assistance, to help move BiH forward on the road toward EU membership. The EU integration process must be carried out in line with the rules of the coordination mechanism, fully respecting the constitutional position and competences of the Entities.

63. The RS has been steadily harmonizing RS legislation with the EU *acquis* since 2007. A total of 3,556 RS regulations (including drafts, proposed laws, and bylaws) have undergone the procedure of harmonization and assessment of conformity with the EU *acquis*. In addition to those normative acts, since 2012, 221 draft or proposed strategic and other general acts have undergone this process.

64. The RS is implementing reforms aimed at advancing EU integration and otherwise improving governance, the business environment, and the standard of living of all its citizens. The RS has continued to push forward on such reforms, even during the COVID-19 pandemic. In June, for example, the RS National Assembly approved a new Law on Electric Power that transposes the EU's Third Energy Package and liberalizes the electricity market.<sup>25</sup> Also in June, the RS Government adopted the Public Administration Reform Strategic Framework for BiH.<sup>26</sup> According to EU Special Representative to BiH Johann Sattler, the "Strategic Framework is an indispensable step towards a more efficient public administration in BiH, able to deliver for citizens in line with EU standards."<sup>27</sup>

65. The RS has enacted far-reaching reforms to improve its business environment and otherwise promote economic development. The independent London-based news organization Emerging Europe praised these efforts in a July 2020 article saying, "Republika Srpska has taken steps to attract more investment and become a more desirable location to do business."<sup>28</sup>

66. In recent years, the RS established a one-stop shop for business registration, making it easier to start and operate a business. As the European Commission's 2019 Analytical Report on

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<sup>25</sup> *Republic of Srpska adopts new law on electricity in line with EU's Third Energy Package*, Balkan Green Energy News, 1 Jul. 2020.

<sup>26</sup> Johann Sattler, *Our Partners Are the People*, EU Ambassador's Blog, 2 Sep. 2020.

<sup>27</sup> *Id.*

<sup>28</sup> Nikola Đorđević, *FDI in Bosnia's Republika Srpska is increasing, but there's plenty of room for more*, Emerging Europe, 16 Jul. 2020.

BiH recognizes, the RS has the only such one-stop shop in BiH.<sup>29</sup> The European Stability Initiative recommended that in order to ease business registration, “[a]ll the Federation needs to do is to copy the reforms adopted in Republika Srpska.”<sup>30</sup>

67. The RS has implemented many other major economic reforms, such as the first regulatory “guillotine” in the region (a process by which unnecessary and burdensome regulations are abolished); regulatory impact assessments; new commercial courts; and reform of land registry and construction permits.

68. The RS has also strengthened the rule of law. In November 2019, the RS Government approved legislation on the protection of the right to trial within a reasonable time. The legislation will accelerate court proceedings and provide for financial compensation for violation of this right.<sup>31</sup>

## **B. BiH-level progress on EU integration**

69. Despite the many issues that divide BiH’s leadership, there is a consensus across BiH’s leading Serb, Bosniak, and Croat parties that BiH should push forward with the reforms necessary to advance toward EU membership. The European Commission’s 2019 Opinion on BiH’s membership application identified 14 key priorities for BiH to address in order to be recommended for the opening of EU accession negotiations. BiH’s leaders are working toward addressing the 14 priorities as quickly as possible.

70. On 28 April, the BiH Presidency adopted a Conclusion stating that “with the aim of speeding up the process of accession of Bosnia and Herzegovina to the European Union, the BiH Presidency will initiate and lead the reform in order to achieve a necessary level of harmonization with the membership criteria, based on the implementation of the 14 key priorities set out in the Opinion of the European Commission.”<sup>32</sup> The Conclusion also affirmed EU membership “as a strategic foreign policy objective and priority” of BiH, and started “the process of implementation of the 14 key priorities.”

71. Ambassador Sattler wrote that the BiH Presidency has “formally committed to implementation of reforms necessary to fulfil the 14 key priorities” and “set out an inclusive process aimed at accelerating BiH’s progress on its integration path.”<sup>33</sup> On 6 May, Ambassador Sattler wrote, “First-hand experience over the last two months shows that BiH political leaders can

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<sup>29</sup> Analytical Report Accompanying Commission Opinion on BiH’s application for membership of the European Union, 29 May 2019 (“Commission Staff Analytical Report”), at 97.

<sup>30</sup> *Bosnia as Wunderkind of Doing Business, Outline of 14 steps to take*, European Stability Initiative, 19 March 2015, at p. 13.

<sup>31</sup> *Draft bill on protection of right to trial within reasonable time*, SRNA, 14 Nov. 2019.

<sup>32</sup> *BiH Presidency holds its 11th regular session*, Presidency of BiH, 28 Apr. 2020.

<sup>33</sup> Johann Sattler, *Our Partners Are the People*, EU Ambassador’s Blog, 2 Sep. 2020.

take quick and constructive action and can deliver on their commitments for the benefit of all citizens.”<sup>34</sup>

72. After years of deadlock that have prevented the holding of local elections in Mostar since 2008, BiH’s main Croat and Bosniak political parties in June reached an agreement on the way the city should be governed, paving the way for elections to take place this year.<sup>35</sup> The BiH Parliamentary Assembly in July approved amendments to the election law allowing for the Mostar elections. As Ambassador Sattler observed, “This was an essential step towards meeting the Number 1 on the list of Opinion key priorities on free and democratic elections.”<sup>36</sup>

73. In July, members of the BiH Parliamentary Assembly broke five years of deadlock and agreed on the rules of procedure for the EU-BiH Stabilisation and Association Parliamentary Committee, thus fulfilling one of the 14 priorities from the EC’s 2019 Opinion.<sup>37</sup> In a statement posted on the website of the EU Delegation to BiH, the EU called the adoption of the rules “an important step forward in the European integration of the country” and said it “demonstrates that political leaders and BiH institutions are able to make compromise and resolve difficult issues.”<sup>38</sup>

74. Also in July, the EU removed BiH from the list of high-risk countries with weak anti-terrorism financing regimes.<sup>39</sup> The EU recognized BiH’s progress in the recent period and concluded that BiH has no “strategic deficiencies” in its anti-money laundering and terrorist financing regimes.<sup>40</sup>

75. In September, the BiH Council of Ministers, after a delay of several years, adopted a revised War Crimes Processing Strategy, which is designed to speed work on a large backlog of cases.<sup>41</sup> The EC’s 2019 Opinion had called for BiH to adopt the strategy. Its adoption had been delayed because it was repeatedly blocked by SDA members of the Council of Ministers.

76. One of the key priorities for BiH reforms that was identified by the European Commission was the implementation of the European Court of Human Rights’ decisions in *Sejdić-Finci* case.<sup>42</sup> The RS agrees that BiH must ensure equality and non-discrimination for all citizens, including by implementing the *Sejdić-Finci* decision and related decisions. The RS advocates a simple solution

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<sup>34</sup> Johann Sattler, *A Fresh Start – Unity over Division*, EU Ambassador’s Blog, 6 May 2020.

<sup>35</sup> *Bosnia's rival ethnic parties seal a deal on Mostar after a decade*, Reuters, 17 Jun. 2020.

<sup>36</sup> Johann Sattler, *Our Partners Are the People*, EU Ambassador’s Blog, 2 Sep. 2020.

<sup>37</sup> *Bosnia makes an important step on EU integration path*, N1, 22 Jul. 2020.

<sup>38</sup> EU Statement on the adoption of the Rules of Procedure of the Stabilisation and Association Parliamentary Committee, 22 Jul. 2020.

<sup>39</sup> EU removes Bosnia from list of high-risk countries for financing terrorism, N1 9 Jul. 2020.

<sup>40</sup> *Id.*

<sup>41</sup> Nermina Kuloglija and Haris Rovcanin, *Bosnia Adopts Long-Delayed National War Crimes Strategy*, *Balkan Transitional Justice*, 24 Sep. 2020.

<sup>42</sup> Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union, 29 May 2020 (“Commission Opinion”), at p. 15.

for members of the BiH Presidency and House of Peoples representing the RS: to eliminate all ethnic qualifications. For office holders representing the Federation, the RS has for years made clear that it would accept any solution the Croat and Bosniak parties agree to that does not disenfranchise any of the three Constituent peoples of BiH. The RS remains hopeful that BiH's Croat and Bosniak parties will find such a solution.

### **C. Obstacles on BiH's path to the EU**

77. Despite the recent progress by BiH toward EU membership, there remain obstacles standing in BiH's EU path, obstacles that should be addressed promptly with the assistance of the international community. As long as BiH has a foreign overseer—the HR—and a Constitutional Court with three seats reserved for foreigners, it will remain a protectorate rather than a fully sovereign state eligible for EU membership.

#### **1. The High Representative**

78. The continued presence of an international High Representative who illegally claims dictatorial powers, and the autocratic imposition of ill-conceived and unconstitutional laws by the HR, with no democratic process whatsoever, remain major obstacles to BiH's EU integration.

79. As the EU has recognized, the continued operation of the Office of the High Representative (OHR), with its self-asserted right to exercise so-called "Bonn powers," hinders BiH's continued progress toward EU integration. Regarding the OHR, the EC's 2019 Opinion says: "Such extensive international supervision is in principle incompatible with the sovereignty of Bosnia and Herzegovina and therefore with EU membership."<sup>43</sup> The EC's 2019 Analytical Report elaborates, explaining:

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

The Analytical Report concludes that the OHR's "executive powers" must "be phased out."<sup>44</sup>

80. As explained in part I, above, the HR has no legal authority to decree laws and punishments or otherwise make decisions binding upon BiH or its citizens. Moreover, the HR has had a corrosive effect on BiH's politics, making reforms necessary for EU integration far more difficult.

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<sup>43</sup> *Id.* at p. 7.

<sup>44</sup> Commission Staff Analytical Report at p. 13.

As the International Crisis Group recognized, “keeping the OHR open will not push its citizens toward reform and may sow enough discord to push reform out of reach.”<sup>45</sup>

## 2. Foreign judges on the BiH Constitutional Court

81. Another important barrier standing between BiH and EU integration is the continued presence of foreign judges on the BiH Constitutional Court. The BiH Constitution includes a peculiar provision—intended as a transitional measure to last five years—in which three of the nine seats on the BiH Constitutional Court are reserved for foreigners.

82. The EC’s 2019 Opinion rightly includes among its 14 “key priorities” for BiH, “addressing the issue of international judges” on the Constitutional Court.”<sup>46</sup> The RS appreciates the EC’s acknowledgement that the foreign judges on the Constitutional Court are inconsistent with EU integration.

83. The presence of foreign judges on BiH’s Constitutional Court is incompatible with BiH’s sovereignty and democracy. The RS knows of no other sovereign state in the world that has seats on its constitutional court reserved for foreign judges, let alone judges appointed by a foreign individual without any requirement of domestic consent. As Professor Robert Hayden has observed, the role of foreign judges on the Constitutional Court “of course, compromises the sovereignty of Bosnia and Herzegovina, since it gives decision-making powers to people who may not, by constitutional mandate, be citizens of the country.”<sup>47</sup>

84. In a 2016 article about the BiH Constitutional Court, Stefan Graziadei of the University of Antwerp observes:

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>48</sup>

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<sup>45</sup> International Crisis Group, *Bosnia’s Dual Crisis*, 12 Nov. 2009, p. 16.

<sup>46</sup> Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union, 29 May 2019.

<sup>47</sup> Robert M. Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (1999) 131.

<sup>48</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*

85. The presence of foreign judges on the BiH Constitutional Court is also incompatible with BiH democracy. As an international expert panel on Cyprus observed, “Leaving the final decision in case of stalemate to foreign citizens in such critical organs as the Supreme Court and others is in stark contradiction to the principle of democracy.”<sup>49</sup>

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

87. In an analysis of the foreign judges on the BiH Constitutional Court, the University of Hong Kong’s Dr. Alex Schwartz rightly concludes that “the foreign judges appear to have contributed to the Court’s crisis of authority.”<sup>50</sup>

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

Judges who decide constitutional challenges to the actions of other parts of the government not infrequently face challenges to their “democratic” legitimacy. . . . [T]his challenge may be heightened where the holder of judicial office is a foreign judge.” . . . Both the decision to have foreign judges sit and the selection (or selection methods) of those judges may implicate democratic legitimacy concerns.”<sup>51</sup>

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

89. 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>52</sup>

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*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>49</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>50</sup> Alex Schwartz, *International Judges on Constitutional Courts: Cautionary Evidence from Post-Conflict Bosnia*, 44 *Law & Social Inquiry* 1, 26 (Feb. 2019).

<sup>51</sup> Rosalind Dixon and Vicki Jackson, *Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts*, 57 *Colum. J. Transnat’l L.* 283, 317 (2019).

<sup>52</sup> Graziadei at 5 (footnotes omitted).

90. Similarly, Professors Dixon and Jackson write that foreign judges “may lack sufficient local contextual knowledge to appropriately perform the constitutional function.”<sup>53</sup> Such judges, Professors Dixon and Jackson write, “will often have limited knowledge of local history, socio-political values and attitudes, and the kinds of national social, economic, and political conditions that can affect the implementation of a court decision.”<sup>54</sup> In addition, as Professor Tim Potier has pointed out, the use of foreign judges in a country’s highest court prevents a society’s ownership of its constitution and system.<sup>55</sup>

91. A 2016 study of the BiH Constitutional Court published by the Analitika Center for Social Research, an independent Sarajevo-based think tank said of the Constitution’s provision on foreign judges, “Even though agreeing that the provision had its justification at first, most of our interlocutors now see such a feature as unnecessary, and as overstaying its welcome almost twenty years later, with one constitutional scholar noting that such hybridization of [the BiH Constitutional Court] is ‘demeaning,’ while the first president of the Court after the Dayton Agreement saw in it ‘elements of protectorate.’”<sup>56</sup>

92. Moreover, the foreign judges on the court have shown themselves to be far from the disinterested “swing votes” they were intended to be. In reality, the foreign judges have allied themselves with Bosniak bloc of the court—consistently in favor of BiH’s unconstitutional centralization, subservient to the HR, and hostile to the Entities’ rights under the BiH Constitution.

93. BiH’s main Serb and Croat parties strongly favor replacing the Constitutional Court’s foreign judges with BiH citizens and have introduced legislation to do so, but the SDA and other Bosniak parties refuse to consider the idea, thus again preventing BiH from operating as intended under the Dayton Accords and standing in the way of BiH’s progress toward EU membership.

## V. The migrant crisis

94. BiH is continuing to confront a crisis that it did nothing to create: the influx of migrants seeking to enter Western Europe. As of early August, the BiH Service for Foreigners’ Affairs had recorded the entry of more than 62,000 migrants into BiH since 2018.<sup>57</sup> About 14,000 migrants have entered BiH illegally so far this year.<sup>58</sup> In the first six months of 2020, the RS police registered 69% more migrants than during the same period last year.<sup>59</sup>

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<sup>53</sup> Dixon and Jackson at 317.

<sup>54</sup> *Id.*

<sup>55</sup> See Tim Potier, *Making an Even Number Odd: Deadlock-Avoiding in a Reunified Cyprus Supreme Court*, *Journal on ethno-politics and minority issues in Europe*, Vol. 7 (2008), at 4.

<sup>56</sup> Nedim Kulenović, [\*Court as a Policy-Maker?: The Role and Effects of the Constitutional Court of Bosnia and Herzegovina in Democratic Transition and Consolidation\*](#), Analitika Center for Social Research (2016) at 15.

<sup>57</sup> *More than 62,000 migrants entered Bosnia since 2018*, official says, N1, 3 Aug. 2020.

<sup>58</sup> *Bosnian government endorses readmission agreement with Pakistan*, N1, 15 Oct. 2020.

<sup>59</sup> *Lukač: Crime rate drops, number of migrants increases*, SRNA, 17 Jul. 2020.

95. The migrant crisis stems from geopolitical and economic issues not of BiH's making. Faced with labor shortages, some Western European countries opened their doors to migrants, triggering a huge surge of migrants seeking to enter those countries. Since 2018, migrants have been using a route through BiH, trying to enter the EU at the border with Croatia. Croatia, however, has blocked migrants from entry, thus leaving large numbers of migrants in BiH. In recent years, the EU's border controls were strengthened at BiH's border with Croatia but not in other locations through which migrants have been entering the EU and then finding their way to BiH. That has left many migrants in BiH, where they have no wish to be.

96. The influx of migrants to BiH, a country that cannot afford to accommodate them, has resulted in a humanitarian crisis. Although there is great sympathy for the plight of the migrants, their arrival was not due to the actions of BiH, and so BiH cannot be expected to deal with the crisis by itself.

97. The migrant crisis—and the SDA's reaction to it—has been accelerating the decline in the Serb population of the Federation. Before the war, some 540,000 Serbs lived in the territory of the Federation. That number had fallen to 56,000 by the time of the 2013 census, and has fallen even further to about 40,000 since then. This trend has only been reinforced by the SDA's practice of locating migrant camps mainly in areas populated by Serbs, causing Serbs to fear for their lives.

98. Many of the migrants in BiH come from countries in which jihadist groups have large numbers of followers. According to BiH Security Minister Selmo Cikotic, out of 11,292 migrants to BiH registered in the first eight months of 2020, roughly half came from Afghanistan and Pakistan, with large numbers also coming from Bangladesh, Morocco, and Iraq.<sup>60</sup>

99. On 24 April, then-Security Minister Fahrudin Radoncic said that BiH had uncovered two terrorists among the migrants based on their fingerprints.<sup>61</sup> In 2019, the BiH Service for Foreigners' Affairs apprehended five suspected Afghan terrorists.<sup>62</sup> But the terrorists identified are certainly not the only jihadists entering BiH among the migrants. Many migrants lack identification, often making it impossible to check whether individuals are linked to terrorism or other crimes. Sometimes migrants provide false information about their origin in order to make it impossible to determine their identities and cooperate with their countries of origin.<sup>63</sup> The infiltration of terrorists into BiH is especially sensitive because BiH has been a haven for Islamic radicals.

100. The migration crisis has also brought other types of violence to BiH. In September, a large clash between groups of migrants from Afghanistan and Pakistan killed two migrants and injured

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<sup>60</sup> *Minister: Bosnia records 39 percent drop in influx of migrants this year*, N1, 15 Sep. 2020.

<sup>61</sup> *Security Minister: Bosnia uncovered two terrorists among the migrants*, N1, 24 Apr. 2020.

<sup>62</sup> *Bosnian authorities apprehend five suspected terrorists among migrants*, N1, 19 Feb. 2019.

<sup>63</sup> *More than 62,000 migrants entered Bosnia since 2018*, official says, N1, 3 Aug. 2020.

18.<sup>64</sup> Another migrant was killed in a fight between groups of migrants in August.<sup>65</sup> A spokesman for the Una-Sana Canton Police said in August after a stabbing in Bihac that such incidents between migrants are becoming almost an everyday occurrence in the region.<sup>66</sup> In June, a migrant pointed a gun at a police officer near Banja Luka. In May, hundreds of migrants rioted at a migrant camp near Bihać.<sup>67</sup>

101. Since the migrants have no interest in staying in BiH, the best solution to the humanitarian and security crisis posed by the migrant influx is to return the migrants to their countries of origin. On 27 August, the BiH Presidency took several important steps to alleviate the migrant crisis, including strengthening institutions and protecting the border, as well as signing readmission agreements with migrants' countries of origin.<sup>68</sup> The Presidency asked the BiH Council of Ministers to increase the capacity of the border police and allocate 5 million KM from the budget reserve for migrant crisis management.

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<sup>64</sup> Daniel Kovacevic, *Two Killed in Clash Between Migrants in Northwest Bosnia*, Balkan Insight, 1 Oct. 2020.

<sup>65</sup> *One killed in a migrant clash near Sarajevo*, N1, 1 Sep. 2020.

<sup>66</sup> *Bihac police on migrant stabbing: Such conflicts are becoming commonplace*, N1, 5 Aug. 2020.

<sup>67</sup> *Riot in Lipa camp*, SRNA, 13 May 2020.

<sup>68</sup> *Dodik: There is no engagement of BiH Armed Forces at the border*, FENA, 27 Aug. 2020.

### The SDA's Foreign Minister

Since taking office as BiH's foreign minister in December 2019, SDA member Bisera Turković has represented not BiH but, instead her party.

Even before she was appointed, Turković's background made clear that she was ill-suited to serve as a foreign minister, especially for a country with three equal constituent peoples, each with its own religious tradition. Turković touts her Ph.D. in International Relations from Pacific Western University, but that institution has been exposed as a fraudulent diploma mill and shut down by court order.

Turković was one of the founders of the SDA party in 1990. That same year, the SDA's principal founder, Alija Izetbegović, published his *Islamic Declaration*, which states, "There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions."<sup>69</sup> The SDA's manifesto, published in 1993, lays out the party's vision of a Muslim state, emphasizing, "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."<sup>70</sup>

During the war in BiH, Turković played a key role in supporting the radical Islamist mujahedeen who fought alongside the Bosniak army, especially in her role as ambassador to Croatia. In a 2005 speech to the U.S. House of Representatives, Rep. Trent Franks of Arizona blasted the U.S. State Department for agreeing to Turković's designation as BiH's ambassador to the United States, citing Turković history of supporting for radical Islamists.<sup>71</sup> Franks explained that, under Turković's leadership, BiH's embassy in Zagreb "was constantly used by the SDA and their leadership to provide Bosnian passports, visas, humanitarian worker status, and logistical support to radical Islamist mujahideen coming into Bosnia to fight their own jihad there."<sup>72</sup> Franks added, "Individuals such as Anwar Sha'ban, the spiritual leader of al Qaeda in Bosnia and the cousin of Osama bin Laden, Abu al-Madani, who was killed fighting soldiers in Sarajevo, and even Osama bin Laden himself entered Bosnia through Zagreb."<sup>73</sup>

In 2015, NATO refused BiH's designation of Turković as ambassador to NATO because she failed NATO's security vetting.<sup>74</sup>

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<sup>69</sup> ALIJA IZETBEGOVIC, ISLAMIC DECLARATION, p. 30.

<sup>70</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>71</sup> Congressional Record, Volume 151, Number 81 p. H4712, (17 Jun. 2005).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Iz Brisela crveno svjetlo za Biseru Turković*, RTRS, 30 Oct. 2015.

Turković's close ties to Islamic radicals and terrorist groups continue to this day. In December 2019, Turković travelled to Qatar to visit Yusuf al-Qaradawi,<sup>75</sup> the spiritual leader of the Muslim Brotherhood and chairman of the Union of Good, a group the United States has declared a "Specially Designated Global Terrorist" (SDGT) organization. Al-Qaradawi, according to the Washington Post, "has suggested that the murder of 6 million Jews by Nazi Germany was 'divine punishment' for historical transgressions," repeatedly urged the killing of Israeli civilians, and called the killing of U.S. soldiers in Iraq a "religious obligation."<sup>76</sup>

As foreign minister, Turković has disregarded the BiH Constitution by trying to turn BiH foreign policy into the SDA's private fiefdom. The BiH Constitution explicitly gives the BiH Presidency responsibility for "[c]onducting the foreign policy of Bosnia and Herzegovina."<sup>77</sup> In order to respect the Constitution, then, a BiH foreign minister must harmonize the official positions she espouses with those of the Presidency. Turković, unfortunately, has disregarded BiH's constitutional architecture, representing SDA positions rather than those of the Presidency.

In February 2020, for example, Turković invited deputy ambassadors and charges d'affaires from Sarajevo embassies to a meeting at the BiH Ministry of Foreign Affairs. Despite having called the meeting in her capacity as foreign minister, Turković used the meeting to explain the situation in BiH to those diplomats solely from her own—SDA—point of view.

Turković has made a habit of bypassing BiH ambassadors and other embassy personnel who are Serbs. Turković has also refused to transmit to world leaders certain letters from the Serb member of the BiH Presidency and from the chairman of the Council of Ministers.

At the beginning of the COVID-19 crisis, Turković tried to obstruct Republika Srpska's efforts to secure pandemic aid from friendly countries in Europe. Without authorization from the BiH Presidency, Turković wrote to EU High Representative Josep Borell and Hungarian Foreign Minister Peter Szijjarto complaining that European countries were sending aid to Republika Srpska, arguing that all aid must go to the BiH level instead.<sup>78</sup> Apart from the impropriety of Turković bypassing BiH institutions, her letter was simply wrong. Entities asking for—and receiving—aid directly from other countries is fully consistent with the BiH Constitution, and it perfectly appropriate for units of federal states to procure aid from foreign states. (The U.S. state of New York, for example, asked for and received COVID-19 supplies from foreign countries.)

Turković has also repeatedly used her position on the Council of Ministers to block the formation of an expert team to address Croatia's plans to build a nuclear waste dump at Trgovska Gora on

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<sup>75</sup> *Bisera Turković - Buduća ministrica vanjskih poslova: Muslimansko Bratstvo, kćerke i zetovi*, Zurnal, 17 Dec. 2019.

<sup>76</sup> Sudarsan Raghavan and Joby Warrick, *How a 91-year-old imam came to symbolize the feud between Qatar and its neighbors*, Washington Post, 27 Jun. 2017.

<sup>77</sup> BiH Constitution, art. V(3)(a).

<sup>78</sup> Danijel Kovacevic, *Hungary's Medical Aid Reopens Bosnia's Wounds*, Balkan Insight, 16 Apr. 2020.

the border with BiH near the Republika Srpska town of Novi Grad. Turković's repeated obstruction has come despite the BiH Presidency's official opposition to Croatia's plans.

Minister Turković's priorities as foreign minister have been further demonstrated by her reaction to allegations that BiH's ambassador to Pakistan issued thousands of fraudulent visas. In May 2020, the BiH Prosecutor's Office launched an investigation into allegations that BiH's ambassador to Pakistan, Sakib Foric, illegally issued visas to thousands of Pakistani nationals.<sup>79</sup> This followed reports from the BiH border police that Pakistani citizens have been fraudulently granted visas through the BiH embassy in Islamabad.<sup>80</sup>

The BiH Security Ministry warned the BiH Presidency that Ambassador Foric had issued an astonishing 3,000 suspicious visas.<sup>81</sup> Foric, who was handpicked for his ambassadorial post by the president of the SDA, was a senior Bosniak commander during the 1990s war in BiH. Then-BiH Security Minister Fahrudin Radončić, a Bosniak, called the issuance of the visas a security threat.<sup>82</sup> He reported that there were 9,500 Pakistanis in BiH whose identity was unknown to BiH authorities and that Pakistani authorities were refusing to help BiH officials identify them.<sup>83</sup> Minister Radončić also asserted that two Pakistanis who had passed through BiH were suspected of a terrorist attack in France.<sup>84</sup> He threatened to declare Pakistan's ambassador to BiH *persona non grata* if he refused to cooperate.<sup>85</sup>

Rather than aiding the investigation of these serious allegations raised by a fellow Bosniak, Turković rushed to the defense of Ambassador Foric and Pakistan's ambassador. Minister Radončić later resigned, in part because of the refusal of SDA officials like Turković to cooperate with him in dealing with the security threat posed by the flood of unidentified aliens from hotbeds of terrorism.

Turković should respect the BiH Constitution and do her job, which is to pursue the foreign policies adopted by the BiH Presidency. Foreign interests should understand that Turković's academic credentials are fraudulent, that she does not speak for the BiH, and that her ties to radical

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<sup>79</sup> Danijel Kovacevic, *Bosnia Probes Alleged Scam Over Visas for Pakistan Citizens*, BIRN, 20 May 2020.

<sup>80</sup> Hannah Lucinda Smith, *Visa fraud lets Pakistanis use Bosnia as back door to EU*, The Times, 22 May 2020.

<sup>81</sup> Danijel Kovacevic, *Bosnia Probes Alleged Scam Over Visas for Pakistan Citizens*, BIRN, 20 May 2020.

<sup>82</sup> Hannah Lucinda Smith, *Visa fraud lets Pakistanis use Bosnia as back door to EU*, The Times, 22 May 2020.

<sup>83</sup> *EKSKLUZIVA OSLOBODENJA: Stenogram razgovora Radončića i članova Predsjedništva, žestoki obračun i optužbe na račun Džaferovića*, Oslobodjenje, 2 June 2020.

<sup>84</sup> *Id.*

<sup>85</sup> Hannah Lucinda Smith, *Visa fraud lets Pakistanis use Bosnia as back door to EU*, The Times, 22 May 2020.

Attachment 1 to Republika Srpska's 24<sup>th</sup> Report to the UN Security Council

Islamist groups are a source of serious concern to many both inside and outside of BiH, and even many of her fellow Bosniaks.

### **The SDA's Intelligence Chief**

In his role as general director of the Intelligence-Security Agency of BiH (OSA-OBA), Osman Mehmedagić has served the interests not of BiH, but of himself and his hardline Islamist faction of BiH's main Bosniak party, the SDA. The SDA has pushed for Mehmedagić to be reappointed, even though his credentials do not meet his position's statutory requirements. Mehmedagić has also recently been charged with abuse of power by BiH prosecutors. As head of the OSA-OBA, whose staff is already approximately 60% Bosniak, Mehmedagić has been trying to increase Bosniak control by purging Serbs from the organization.

During the 1990s, Mehmedagić was part of the Bosniak political and military machinery responsible for bringing Islamic jihadists to Europe. He was chief of security for SDA founder Alija Izetbegovic during the period in which Izetbegovic imported mujahedin into BiH, cooperated closely with them, and then gave them sanctuary. Izetbegovic personally ordered the creation of the El Mujahid Detachment, which routinely tortured and beheaded Serb prisoners. It is inconceivable that Mehmedagić 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 Mehmedagić's appointment as director. In 2015, the CIA sent a letter to the Chairman of the BiH Presidency stating that the new director should not be an Islamist,<sup>86</sup> but Mehmedagić was appointed nonetheless.

Another reason Mehmedagić never should have been appointed as director of the OSA-OBA is that he lacks a valid university diploma, which is a statutory requirement for the office. Acting upon a request of the BiH Prosecutor's Office, the RS Inspectorate determined that there are irregularities and omissions regarding Mehmedagić's diploma.<sup>87</sup> After that diploma was revealed as invalid, Mehmedagić presented a diploma from a different university, but that diploma was invalid as well. In July 2020, he declared his diplomas to be secret documents.<sup>88</sup>

In October 2020, the BiH Prosecutor's Office charged Mehmedagić with abuse of power, alleging that he used OSA-OBA resources to spy on a man who filed a criminal complaint against him.<sup>89</sup> Prosecutors say Mehmedagić used his position to establish the identity of the person who anonymously reported him for having an invalid university diploma.<sup>90</sup> Mehmedagić is accused of using his position and OSA-OBA resources to obtain information and photos about the person who filed the complaint.<sup>91</sup>

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<sup>86</sup> *Analyst on reasons behind CIA chief's visit to Sarajevo*, TANJUG, 22 Apr. 2016.

<sup>87</sup> *Inspectors discover irregularities in diploma of Bosnia's intelligence chief*, N1, 15 Aug. 2019.

<sup>88</sup> *Stevandic left the session, Mehmedagic declared diplomas a secret document*, SRNA, 8 Jul. 2020.

<sup>89</sup> *Bosnia's intelligence chief charged with abuse of office*, AP, 22 Oct. 2020.

<sup>90</sup> *Bosnia's intelligence chief indicted for abuse of power*, HINA, 23 Oct. 2020.

<sup>91</sup> *Id.*

Mehmedagic's misuse of his office is nothing new. In March, Federation Interior Minister Aljosa Campara, who was then a member of the SDA presidency, complained about disinformation campaigns being run by Mehmedagic.<sup>92</sup>

It is indefensible that, notwithstanding all of the concerns raised regarding his past affiliation with jihadi elements, his falsification of credentials, and his misuse of office, Mehmedagic still retains the support of the SDA leadership. No one with such a questionable past, fraudulent credentials, and illegal tactics should be serving in BiH institutions.

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<sup>92</sup> *BUKTI VERBALNI RAT U SDA Čampara: Osmica naručuje tekstove od Avdića, Mostar i Stolac najvažnije točke za obranu BiH i Bošnjaka u njoj*, Poskok.info, 9 Mar. 2020.