UNCONSTITUTIONAL CHANGE OF THE DAYTON STRUCTURE OF BOSNIA AND HERZEGOVINA

IMPACT ON THE POSITION AND RIGHTS OF REPUBLIKA SRPSKA

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BELGRADE 2025.

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Instead of Introduction

BiH Relying on the Interest of Foreigners or the Constitution?

Bosnia and Herzegovina, the epitome of peace and social order,the state union established by the Dayton Peace Agreement as the first-class international treaty, hasbeen living its parallel reality with the distorted Bosnia and Herzegovina, exhausted by the continuous legal violence inflicted by high representatives and the insatiable Sarajevo. Persistent in its efforts to make Bosnia and Herzegovina a state that is ruled by the national majority, and downgrade the other two nations from the status of state-forming people to the status of national minorities, the Federation of Bosnia and Herzegovina[1] has grasped and occupied all the vital levers of power within the joint authorities, continuingly presenting all its illegitimacies in that area as completely legal, while the current, unlawful, 'low' representative of nobody keeps acknowledging all of those illicit deeds, slowly pushing Bosnia and Herzegovina into an even deeperchasm of disorderliness. This book is another attempt to, not only portray the true picture of Bosnian reality, but also to present possible ways out of this abnormal, unconstitutional state.

Is there, therefore, any way or a possibility for Bosnia and Herzegovina to have peace and social order based on the Constitution and laws, to emerge from the shadows of the present Bosnia and Herzegovina and disorder, unconstitutionality, constant legal violence and disrespect for the fundamental rights of peoples and citizens?

We sincerely believe so.

The Bosnia and Herzegovina that has been established

[1] Initial name of the Muslim – Croat federation in Bosnia and Herzegovina, Washington Agreement, 1994

based on the Constitution, in the form of Annex 4 to the Dayton Agreement, is possible only if all the powers and rights that Republika Srpska was divested of, are restored and the Federation of Bosnia and Herzegovina is returned to the status of those same rights and responsibilities, so that the joint bodies are freed and the Constitution observed.

The recovery of Bosnia and Herzegovina should begin by abolishing the "powers" of foreigners in our institutions and by creating conditions for dialogue and agreement between peoples and entities in Bosnia and Herzegovinaon an equal basis.

The book that you have in your hands is a big step forward to this end, and therefore, after having read it, I encourage you to make it available to all whoseek peace and orderly societies of equal peoples and citizens.

Mlađen Cicović,
Head of the Republika Srpska
Representative Office in Serbia

1. CIRCUMSTANCES AND NATURE OF THE DAYTON STRUCTURE OF BOSNIA AND HERZEGOVINA

Both the starting point and the outcome of any discussions concerning Bosnia and Herzegovina are stemming from the fact that it is a state union established in Dayton on 21 November 1995, by General Framework Agreement for Peace in Bosnia and Herzegovina and its 11 Annexes initialled and then signed in Paris, on 14 December of the same year. Until then, there had been no state of Bosnia and Herzegovina in terms of the present framework, but only a territory created following the breakup and collapse of the SFR Yugoslavia. This could not be changed even by the premature international recognition of the Republic of Bosnia and Herzegovina, as of April 1992, nor by its membership in the United Nations since May 1992. Therefore, in September 1995, the warring parties, first in Geneva and then in New York, established the principles of peace negotiations. The negotiating parties were the Republika Srpska and the quasi-state consisting of the "Republic of Bosnia and Herzegovina" and the Federation of Bosnia and Herzegovina, as an undefined coupling. Republika Srpska was acknowledged in Dayton as a statehood and a party to the Agreement. Republika Srpska was not a "rebellious party confronting the internationally recognized Republic of Bosnia and Herzegovina". After all, Republika Srpska is a signatory to all Annexes to the Peace Agreement, as its essential and implementing part, in contrast to the Peace Agreement, drafted as "general and a framework" document. Republika Srpska received confirmation of its statehood by retaining its name, unlike the "Republic of Bosnia and Herzegovina" whose qualifier, the "republic", was removed.

The Dayton Agreement itself is one of the most important documents of international law following World War II. "There is no fault in the Agreement itself, but in how its implementation was understood," said American diplomat Richard Holbrooke, on the tenth anniversary of signing the General Framework Agreement for Peace in Bosnia and Herzegovina.

Holbrooke is considered to be the creator of the Dayton peace process that ended the bloody, multi-year civil war in Bosnia and Herzegovina. Signing of the Agreement and the end of war were possible because the Dayton Agreement established a completely new internal structure of post-war Bosnia and Herzegovina, its election model and functioning of bodies, in line with the Geneva and New York Principles from September 1995. These principles, as a prerequisite for the Dayton negotiations, were agreed between the two parties – Republika Srpska and the "Republic of Bosnia and Herzegovina". The Peace Agreement is only a general framework whose content refers to the Annexes signed by the two entities, as its integral and implementing parts – the Republika Srpska and the Federation of Bosnia and Herzegovina. If it were not for these annexes, and especially Annex 4 - the Constitution of Bosnia and Herzegovina, the Dayton Agreement would have never been signed. Therefore, we conclusively believe that Bosnia and Herzegovina is a state of two entities and three constituent peoples. Bearing in mind the large number of documents (the Agreement and 11 Annexes), this international agreement should be called the "DAYTON AGREEMENTS."

1.1. Overview of circumstances that created Dayton's Bosnia and Herzegovina

Taking into consideration the situation at the time, with the existence of the Bosniak-Croat Federation and the Republika Srpska, American preparations for the peace conference involved "shuttle diplomacy", while working on possible solutions. Before starting the Dayton negotiations, the State Department compiled a "Scenario Book", stating under point 4 that:

"**According to the constitution, Bosnia and Herzegovina will remain a single state, but it will consist of two entities, each with a high degree of autonomy - most likely one with a Serb**

majority and the other with a Muslim-Croat majority, with the details to be agreed by the conflicting parties themselves."[2]

The Dayton negotiations conducted in November 1995 were the final act of ending the civil war that broke out following the secession of Bosnia and Herzegovina from the internationally recognized SFR Yugoslavia. Based on the decisions made by rump bodies of the PRE-WAR YUGOSLAV REPUBLIC of Bosnia and Herzegovina, a referendum on independence was held on 29 February and 1 March 1992, in which only Muslims and Croats took part, without the participation of Serbs. Despite the position of the Badinter Arbitration Commission, an ad hoc body created by the European Union, that a decision in a referendum should be made with the participation of voters from all three dominant peoples, requiring a minimum of a two-thirds majority. Around 64% of those registered on the polling list voted, and the majority of them voted in favour of the independence of Bosnia and Herzegovina. Swift recognitions of independence followed, which led to the expansion of the conflict and intensified national and territorial divisions.

The Dayton Peace Conference, held from 1-21 November 1995 at the US military base in Dayton, ended the war that had started with the acts of the Muslim side and the statement of Alija Izetbegović, president of SDA - the Party of Democratic Action: "I will sacrifice peace for a sovereign Bosnia and Herzegovina", that was translated to deeds, the murder of a Serbian wedding guest in Sarajevo's Baščaršija. Fahrudin Radončić also testified about the circumstances that led to the war before the court in Priština: "Some people were convinced that Ramiz Delalić demanded millions of marks from the SDA for killing the Serbian wedding guest at the order of SDA, that started the war in Bosnia and Herzegovina," said Radončić, adding, among other, that a few months after Delalić was killed, "there were numerous speculations in the public, the main one being that he'd been liquidated by the Muslim secret service

[2] Derek Chollet: The Secret History of Dayton, 2007., p. 90.

so that he would no longer blackmail them and ask for money." Answering the judge's questions, Radončić stated that Delalić "was a controversial figure who worked for the Muslim secret service and was deeply involved and even declared that he did some killings at the order of the President Alija Izetbegović." Two days before his death, Delalić gave an exclusive interview in which he explained what crimes the Muslim secret service had committed.[3]

There were several attempts to reach an agreement between the political representatives of Muslims, Serbs and Croats that would have prevented the war. The most important and most tangible was the plan of the Portuguese diplomat, former envoy to the UN Secretary-General for Bosnia and Herzegovina, José Cutileiro, in February 1992. Cutileiro spoke about this in an interview with the Belgrade "*Blic*" titled: "IZETBEGOVIĆ REJECTED PEACE", claiming: "If the Serbs, Bosniaks and Croats had accepted the plan offered to them in 1992, the war in Bosnia and Herzegovina would have been avoided, and reconciliation would have been much easier". Cutileiro's plan envisaged the constitutional aspects of the new establishment of Bosnia and Herzegovina. Each of the three constituent peoples - Bosniaks, Serbs and Croats - would have their own federal or autonomous unit. Additionally, a principle was established to use the census for the division. According to this concept, Bosniaks would receive 44 percent of the territory, where they were the majority. Croats were the majority at only 16.6 percent, and around 40 percent would belong to Serbs."[4]

Thus, Cutillero confirmed what was already known: the Bosniak leaders wanted a unitary state in which they would have supremacy over the other two peoples.

The Washington Agreement of March 1994 that led to the creation of the Muslim-Croat Federation, in a way, deceived the Croats in Bosnia and Herzegovina. The Agreement envisaged a confederation of the Republic of Croatia and the Federation of

[3] Free Europe, 28 October 2016
[4] The *Blic*, 18 July 2005

Bosnia and Herzegovina. The then Croatian Minister of Foreign Affairs, Mate Granić, stated that he had accepted the proposal even though he was aware that it would never be implemented.

Thus, the Dayton Agreement was created based on several earlier proposals by various international mediators, all of whom had had one common perspective: each envisaged a decentralized, consociational structure for Bosnia and Herzegovina. Such a structure was deemed necessary in order to maintain peace and the functioning of a union of three peoples with extensive mutual distrust rooted in their historical background. As late Richard Holbrooke, the chief architect of the Dayton Agreement said in 2007:

"Bosnia is a federal state. It has to be structured as a federal state. You cannot have a unitary government, because then the country would go back into fighting. 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."[5]

The Constitution of Bosnia and Herzegovina (Annex 4 of the Dayton Agreement) reflects democratic governance in Bosnia and Herzegovina through a confederal-federal, bi-entity structure and various mechanisms, carefully designed to protect the two entities and three constituent peoples of Bosnia and Herzegovina. The Constitution gave most of the powers to the entities and established other important mechanisms, such as the possibility that two-thirds majority of deputies from one entity in the House of Representatives may use veto to a regulation. One of the mechanisms for the protection of all three constituent peoples is the tripartite Presidency of Bosnia and Herzegovina and the power of the representatives of a constituent people to declare that a law destabilises their vital entity or national interest.

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

The sensitivity, specificity and importance of this political compromise were vividly described by Judge Giovanni Bonello in his dissenting opinion in the decision of the European Court of Human Rights in the case of "Sejdić and Finci v. BiH". The Dayton structure, said Bonello, is based on a division of powers, elaborated in the finest detail and regulates how the three nationalities will exercise the division of power in the various representative bodies of the state. "The Dayton Agreement dosed with a chemist's fastidiousness the exact ethnic proportions of the peace recipee ".[6]

1.2. Annex 4 of the Dayton Agreement (BIH constitution) according to the US recipes

At the time when the American Constitution was drafted, in the late 18th century, its creators - Alexander Hamilton and James Madison - wrote the "Federalist Papers" as a kind of supplement and guidelines for the interpretation, but also for potential new amendments to the Constitution. Accordingly, James Madison wrote in the Federalist Papers: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite" (referring to the member states of the USA, currently numbering 50). This position of Madison was later formulated as Amendment X of the American Constitution, which reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This amendment was copied in Article III.3(a) of the Constitution of BiH, stating as follows: "All state functions and powers not expressly granted by this Constitution to the institutions of Bosnia and Herzegovina shall belong to the entities." This was consistently implemented through the changes to the Constitution of the Republika Srpska, Amendment LVI, replacing Article III of the Constitution of the Republika Srpska, which now reads: "The

[6] *Sejdić and Finci v. Bosnia and Herzegovina* [BB], no. 27996/06 and 34836/06), ECHR 2009, dissenting opinion of judge Bonello, p. 53

Republic shall have all state functions and competencies except those explicitly **transferred to its institutions by the Constitution of Bosnia and Herzegovina**." This was the obligation of the Republika Srpska that it assumed by signing Annex 4 - the Constitution of BiH as part of the international Dayton Agreement, which in Article III.3(b) determines: "The Entities and all their parts **shall fully comply with this Constitution**, which shall prevail over the provisions of the laws of Bosnia and Herzegovina, including any constitutions and laws of the entities that inconsistent with it, and with the Bosnia and Herzegovina's decisions of the institutions".

There is another provision in the Constitution of Bosnia and Herzegovina stating that it is a state composed of entities deciding on the adoption of decisions in the Council of Representatives and the House of Peoples of the Parliamentary Assembly in Sarajevo. The so-called "entity vote" means that for any decision to be made in these two bodies, there must be minimum one third of the votes from each entity. In the case of the Council of Representatives, there must be at least five votes by the deputies from Republika Srpska (out of a total of 14), or ten votes from deputies from the Federation of Bosnia and Herzegovina (out of a total of 28). As regards the House of Peoples, there must be minimum two votes from delegates from Republika Srpska (out of a total of 5), or four delegates from the Federation of Bosnia and Herzegovina (out of a total of 10). Therefore, voting and decision-making in the Parliamentary Assembly have been indirectly delivered by the entities. This means that Bosnia and Herzegovina has been established as a common state of two entities and three constituent peoples. It is not, and cannot be a "civic state based on the principle of 1 person - 1 vote".

Indeed, the USA itself is not a common civic state according to its Constitution, but a union of fifty states, electing their governments as a federal republic. The president of the most powerful state in the world, holding the executive power of the government, is not elected by citizens, but by states (entities) through electoral votes.

This kind of "entity" voting in the USA was best demonstrated in 2016 during the US presidential election, when Donald Trump won. Thanks to the fact that he won in three states by a margin of some eighty thousand votes: Michigan, Pennsylvania and Wisconsin, Trump was elected the President of the USA by the electoral vote, even though his opponent, Hillary Clinton, won 2.8 million more votes than him taking into account the total number of individual votes cast by voters in the entire USA. In numbers: Donald Trump won 62,984,825 or 46.1% of the votes, and Hillary Clinton won 65,853,516 or 48.2% of the votes.[7] The difference was precisely 2,868,691 in favour of Clinton, but Trump still became the president, because the US Constitution stipulates so. In the elections held on 5th November 2024, Donald Trump, as the candidate of the Republican Party, overwhelmingly defeated the candidate of the Democratic Party by the difference of 4 million votes. His Republican Party also won the elections for both houses of Congress.

The US Congress is bicameral: the House of Representatives and the Senate. The Senate, as the upper house, has 100 members elected in 50 federal states that make up the American federation. Each state elects two senators, irrespective of the census and size of the territory. Thus, California, having over 37 million inhabitants, has two senators, as does Wyoming, which has less than 600 thousand inhabitants. These examples illustrate that the USA is a community of states. By creating the House of Peoples as the upper house of the Parliamentary Assembly in Bosnia and Herzegovina, the American authors of the Dayton Constitution of Bosnia and Herzegovina opted for the solution that reflects the US Senate. A total of 15 delegates are elected by the entity parliaments – the Federation of Bosnia and Herzegovina elects 5 Bosniaks and 5 Croats, and the National Assembly of Republika Srpska elects 5 Serbs. This election – 5 delegates each, regardless of the number of peoples in Bosnia and Herzegovina, achieves the equality of the three peoples. The three

[7] Source: US election atlas, 2016

peoples exercise constituency in Bosnia and Herzegovina through their national entities, and not on the basis of the falsified decision of the Constitutional Court of Bosnia and Herzegovina U 5/98 (as explained hereinafter) and Petritsch's[8] imposed amendments to the constitutions of entities.

After all, the federal systems in Europe - in the countries such as Germany, Belgium and Switzerland – has shown that it is in fact the broad autonomy of federal parts, or internal bodies within the state, that allow different groups and peoples to form successful communities.

1.3. Entities are state-forming constituents of BiH - the Dayton Constitution lays down the primacy of entities over the joint institutions of BiH

The provision of Article III.3(a) of the Constitution of BiH has been effective, both at the time of the conclusion of Annex 4 - the Constitution of BiH, as it is today. If there is no constitutional basis for any competence of BiH, the Parliamentary Assembly cannot pass a law, nor can institutions be formed at the level of BiH without a constitutional basis created beforehand. Given that Annex 4 - the Constitution of BiH is itself an international treaty, it is subject to the Vienna Convention on the Law of Treaties, stipulating in Article 39 that treaties are amended by agreement of the signatory parties. According to the Opinion of the Venice Commission No. 337/2005 adopted at the 63rd plenary session of 10-11 June 2005, the entities are recognized as states within the meaning of the Vienna Convention on the Law of Treaties, which is confirmed by the Constitutional Court of BiH, point 19 of Decision U 5/98.

In the case of Annex 4, this means that amendments to the Dayton Agreement, i.e. the Dayton structure and Dayton competencies, can only be made with the consent of the entities - Republika Srpska

[8] Wolfgang Petritsch, High Representative in BIH 1999 – 2002

and the Federation of BiH, without the participation of BiH as a joint state/state union. This is also confirmed by the text from the Commentary to the Constitution of BiH[9] that reads:

"There have been many discussions as to which legal subjects are entitled to conclude an agreement under Article III.5(a) of the Constitution of BiH. While the text of Article III.5(a) of the Constitution of BiH refers to an agreement between Entities only, some have argued that the main beneficiary of such an agreement, namely Bosnia and Herzegovina, should also be party to such agreements.

The the text of Article III.5(a) of the Constitution is clear. It stipulates that Bosnia and Herzegovina shall assume responsibility for such other matters "as are agreed by the Entities". When read in conjunction with Article IV.4(e), which stipulates that the Parliamentary Assembly shall have responsibility for such other matters as are assigned to it "by mutual agreement of the Entities" it can be argued that the text of the Constitution tends to suggest that Entities only are entitled to enter into such agreements.

The practice of the parties (the state and the entities) provides us with additional elements to interpret the text of Article III.5(a) of the Constitution of BiH. The transfer agreement concluded in the field of defense is particularly interesting in this regard. The text of the agreement makes it clear that it was the Entities themselves that agreed on transferring responsibilities. While the agreement has been signed by the Chairman of the Council of Ministers of BiH (in addition to representatives of both Entities), it indicates explicitly that he had signed the agreement as a witness.

The arrangements that led to the establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) may, although reached under Article III.5(b), also be

[9] Steiner-Ademović: Constitution of BiH - Commentary, p. 547-548, ed. Conrad Adenauer Stiftung, Sarajevo 2010.

of particular interest. This agreement provides for a number of obligations for Bosnia and Herzegovina. It was signed by the Prime Ministers of both Entities on 11 March 2004 and was also signed by the Minister of Justice of Bosnia and Herzegovina on 18 March 2004. The agreement, however, indicates in its first Article that it is the Entities themselves that agreed to the transfer of the relevant responsibilities. Moreover, the Court seems to have recognized in U 11/08 that the agreement had been reached between the Entities themselves (as opposed to the Entities and BiH).

As far as the arguments based on Annexes 6, 7 and 8 to the General Framework Agreement are concerned, we note that they have been signed by a representative of the "Republic of Bosnia and Herzegovina" as opposed to "Bosnia and Herzegovina" (namely the new central level of government established by the Constitution of BiH). This signature seems more to be linked to the particular circumstances that were prevailing on the ground at the time of the negotiations which led to the signature of the General Framework Agreement rather than a clear intention to ensure that the institutions of Bosnia and Herzegovina needed to be party to any subsequent agreements to be reached under Article III.5(a) of the Constitution of BiH."[10]

That this was indeed the intention of the creators of the Dayton Agreement was also evidenced by the statement of Mira Lazović, a participant in the Dayton negotiations and a member of the Presidency of the "Republic of Bosnia and Herzegovina", who said: "Mr. Ivo Komšić and I, as members of the Presidency of Bosnia and Herzegovina, never accepted, nor considered the option of the existence of an entity with the name Republika Srpska, neither in the Presidency nor in the Parliament of Bosnia and Herzegovina, which I chaired. Richard Holbrooke cleared this misunderstanding by saying that it was a done deal, that **"there are two entities, and we can only create the concept of the Constitution of Bosnia and Herzegovina**

[10] Steiner-Ademović: Constitution of BiH - Commentary, p. 546 – 548

by taking out from the two entities such content that will enable the state to be preserved, to be functional and stable to some extent".[11] Annex 4 – The Constitution of BiH implemented this, giving the BiH level a minimum of competences and sovereignty towards externally, while almost all internal sovereignty remained under the competence of entities.

The entities transferred only a limited part of their competences to the BiH. The Bosniak political and other structures in Sarajevo are falsely and shamelessly, attempting to present that the "state of BiH" transferred or gave something to the entities, even more so bearing in mind that the "Republic of BiH" has been a non-existent state since its inception. Sead Fetahagić also wrote on this matter: "The 1994 Constitution of the FBiH abolished the existence of the Republic of BiH, for the Dayton constitution-makers there is legal continuity between this "phantom" RBiH (which practically had not a single day in peace as a stable and democratic political community) and the "Dayton" BiH with a significant modification introduced, with respect to its internal state structure."[12].

Specifically, the international recognition of the "Republic of Bosnia and Herzegovina" from April 1992 could only state the existence of such "state" on paper. From the declaration of independence on 6 April 1992 to 14 December 1995, the "Republic of Bosnia and Herzegovina" had no actual authority on the territory of the pre-war Socialist Republic of Bosnia and Herzegovina, nor did it have people, which the international law defined as elements of the existence and sovereignty of any state. This is because Croatian representatives formed the Croatian Community of Herzeg-Bosnia on 18 November, 1991, and then Serbian representatives adopted the Decision on the formation of the Republika Srpska on January 9, 1992, which created separate territorial and political units on the territory of the pre-war Bosnia and Herzegovina. Thus, the two peoples in the then internationally unrecognized Bosnia and Herzegovina exercised

[11] H1, 1 November 2017
[12] Novi pogledi, 2012

their right to self-determination under the United Nations Charter, laying the foundations of their national territorial units. That this was in accordance with international law was indirectly confirmed by the Badinter Arbitration Committee. The Serbian and Croatian actions were reactions to the SDA declaration of February 1991, in which the Muslims defined their goals in the crisis of the destruction and disintegration of Yugoslavia. Just as Yugoslavia was falling apart, Bosnia and Herzegovina was also falling apart – along ethnic lines.

The Republika Srpska, with its institutions of legislative, executive, judicial and military power, the same as the Croatian Republic of Herzeg-Bosnia, effectively exercised all power on their territories within the "internationally recognized borders of BiH". Besides its *de facto* non-existence, the "Republic of Bosnia and Herzegovina" has ceased to formally exist as of March 1994. After signing the Washington Agreement on 1 March 1994, and the establishment of the Constituent Assembly of the Federation of BiH on 18 March, out of the deputies of the pre-war Assembly of the SR BiH who remained after the withdrawal of the Serbian deputies, the assembly of the "Republic of BiH" no longer existed. There was the Federation of Bosnia and Herzegovina and the Republika Srpska, and what presented itself in Dayton as the "Republic of Bosnia and Herzegovina" were only Bosniak-Muslims, embodied in Alija Izetbegović, Haris Silajdžić and Muhamed Šaćirbej, who were simply officials of a non-existent state. Certainly, their presence in Dayton and signing of the Agreement with its Annexes was part of the scenario for ending the war.

"Republic of Bosnia and Herzegovina" as a signatory (declarer of acceptance) of Annex 4, and formally ceased to exist on 14 December 1995, in keeping with Article XII.1 of Annex 4 as the Constitution of BiH, which reads: "This Constitution shall enter into force upon the signing of the General Framework Agreement as a constitutional act that replaces and repeals the Constitution of the Republic of Bosnia and Herzegovina." The so-called "Republic of

BiH" was not a sovereign state, and therefore the Dayton Agreement has foreseen no ratification in the parliament of this so-called state, which existed only on paper for the sake of its international recognition, which was undoubtedly the introduction into a bloody civil war. Richard Holbrooke also testified to the non-existence of the "Republic of BiH" as a state in his book "To End a War". Holbrooke wrote that in early September 1995, in the course of negotiations on the Geneva Principles, Alija Izetbegović objected to the name Republika Srpska, calling it a "Nazi name". Republika Srpska, aside from its *de facto* authority over half of the territory of pre-war Bosnia and Herzegovina, by retaining the name, also demonstrated the formal strength of its status. Moreover, the attribute "Republic" was deleted from the name of today's Bosnia and Herzegovina by an international agreement. All this points to a very limited and exclusively foreign policy continuity of Bosnia and Herzegovina.

Convincing Alija Izetbegović to accept the name Republika Srpska, Holbrooke said: "We do not believe that the name Republika Srpska means much as long as you get everything else – international recognition, defined borders, acceptance of your legal status. **You had none of this before**."[13]

Considering that the Constitution of the "Republic of Bosnia and Herzegovina" was not amended following the procedure set out in that constitution, but instead, a different constitutional structure was established, there is no constitutional continuity, as stated by Sarajevo professor of constitutional law **Kasim Trnka**: "Given that the Constitution was imposed by an international treaty, the change of the constitutional order did not take place in accordance with the revision procedure laid down by the previous legal and legitimate Constitution of the Republic of Bosnia and Herzegovina **and therefore, this may be regarded as the constitutional discontinuity."**[14]

[13] R. Holbrooke: To End a War, Sarajevo, 1998. p. 134
[14] Specificities of constitutional system of BiH, Ljubljana, 2009

For this reason, the provisions of Article I.1. of the Constitution of BiH, expressing the continuity of the "Republic of Bosnia and Herzegovina", very clearly and precisely determined in three segments that this applies exclusively to its international legal status. The Constitution determines that the Republic of Bosnia and Herzegovina, whose official name will henceforth be "Bosnia and Herzegovina", shall continue its legal existence: 1) under **international** law as a state, 2) within **internationally** recognized borders, 3) remain a **member of the United Nations**, and may, as Bosnia and Herzegovina, maintain or apply for membership in the United Nations system and other international organizations. But all this with the internal structure modified as provided for by the Constitution of BiH. The internal structure is two entities and that level of joint bodies that defines BiH as a state exclusively in external relations. This is also supported by the fact that Article II of Annex 2, Annex 4 of the Dayton Agreement defines that "All laws, regulations, and judicial rules of procedure in effect **within the territory of Bosnia and Herzegovina** (NOTE: hence not in the "Republic of BiH", but on the geographical territory of BiH) when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina". The same applies to institutions: Article IV of the same Annex reads that "Until superseded by applicable agreement or law, governmental offices, institutions, and other bodies of Bosnia and Herzegovina will operate in accordance with applicable law".

This means, that it was clear to everyone, even at Dayton, that each entity had their own legal system and structure, in particular: the institutional structure and each of the branches of government. Furthermore, in accordance with the clear division of competences prescribed by the constitution, each of the existing institutions would perform its tasks, while at the common level, it would be necessary to form only those joint institutions necessary for maintaining the country's international relationships, as confirmed by the fact that

the Council of Ministers, as an auxiliary body of the BiH Presidency, there are only two ministers – the minister of foreign affairs and the minister of foreign trade. Subsequently though, due to numerous unconstitutional interventions, seven more ministers were added.

All the above brings to the conclusion that Republika Srpska and the FBiH, by signing Annex 4 to the Dayton Agreement and assigning some of their own competencies explicitly listed in Article III.1. of the Constitution of BiH to the common government level, actually created what constitutes the competence of BiH as a state community. Without such consent of the peoples, or in particular, the entities that form it, BiH would not exist, nor have any of such competencies.

According to the Geneva and New York Principles from September 1995, i.e. before the Dayton Conference, the representatives of the warring parties decided on what the post-war BiH would be like. If those two documents had not been concluded, there would have been no Dayton Peace Conference nor signing of the Paris Agreement in December of the same year. The Federation of BiH often claims that the Republika Srpska was recognized as an entity only after the Dayton Agreement was signed. If the Republika Srpska were created by the Dayton Agreement, the question is, how would something that was created by the Dayton Agreement alone, sign that same Agreement in all its Annexes? How is it possible that the Republika Srpska, only created by Annex 4, i.e. the new Constitution of Bosnia and Herzegovina, signed all 11 Annexes and assumed the obligations arising from those Annexes?

1.4. Entities have special rights

The Republika Srpska and the Federation of Bosnia and Herzegovina are the entities that form "Bosnia and Herzegovina" established in Dayton, i.e. Paris, on December 14, 1995, by signing the Peace Agreement. Entities transferred to that Dayton "Bosnia and Herzegovina" only few of their state competencies, specifically

those fully listed in Article III.1(a) to (j), while retaining all other governmental functions and powers that were "not expressly assigned to the institutions of Bosnia and Herzegovina" by Annex 4 to the Constitution of Bosnia and Herzegovina.

In addition, the entities have some degree of international legal subjectivity, also prescribed by Annex 4. Article III.2(1) of the Constitution of BiH reads: "The Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina." Republika Srpska established such special relations with the Republic of Serbia, which is also a signatory to the Dayton Agreement and certain annexes. Serbia, as the successor to the Federal Republic of Yugoslavia, signed the Dayton Agreement on the basis of the authorization of Republika Srpska on its behalf, as specifically emphasized in its preamble, and Republika Srpska concluded the Agreement on the Establishment of Special Parallel Relations between Republika Srpska and the Republic of Serbia dated 26 September 2006, that was concluded in accordance with Article III. 2(a) of the Constitution of BiH. This Agreement is one of the foundations of the Declaration on the Protection of National and Political Rights and the Common Future of the Serbian People, adopted on 8 June 2024. According to the Constitution of Bosnia and Herzegovina, "each Entity may also conclude agreements with states and international organizations, if approved by the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such approval."

The tripartite Presidency of BiH is a joint body of the two entities and three constituent nations. Its powers are those that belong to the heads of state and to the governments of the states as the executive branch. This is not surprising because the model for the Constitution of BiH was the US Constitution, according to which the US President is both the head of state and the executive authority. With regard to the powers of the Presidency of BiH established by

the Constitution, concerning the decisions on: foreign policy, foreign trade policy, customs policy, monetary policy, institutional finance and international obligations of Bosnia and Herzegovina, there must be a consensus of all three members of the Presidency. If a decision from the domain of the listed powers is made by two members outvoting the third one, then the outvoted member of the Presidency may declare such a decision detrimental to the vital interests of the Entity on whose territory he had been elected, provided that he does so within three days following its adoption. Such decision shall be immediately forwarded to the National Assembly of the Republika Srpska if declared harmful by a member of the Presidency from that area; to the Bosniak delegates in the House of Peoples of the Federation, if declared harmful by a Bosniak member of the Presidency; or to the Croat delegates in that body if declared harmful by a Croat member of the Presidency. If the declaration of harmfulness is confirmed by two thirds of the votes within ten days of its transmission, **the contested Decision of the Presidency shall not enter into force**." This proves that the primacy in deciding on individual matters under the competence of the Presidency of BiH lies with the entities – they have the final say.

2. UNCONSTITUTIONAL INTERVENTIONS IN BIH CONSTITUTION

Following the introductory considerations explaining the way in which Dayton BiH came into being, it is necessary to pay attention to the various forms of unconstitutional interventions in the structure of the state union created in Dayton. Despite the fact that the Dayton constitutional system was designed to minimize the possibility of political conflict, this was reversed by illegal efforts to promote centralization and thus maximize that possibility.

Unconstitutional centralization led to frequent drawbacks and crises that have marked BiH. The highest damage to the functioning of BiH was caused by high-ranking representatives who granted

themselves legally absurd powers and used them to make dictatorial decisions - sometimes formal, sometimes informal - with the aim of centralizing power at the BiH level. Of great help in such efforts, were the continuous pressures of certain elements of the international community (including the OSCE, the Peace Implementation Council (PIC), etc.) to implement the imposed decisions, and to constitutionalize the forced changes to the constitutional structure and the Dayton structure via the "packages" of constitutional changes. After the support for the undemocratic and illegal actions of high representatives declined among the international circles, their activities were redirected to domestic institutions following the principle " you continue where I left off, " - the Constitutional Court of Bosnia and Herzegovina and the foreign judges of that court ruthlessly reshaped the Dayton structure of Bosnia and Herzegovina by their decisions, most often made by outvoting by two out of the three judges from constituent peoples. In all of this, the extremist agendas of Bosniak politicians and parties that never actually accepted the Dayton formula for Bosnia and Herzegovina led to the continuingly strained relations and the inability to implement the signed agreements.

2.1. Changes to the Dayton structure of Bosnia and Herzegovina resulting from the violation of the Dayton Agreement by High Representatives

Republika Srpska, based on the Agreement of 29 August 1995, authorizing the Federal Republic of Yugoslavia (whose rights and obligations were assumed by the Republic of Serbia), became an indirect signatory to the Dayton Agreement, as this status arises from the Preamble to the Dayton Agreement (paragraph 5), and it is a direct signatory to all 11 Annexes to the Dayton Agreement. According to Annex 10 of the Dayton Agreement - Article II.1(f) - the High Representative has the obligation to "Report periodically on progress in implementation of the peace agreement concerning the tasks set forth in THIS Agreement to the United Nations, Euro

pean Union, United States, Russian Federation, and other interested governments, parties, and organizations" (i.e. only in Annex 10). The High Representative has never informed the Government of Republika Srpska about this, although it has been requested to do so on several occasions. The National Assembly of the Republika Srpska, by its Resolution of 15 October 2008, as a party to the Agreement on the Civilian Implementation of the Peace Agreement (Annex 10), invited the High Representative to report to the Republika Srpska as an interested party on the implementation of that Agreement.

The vast changes to the constitutional structure of Bosnia and Herzegovina as introduced by Annex 4 of the Dayton Agreement, being the Constitution of Bosnia and Herzegovina, were carried out by the High Representatives, in violation of the provisions of Annex 10, that has established this institution as a facilitator and coordinator. Article V of Annex 10 of the Dayton Agreement clearly states that the High Representative is "the final authority on the ground for the interpretation of THIS Agreement on the Civilian Implementation of the Peaceful Settlement". So not the entire Dayton Agreement, as is often claimed in the OHR as an administration, service or agency serving the High Representative. The Republika Srpska, in statements by the High Representative and individual Western diplomats, is regularly accused of violating the Dayton Agreement. These attacks often name Milorad Dodik as the one who violates the international law. All of this is a distortion of the truth and a substitution of theses. Violations of the Dayton Agreement and Annex 4 - the Constitution of BiH, came exclusively from the High Representative, the Constitutional Court of BiH and the imposed "judicial institutions of BiH" - the Prosecutor's Office and the Court of BiH.

Matthew Parrish, a former OHR employee, testified about the goals of violating the Dayton Agreement and Annex 4: "The best way to undermine the Republika Srpska was to create the institutions of a centralized state, in which powers would be divided between three ethnic groups, and the monoethnic political institutions of the

Republika Srpska would become less important. By the time of the High Representative Paddy Ashdown (May 2002 to January 2006), the strategy was clear: to put money and a monopoly on coercion under the control of state institutions, and in this way the Republika Srpska would gradually disappear. Therefore, the state-building reforms that Ashdown insisted on were: taxation (creating a special state body for indirect taxation that would collect and distribute most taxes), judiciary, defence (to centralize the management of the entity armed forces), and police."[15].

This is how the current Indirect Taxation Administration and the Ministry of Finance and Treasury of BiH, the Armed Forces of BiH and the Ministry of Defence, SIPA and the Ministry of Security of BiH were created. And not only those - since the signing of the Dayton Agreement until today, over a hundred different bodies, administrative organizations and other institutions have been established at the level of the State Union of BiH, while the predominant number of those institutions were formed as a result of decisions of the High Representative, who imposed not only laws and other regulations, but also amendments to the entity constitutions. Most often, decisions of the High Representative imposing laws contained a provision according to which "the law shall enter into force immediately as the law of BiH on a temporary basis, until it is adopted in the same form, without any amendments or any additional conditions by the Parliamentary Assembly of Bosnia and Herzegovina". The imposed laws would alter the constitutional structure of Bosnia and Herzegovina, but without formally amending the Constitution of Bosnia and Herzegovina. The SNSD also bears political responsibility for voting for the imposed laws, believing that this would enable their corrections. As it turned out, it was quite the opposite. That was a fraud, because no imposed regulation could be changed because Bosniak politicians considered it final. This is

[15] Matthew Parrish, A Free City in the Balkans, p. 144. Parrish was the head of legal department within OHR, the regional office in Brčko. He holds degrees from the University of Cambridge and the University of Chicago Law School.

confirmed by the SDA Declaration, which does not even mention these issues.

In the future, the Dayton foundations of BiH should be restored, and accordingly, the rights and responsibilities of the Republika Srpska and the Federation of BiH as state-forming entities. The creators of Annex 4, the Constitution of BiH, were much more aware of the situation in BiH almost 30 years ago than those who tried to change things after them under the pretext of improving the system, under various names - from the Dayton to the Brussels phase, a functional BiH, a normal state, etc.

2.2. Illegitimacy of the 'Bonn powers'

High Representatives, starting with Karl Westendorp, Wolfgang Petritsch, Paddy Ashdown, Christian Schwarz-Schilling, Miroslav Lajčák and lastly Valentin Inzko, refer to the illegal fabrication known as the BONN POWERS.

The so-called "Bonn powers", which the High Representative of the international community in Bosnia and Herzegovina (BiH) has appropriated, and on the basis of which he imposed laws and sanctioned individuals by a simple decision, are evidently illegal. The Dayton Agreement of 1995, as the only source of the legitimate powers of the High Representative, may not be reasonably interpreted as granting the High Representative such dictatorial powers. Neither the Peace Implementation Council - an *ad hoc* group of countries without legal authority - nor the UN Security Council has granted the High Representative any legal authority beyond his mandate as defined by the Dayton Agreement. Moreover, the "Bonn powers" violate the human rights that the citizens of BiH enjoy under crucial and binding international instruments. Consequently, the "Bonn powers" violate the international law. The international community should not allow such actions, and in any case, they cannot be considered legally binding.

The High Representative is an institution specifically authorized by the signatories to Annex 10 of the Dayton Agreement, including Republika Srpska, to act as a coordinator of international activities concerning the civilian aspects of the Dayton Agreement and to assist the parties in their efforts. He is not the "high representative of the international community" as Western countries falsely portray him, ignoring the fact that according to Annex 10 he is the representative of the signatories to that annex: the "Republic of Bosnia and Herzegovina" (that became invalid after Dayton), the Federal Republic of Yugoslavia (now Serbia), Croatia, the Federation of Bosnia and Herzegovina and the Republika Srpska. Annex 10 defines a strictly limited mandate under which the High Representative is authorized to participate in these activities and to "monitor", "maintain close contact with the parties", "assist", "participate in meetings" and "report".

The High Representative's mandate contains no indication of the authority to make decisions that are binding for the governments and citizens of Bosnia and Herzegovina. Matthew Parrish wrote: "The list of duties of the High Representative is set out in Annex 10, but they are predominantly **consultative, observational and reporting** in nature. His functions are limited to coordinating the work of other international organisations, and observing and urging domestic officials to comply with their Dayton commitments."[16]

However, since 1997, the High Representative has been appropriating, without any legal justification, "Bonn powers" on the basis of which he rules and punishes through decisions, thus greatly exceeding the mandate given to him by the Dayton Agreement and disregarding the entire democratic system established by the Constitution of Bosnia and Herzegovina as an international treaty.

The name "Bonn Powers" comes from a statement issued by the Peace Implementation Council (PIC), an ad hoc gathering

[16] Matthew Parrish, A Free City in the Balkans, p. 86, Brčko 2017

of self-elected countries and organizations, following a conference held in the German city of Bonn, two years after the signing of the Dayton Agreement. That statement, dated 10 December 1997, contained the PIC wrote: "the intention of the High Representative to use his supreme authority in the field in the interpretation of [Annex 10] is welcomed with a view to taking binding decisions 'on certain issues'". Thus, the "welcoming intention" became a dictatorial power. The "Bonn Powers" as it is written "with a view to facilitating the resolution of issues by taking binding decisions, when he considers it necessary, on the following issues:

a) timing, location and chairmanship of meetings of the common institutions,

b) interim measures to take effect when parties are unable to reach agreement, which will remain in force until the Presidency or Council of Ministers has adopted a decision consistent with the Peace Agreement on the issue concerned,

c) other measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities, as well as the smooth running of the common institutions. Such measures may include actions against persons holding public office or officials who are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation."

Therefore, the "Bonn Powers" under Chapter XI, Item2 (b) refers exclusively to the activities of the Presidency of BiH and the Council of Ministers, and not to the activities of the Parliamentary Assembly at the level of BiH, which is the legislative body. This means that even the "Bonn Powers" provided no empowerment to impose laws, because the High Representative could not even

substitute the legislative body under those powers. That is why the OHR came up with the formula – the High Representative makes a DECISION on imposing laws, to make it less obvious that it is in fact the creation of a law. In addition, when they realized that the "Bonn legislative powers" were missing, the OHR simply added them, falsifying the conclusions of the PIC of 10 December 1997. Thus, the official website of the High Representative reads: " Among the most important milestones in the peace implementation process was the PIC Conference in Bonn in December 1997. Elaborating on Annex 10 of the Dayton Peace Agreement, the PIC requested the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and **to impose laws as he sees fit if Bosnia and Herzegovina's legislative bodies fail to do so**."[17] It is important to note that the "laws" imposed by the self-proclaimed High Representative Christian Schmidt do not even meet those written "Bonn Powers". This specifically applies to the amendments to the Criminal Code of BiH that introduced the criminal offense of disrespecting the decisions of the High Representative, because it is neither a "key law", nor was it on the agenda of the Parliamentary Assembly, and therefore there could be no 'failure to adopt it'. This is confirmed by the response sent by the Collegium of the Secretariat of the Parliamentary Assembly of BiH to a parliamentary question: "At which session of the House of Representatives, or the House of Peoples of BiH, did the Parliamentary Assembly of BiH discuss and adopt the amendments to the Criminal Code of BiH, that were published in the Official Gazette of BiH 47/23?" The answer was: Please be informed that the relevant amendments to the Criminal Code of BiH, that were published in the Official Gazette of BiH under no. 47/23, were not discussed at the sessions of the House of Representatives or the House of Peoples of the Parliamentary Assembly of BiH.[18]

It is under this fabricated and illegitimately formed criminal

[17] https://www.ohr.int/o-ohr-u/mandat/

[18] http://www.sluzbenilist.ba/page/akt/JPoM0kky2ZM=

act, in the unconstitutional Court of Bosnia and Herzegovina, that the President of the Republika Srpska, Milorad Dodik, is being tried because, in fulfilling his constitutional obligation, he signed decrees on the entry into force of two laws passed by the National Assembly of the Republika Srpska. Under this Schmidt "law", the director of the Official Gazette of the Republika Srpska is also being tried for ordering the publication of these laws. An incredible series of illegalities, violations of international law, the Dayton Agreement, all of which are a disgrace to the European Union and the USA supporting Christian Schmidt as an illegitimate High Representative, whilst all avowing their commitment to the rule of law.

The OHR website fails to indicate who authorized the PIC to "develop Annex 10," because the PIC is not a signatory to the Dayton Agreement, nor is it mentioned anywhere in the Dayton Agreement or its Annexes. That is why they made up for themselves that "the PIC Steering Board provides political guidance to the High Representative. In Sarajevo, the High Representative chairs meetings of ambassadors of member countries and organizations of the Steering Board in BiH twice a month. In addition, the Steering Board meets at the level of political directors twice a year."[19]

Carlos Westendorp, the High Representative at the time of the Bonn Conference of the PIC, and a participant in it, later admitted: "At the Bonn Conference, we managed to introduce a way for the High Representative to make these decisions, which, legally speaking, is not exactly in line with Dayton . . . I have to admit that it was not exactly legal.[20] Westendorp said in a 1998 interview: "Power will not be handed to you on a platter. You have to grab it yourself."[21]

Such disrespect for the carefully drafted provisions of the

[19] https://www.ohr.int/medunarodna-zajednica-u-bih/vijece-za-provedbu-mira/
[20] Adis Merdžanović, *Democracy by Decree, Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (2015), 256.
[21] David Chandler, State-Building in Bosnia: The Limits of 'Informal Trusteeship,' International Journal of Peace Studies, Volume 11, no. 1, 17, 27 (2006).

Dayton Agreement and the Constitution of Bosnia and Herzegovina is the antithesis of the goal of establishing a culture of respect for the rule of law in Bosnia and Herzegovina. Matthew Parrish wrote that after the Bonn meeting, "Suddenly the High Representative found himself moving from being a 'facilitator' and a mediator to being able to issue 'binding decisions', known as the 'Bonn powers'." Parrish acknowledged that the Bonn declaration of the PIC is "ran quite contrary to the spirit and text of Annex 10 [to the Dayton Agreement] and was legally quite indefensible."[22]

Using the so-called "Bonn Powers", the High Representative imposed dozens of laws at the level of BiH, FBiH and Republika Srpska, and as many as 105 amendments to the constitutions of Republika Srpska and FBiH. He also introduced extrajudicial punishment of hundreds of citizens of BiH, annulled the decision of the Constitutional Court and prohibited proceedings that challenged any of his decisions in any way.

Dr Miroslav Baroš of Sheffield Hallam University wrote: " Legally speaking, the assumption of the powers by the High Representative is *ultra vires*; there is neither legal basis nor justification for any powers outside those envisaged in the DPA [Dayton Agreement], which is to monitor and help with the implementation of the civilian aspect of the treaty, namely: monitoring and assistance in the implementation of the civilian aspects of the agreement."[23]

In a detailed legal analysis of the Bonn powers in the Göttingen Journal of International Law, Tim Benning concludes: " 'Bonn Powers' do not qualify as a legal power and that their existence is merely a powerful, but delusive legal fiction."[24]

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[22] Matthew T. Parish, *The Demise of the Dayton Protectorate*, 1 J. Intervention and Statebuilding, Special Supp. 2007, 14.

[23] Miroslav Baroš, *The High Representative for Bosnia and Herzegovina: A Requiem for Legality*, EJIL: Talk (blog of the European Journal of International Law), 14 December 2010.

[24] Tim Banning, *the 'Bonn Powers' of the High Representative in Bosnia Herzegovina: Tracing a Legal Figment, Goettingen Journal of International Law*

Even Paddy Ashdown admitted during his term that the authority of his decisions derives only from their acceptance by the citizens of Bosnia and Herzegovina, saying: "If I pass a decree that is refused, my authority is gone like the morning dew".[25] In other words – if it passes, it passes. And if does not, there is no implementation of the High Representative's decision".

The High Representative was not imposed on BiH, but was established by an international agreement, Annex 10 to the Dayton Agreement, signed by the Republika Srpska and the Federation of Bosnia and Herzegovina and the other signatories to the Dayton Agreement. Annex 10 is the sole source of the High Representative's authority.

Former British Ambassador to BiH Charles Crawford, who helped create the "as far as I could see the Bonn Powers had no real legal basis at all. They amounted to an international political power-play bluff which successive High Representatives wrapped up in legal language to make the whole thing look imposing and inevitable."[26]

It is inconceivable that the Republika Srpska and the other signatories to Annex 10 would agree to be deprived of precisely those democratic rights to rule under the Constitution of Bosnia and Herzegovina (Annex 4) by granting the High Representative such broad autocratic powers. The signatories to Annex 10 have not vested in him such powers in any provision. It must also be noted that the authority for interpretation under Article V of Annex 10 is not nearly as broad as the High Representative claims. That authority begins and ends with Annex 10. The Dayton Agreement unambiguously limits his right of interpretation "on the ground" to Annex 10,

6 (2014) 2, 259-302, p. 302

[25] Ed Vulliamy, *Farewell, Sarajevo*, The Guardian, 2 November 2005, p. 10, quoted in: Knoll, 298.

[26] Charles Crawford, Bosnia: the Bonn Powers Crawl Away to Die, see: charlescrawford.biz/2011/07/05/bosnia-the-bonn-powers-crawl-away-to-die/

which is entitled "Agreement on the Civilian Implementation of the Peace Settlement". Annex 10 states: "The High Representative shall be the ultimate authority on the ground in the interpretation **of this Agreement on the Civilian Implementation of the Peace Settlement**." Thus, as Dr. Baroš observes, Article V of Annex 10 "clearly limits the power of interpretation designated to the High Representative to the interpretation of this particular Annex, not to the whole DPA.".[27] Otherwise, the High Representative is not mentioned at all in the text of the Dayton Agreement. Only its Article VIII reads: "The Parties welcome and endorse the arrangements that have been made concerning the implementation of this peace settlement, including in particular those pertaining to the civilian (non-military) implementation, as set forth in the Agreement at Annex 10, and the international police task force, as set forth in the Agreement at Annex 11. The Parties shall fully respect and promote fulfillment of the commitments made therein." Despite the Dayton Agreement's unambiguousness in this regard, the High Representative, by persistent repetition, convinced some that the High Representative was the "supreme authority" with regard to the Dayton Agreement as a whole. In his address to the UN Security Council on 8 May 2019, the last High Representative, Valentin Inzko, once again reiterated that the Dayton Agreement gave him "the ultimate authority to interpret the Dayton Agreement". Repeating a lie cannot become truth or law.

This claim is simply not true. It is contrary to the clear wording of Annex 10 and other provisions of the Dayton Agreement. The Dayton Agreement introduced specific mechanisms of interpretation for many other provisions as well. For example: Annex 1A - Agreement on the Military Aspects of the Peace Settlement set forth that "the IFOR Commander shall be the ultimate authority on the ground for the interpretation of this Agreement on the Military

[27] Miroslav Baroš, *The High Representative for Bosnia and Herzegovina: A Requiem for Legality*, EJIL: Talk (blog of the European Journal of International Law), 14 December 2010.

Aspects of the Peace Settlement". Numerous other examples can be found in Annexes 1B, 2, 3, 4, 5, 6, 7 and 8.

Thus, in addition to Annex 10, the plain text of the other provisions of the Dayton Agreement is unambiguous - the High Representative **has no** authority to interpret the Dayton Agreement outside of Annex 10.

Considering that the Bonn powers have no legal basis, that their use has led to violations of the human rights of BiH citizens and fundamental principles of international law established by applicable treaties and customary international law, it may be concluded that the application of these powers may have no binding legal effect or binding force upon anyone.

2.3. False High Representative Christian Schmidt

As stated, the notion of a High Representative is not mentioned in the Dayton Agreement. It exists only in Annex 10, representing the only grounds for the High Representative to act, and exclusively as a representative of the signatory parties to Annex 10 (including Republika Srpska), requesting the appointment of only one, because the singular, not the plural, is used when referring to this assistant to signatory parties. Moreover, after the first High Representative, Carl Bildt, all other High Representatives, including the last one, Valentin Inzko, were appointed 'by inertia', without being requested by the signatory parties to Annex 10, but they were nevertheless confirmed by the UN Security Council. He is not a "high representative of the international community" and has no authority over the entire Dayton Agreement. Anyone who reads the Dayton Agreement can see this.

Hence, the parties signed Annex 10. It reads: " the Parties request the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions" (Article I.2.), and they received a statement: "Today in Sarajevo, the ambassadors of the member states of the Steering Board of the

Peace Implementation Council (PIC) officially appointed Christian Schmidt as the next High Representative in Bosnia and Herzegovina, after Germany nominated him for the position." This was published on May 27, 2021 as an ambassadorial statement (without Russia) on the website of the Office of the High Representative in Sarajevo. It is absolutely not possible to appoint Christian Schmidt as High Representative by applying Annex 10, because there was no request from Republika Srpska or other signatory countries of Annex 10 for his appointment, on the contrary, Republika Srpska explicitly stated in the conclusions of the National Assembly of March 10, 2021 that it "cannot accept the imposition of any person as High Representative". Christian Schmidt does not even have the confirmation of the UN Security Council as laid down in Annex 10. Article I.2 of Annex 10 does not mention any PIC, nor the Steering Board, and in particular, there are no ambassadors in BiH who would "officially appoint the High Representative". There is also no entitlement for Germany to nominate High Representatives. That is why Christian Schmidt is a liar and a fraud, just like those who support him and refer to him as a High Representative. Ambassadors accredited to Bosnia and Herzegovina also violated the Vienna Convention on Diplomatic Relations, that does not allow interference in the internal affairs of countries that accept them as representatives of a foreign state. It should be noted that Christian Schmidt's name was still on the agenda of the UN Security Council session held on 22 July, 2021, but Christian Schmidt's "ambassadorial appointment" was not confirmed, as he received only 2 votes and 13 abstentions. That is why Christian Schmidt is not mentioned in UN Security Council resolutions in 2021, 2022, 2023 or 2024, neither as a high representative, nor as a name or surname. This can be checked on the UN website.

Due to the misrepresentation and illegal actions of Christian Schmidt, Serbian member and Chairperson of the Presidency of BiH Željka Cvijanović sent a letter to UN Secretary General Antonio Guterres on 11 July 2023, requesting from him to submit

"**the decision of the United Nations Security Council on the appointment of German diplomat Christian Schmidt as a High Representative in Bosnia and Herzegovina in accordance with Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina from 1995**". The response followed on 14 July 2023 and is an example of evading an answer to a clearly posed question, as Guterres signed something that others wrote instead of him: "Regarding the implementation of the civilian part of the Peace Agreement in Bosnia and Herzegovina, I would like to remind you that the United Nations is not a signatory of the Dayton Peace Agreement nor a member of PIC (Peace Implementation Council), the relevant body for the appointment of the High Representative for Bosnia and Herzegovina. Security Council documents are publicly available in the UN Official Document System at https://documents.un.org."

However, after a detailed search of the UN Security Council documents available in its online database, only one document was identified, on the "Schmidt's (non-)appointment". It contains the minutes of the UN Security Council meeting no. 8823, held on Thursday, 22 July 2021 at 3:00 p.m., which showed that the only draft resolution for Schmidt's appointment that had been submitted for a vote (no. S/2021/667) was not adopted, as the result of the vote was two votes in favour and 13 abstentions".

If Guterres is right – that the "PIK Steering Board is relevant for the appointment of a High Representative" without indicating the provision of Annex 10 from which this "relevance" derives, Željka Cvijanović asked once again: "It would be logical to ask the UN why they wasted their time and confirmed the appointments of a whole series of High Representatives with UN Security Council resolutions, if they had nothing to do with it? Why then do you keep the database containing decisions on previous appointments? Have they usurped someone's rights and engaged in work that does not belong to them? And why, for example, did they put the appointment of Christian

Schmidt on the agenda, which, by the way, failed to gain the support of the UN Security Council if it was not their business? What does this mean in the context of the decision of the Constitutional Court of Bosnia and Herzegovina, if what the UN is saying is true, given that this Constitutional Court of Bosnia and Herzegovina stated in 2006 that High Representatives must be verified by the Security Council?"

2.4. An attempt to constitutionalize violent changes to the constitutional structure of Bosnia and Herzegovina

The unconstitutional structure of Bosnia and Herzegovina as a result of the OHR's interventionism was a concern not only for one part of the international community in Sarajevo, but also for the structures of the European Union and other Western countries. When, without any legal basis, laws were imposed by decisions of high representatives or authorities were forced to pass laws without constitutional grounds, the "hindsight of the international community" came into force, that is, its part embodied in the High Representative or the majority of members of the Steering Board of the Peace Implementation Council, better known as the PIC. Otherwise, this Council consists of 55 member countries and organizations as a self-elected body of self-elected countries and organizations without any established competences - neither under the Dayton Agreement nor under the resolutions of the United Nations Security Council. The PIC met five times - in June 1996 in Florence; in December 1996 again in London; in December 1997 in Bonn; and in December 1998 in Madrid and most recently in May 2000 in Brussels.[28] After 2000, only the PIC Steering Board meets, increasingly at the ambassadors' meetings in Sarajevo. There has

[28] The Peace Implementation Council has not met since 2000, and today, only its Steering Committee is in place, consisting of 10 countries - among others, Canada, Japan and Turkey as representatives of the Islamic Conference, and there are no representatives of Serbia and Croatia as signatories of the Dayton Agreement.

long been no consensus on the assessment of the situation in BiH, as declared in the discussions at the two-day sessions of the Steering Board, but this fact is skipped in the wording of the communiqué. Only the Russian Federation singles out its own position on some issues or even does not accept the entire communiqué written in advance by the OHR. After the UN Security Council session on 22 July 2021 rejected the draft resolution of the Russian Federation and the People's Republic of China to appoint Christian Schmidt as High Representative in BiH, but only for a period of one year and without implementing the "Bonn powers", the Russian Federation announced that it would no longer participate in PIC meetings.

That is why constitutional change processes were initiated and attempted - in order to subsequently legalize the unconstitutional situation. There were two of such packages of constitutional changes: the "April" package from April 2006 and the "Butmir" package dating from the end of 2009. The "April package" of constitutional changes did not receive the required two-thirds parliamentary majority, and the "Butmir package" did not even make it into the parliamentary procedure. Ever since, there has been no more mention of the respective constitutional changes, hoping that silence means non-denial and the survival of the status quo. Who would benefit from that? Only the Bosniak structures and some international officials in Sarajevo. When Saša Magazinović, an MP from the SDP BiH, re-launched the adoption of the April package, it was rejected not only by the Serbian community, but also by the SDA, which is not comfortable with stirring things up. Why? The answer is simple - if all the present competencies that the BiH level has are constitutional, then there is no need to amend the BiH Constitution.

Magazinović's request is another direct confirmation that any competencies beyond those that the BiH Constitution explicitly granted to the BiH level are now UNCONSTITUTIONAL, including indirect taxes, defence, the High Judicial and Prosecutorial Council, the Court and Prosecutor's Office of BiH, police forces, intelligence services and a number of others, and that all ministries are outside

the BiH Constitution. As regards the ministries at the BiH level, they were not even foreseen by the BiH Constitution. Article V of the Constitution of BiH, entitled "Presidency", includes point 4 entitled "Council of Ministers", deemed to be an auxiliary body of the Presidency of BiH itself, which according to the Constitution is not only the collective head of state, but also its executive body, having the powers that typically belong to governments in regular parliamentary systems. This is because the Constitution of BiH, as Annex 4 to the Dayton Agreement, was written by American lawyers based on the model of the US Constitution, according to which the US President is the executive body of the state. Therefore, the Council of Ministers is not a "government of BiH", because it has the same rank as another auxiliary body of the Presidency of BiH – the Permanent Commission for Military Affairs – according to Article V, point 5 of the Constitution of BiH. Let us recall the Council of Ministers and its composition. The Constitution of BiH reads: "The Presidency shall nominate the Chair of the Council of Ministers, who shall take office upon the approval of the House of Representatives. The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate, who shall take office upon the approval of the House of Representatives." Hence, the Constitution does not provide for the existence of ministries of BiH, so it remains that the performance of duties for the aforementioned two ministers (and other ministers if necessary) be organized as a professional service, or that, for example, professional duties for ministers are performed within the service of the Presidency of BiH. The existence of "ministries of Bosnia and Herzegovina" is not in accordance with the Constitution of BiH and it is difficult to explain this by interpreting Article V.5 of the Constitution of BiH.

The Constitution states that in addition to these two ministers, the Council of Ministers, as an auxiliary body of the Presidency of BiH, will have other ministers if necessary. This does not mean that such a "need" can occur before amendments to the Constitution of BiH create a constitutional basis for introducing other ministers into

the composition of the Council of Ministers. Please note that there are currently nine ministers with separate ministries in the Council of Ministers. In addition to foreign affairs and foreign trade, BiH also has ministers of: defence, security, civil affairs, communications and transport, justice, human rights, finance and treasury.

2.5. Attempts at constitutional changes

The "constitutional amendment packages" contained formulas for the constitutional reform (amending the constitution) based on interventions made in the Constitution of Bosnia and Herzegovina and the Dayton structure.

The **APRIL PACKAGE** contained numerous amendments to the Constitution of Bosnia and Herzegovina, that would grant Bosnia and Herzegovina new powers that did not exist, and still do not exist, in the text of the Constitution. Among other, the powers of Bosnia and Herzegovina would include:

- **defence and security** (which proves that the laws on defence, armed forces, the establishment of SIPA, the Ministry of Defence and Security are outside the constitutional system of Bosnia and Herzegovina);

- **establishment and functioning of the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina** (considering that there are no constitutional grounds for the "judiciary of Bosnia and Herzegovina" because it is also under the exclusive jurisdiction of the entity, the current Court and Prosecutor's Office of Bosnia and Herzegovina have no constitutional basis for their existence);

- **other powers regulated by law** (this provision opens up a range of unlimited possibilities for the Parliamentary Assembly to add powers at the level of Bosnia and Herzegovina by adopting laws).

In addition, the "April Package" would introduce competencies SHARED between BiH and the entities, and would include:

- tax system
- electoral process
- judiciary
- agriculture
- science and technology
- environmental protection
- local self-government

All of the above-mentioned competencies, according to the Constitution of BiH, **do NOT** belong to the level of BiH, except for the Election Law, laying down only the election of the members of the BiH Presidency (Article V.1(a)) and deputies in the House of Representatives – Article IV.2(a) of the Constitution of BiH. There is no constitutional basis for the competence of the Central Election Commission (CEC) at the level of BiH for the entire electoral process and its regulatory arrangement. This means that the "Election Law of BiH" presently usurps the competence of the entities to regulate and organize elections for the President and Vice-Presidents of Republika Srpska, deputies in the National Assembly of Republika Srpska, local elections in which councillors and mayors of municipalities and cities are elected. Republika Srpska is also competent for regulating the election of delegates to the Council of Peoples in the Parliamentary Assembly at the level of BiH. The same applies to the other entity, the Federation of BiH.

The collection of VAT and the indirect withholding tax system also represent undoubted usurpations of entity competences, which contrary to the constitution, assign source revenues to the BiH level. These shared competences are also added at the end by the text: "**other competences regulated by law**".

A very important provision in the April amendments was: "**Competencies transferred to the state may be returned to**

the entities with the unanimous consent of the state and both entities." This would introduce the "state" of BiH into the system of agreeing on competences, although there is no indication in the current wording of the Constitution that this level decides on any constitutional changes before placing the discussion on amendments on the agenda only after the entities have reached an agreement about constitutional changes. Also, such a solution would absolutely mean that competences would never be returned to the entities, because the Bosniak side would always make this impossible. The most important conclusion is that this issue is not currently regulated by the Constitution and that any competencies that have been transferred to the BiH level in various ways are not permanent, and that the entities may reassume their competencies in a manner decided by their legislative body.

Another provision of the "April Package" confirms the intentions of centralization and unitarization. The designation "of Bosnia and Herzegovina" is added to the name "Parliamentary Assembly", which is currently absent, meaning that the Parliamentary Assembly, the House of Representatives, and the House of Peoples are not by name bodies of "Bosnia and Herzegovina", unlike the Presidency of BiH, the Constitutional Court of BiH, and the Central Bank of BiH.

According to the Constitution of BiH, only those three bodies are considered the bodies of BiH, and the Parliamentary Assembly with two chambers, due to the very limited competence of the BiH level, does not have this designation. The "April Package" envisaged that the "Parliamentary Assembly of BiH" would be the "holder of legislative power in Bosnia and Herzegovina", without mentioning at all the legislative competence of the entities and cantons in the Federation of BiH.

The designation "BiH" is not even related to the Council of Ministers, which is not the "government of BiH" as this assembly of two ministers – foreign affairs and foreign trade plus the chairman

– is often incorrectly titled. Namely, in the chapter "Presidency of BiH", which is the EXECUTIVE BODY of the government at the BiH level, the Council of Ministers is mentioned in sub-item 4 and has the status of an auxiliary body, the same as the Permanent Commission for Military Affairs referred to in sub-item 5.

If the Council of Ministers were a "**government**", then according to the Constitution it would be dedicated a separate chapter and a separate Article of the Constitution, with its competencies precisely defined. Thus, according to the Constitution of BiH, the Council of Ministers only has the following competencies:

- proposing, upon RECOMMENDATION to the Presidency of BiH when it proposes the BiH budget to the Parliamentary Assembly;

- CARRYING OUT the policies and decisions of BiH referred to in Article III.1, including item 4, if the Presidency of BiH decides to assist in inter-entity coordination and item 5 when the entities decide on additional responsibilities of the BiH level.

The competencies that the "April Package" bestows to the Council of Ministers are the best illustration of everything that the Council of Ministers **is not** under the valid Constitution. According to the "April Package", "The Council of Ministers of BiH is an institution of the executive power of the state of Bosnia and Herzegovina. The Council of Ministers of BiH has an obligation and responsibility towards the citizens and peoples of Bosnia and Herzegovina through the Parliamentary Assembly of BiH. The President of the Council of Ministers of BiH, i.e. the Prime Minister and the ministers together constitute the Council of Ministers of BiH. The President of the Council of Ministers of BiH, or rather the Prime Minister, chairs the sessions of the Council of Ministers of BiH."

The "April Package" also envisaged numerous other changes that would completely cripple the jurisdiction of the entity, in particular, the Republika Srpska, given that the Federation of BiH is not even important to Bosniak government, since, thanks to the

interventions of the OHR and the OSCE, they have completely taken over the structures of parliamentary and executive power and outvote Croatian MPs and ministers at without consequences at any time, which they very often do.

Without going into details concerning the numerous "April amendments" that would alter the Dayton structure of power in BiH by establishing the supremacy of the "state of BiH" over all other levels of power, we may conclude that all of this was not enough for the insatiable efforts of Bosniak politics embodied in Haris Silajdžić to introduce 100% BiH, without an entity vote. Parties from Republika Srpska supported the "April package" at the time, knowing that it would not pass the Parliament at the BiH level. This was an experience that underpinned the effective resist the "BUTMIR PACKAGE" with similar solutions of unitarization and rendering the competences of the entities and the Dayton structure meaningless. Thus, the "Butmir package" did not even reach the parliamentary procedure, but was instead, buried in a military base of international forces where members of the Republika Srpska delegation were under constant surveillance by armed soldiers as a form of pressure and the illusion that the package had to be adopted, similar to the methods of confinement as was the case in Dayton at the Wright-Petterson military base.

The packages of changes were not adopted, and therefore, new methods and attempts were made to change the constitutional structure – by transferring the fight to the domestic arena, but with the help of the "judiciary of BiH" – the Court and Prosecutor's Office of BiH, the Constitutional Court of BiH, and finally – with declarations, such as the one adopted at the 7th Congress of the Party of Democratic Action on 14 September 2019, in an attempt to keep alive at least some of the provisions of the failed packages of constitutional changes. **The real goal was actually to maintain the illegally changed constitutional structure of Bosnia and Herzegovina at all costs**.

2.6. The role of the Constitutional Court of Bosnia and Herzegovina in reshaping the Dayton structure

International interventionism has been changing the Dayton structure of BiH for years, without formally amending the Constitution of BiH. As already mentioned, the High Representatives not only imposed laws and introduced new institutions, but also changed the entity constitutions (Wolfgang Petritsch), imposing amendments in order to implement the unconstitutional and falsified decision on the constituency of peoples throughout the territory of BiH. The goal was certainly the centralization and unitarization through the transfer of competences, using not only the instruments such as OHR, but also the Constitutional Court of BiH. All institutions at the level of BiH, and especially those created by the interference of the High Representatives, were under its dreadful pressure and control. An illustration is the order issued by the High Representative, Christian Schwarz-Schilling, as "the unchallenged authority and interpreter of entire legislation", which reads: "Any step taken by any institution or authority in Bosnia and Herzegovina in order to establish any domestic mechanism to review the Decisions of the High Representative issued pursuant to his international mandate shall be considered by the High Representative as an attempt to undermine the implementation of the civilian aspects of the General Framework Agreement for Peace in Bosnia and Herzegovina and shall be treated in itself as conduct undermining such implementation. Notwithstanding any contrary provision in any legislation in Bosnia and Herzegovina, any proceeding instituted before any court in Bosnia and Herzegovina, which challenges or takes issue in any way whatsoever with one or more decisions of the High Representative, shall be declared inadmissible unless the High Representative expressly gives his prior consent. For the avoidance of doubt, it is hereby specifically declared and provided that the provisions of the Order contained herein are, as to each and every one of them, laid down by the High Representative pursuant to his international mandate and are not, therefore, justiciable by the Courts of Bosnia

and Herzegovina or its Entities or elsewhere, and no proceedings may be brought in respect of duties in respect thereof before any court whatsoever at any time hereafter."[29]

This formulation reflects an enormous uncertainty and fear of investigating the illegal acts of the High Representative and his Office (OHR).

This is also the case with the Constitutional Court of Bosnia and Herzegovina, whose work has always been subject to the decisive impact of the High Representative. The most obvious example of the High Representative's pervasive interference in the Constitutional Court of Bosnia and Herzegovina is his decision from 2006 - which is still in force - prohibiting any proceedings before the Constitutional Court or any other court that "challenges or takes issue in any way whatsoever with one or more decisions of the High Representative."[30]

The example of the High Representative's establishment of the Court of BiH is exemplary. The BiH Constitution, as Crisis Group notes, "allotted judicial matters to the entities, apart from a state Constitutional Court."[31] Ignoring this fact, the High Representative passed a law establishing the Court of BiH in a 2000 decision. Despite its obvious unconstitutionality, the Constitutional Court of BiH upheld the law by a 5:4 vote, because the three foreign judges of the Constitutional Court voted as a bloc along with the two Bosniak judges, and protected the High Representative's creation. One of those judges later wrote that there was "a tacit consensus between the Court and the High Representative that the Court … always confirms the merits of his legislation…"[32].

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[29] Order by the High Representative to the Constitutional Court of BiH and all other bodies in BiH, 23 March 2007

[30] Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, 23 March 2007

[31] ICG Report from 2014 p. 27

[32] Joseph Marko, Five Years of Constitutional Jurisprudence in Bosnia and

Thus, instead of "supporting (protecting) this Constitution" in accordance with Article VI.2(3) of the Constitution of BiH, the Constitutional Court of BiH protected and supported the unlawful decisions of the High Representative. Moreover, the Constitutional Court of BiH has never been independent of the High Representative, which made it impossible to successfully challenge his unconstitutional centralization of BiH.

Those who justify the unauthorized change of the Constitution of BiH through decisions of the Constitutional Court of BiH find the excuse in the compliance with "decisions of the institutions of Bosnia and Herzegovina" from Article III.3(b) of the Constitution of BiH. Since the Constitutional Court of BiH is the institution of BiH, and its decisions are final and binding, this is intended to ensure the permanence of the unconstitutional structure created by the decisions of the High Representatives and the Constitutional Court of BiH. For such experts, it is irrelevant that they had no legal basis for modifying the Dayton structure of BiH.

The Dayton authors of Annex 4 did not even imagine that the Constitutional Court of BiH, as the only judicial body mentioned in the Constitution of BiH, would be so creative in "interpreting the Constitution" that its decisions would alter the constitutional structure established by an international agreement. The testimony of Nedim Ademović, Chief of Staff of the President of the Constitutional Court of BiH, who gave an interview to the "Oslobođenje" [33] gazette based in Sarajevo, on the occasion of the publication of the "Commentary on the Constitution of BiH" (published by the Konrad Adenauer Stiftung, Sarajevo), is also relevant, as it reflects on the work of constitutional judges, for whom the Constitution of BiH prescribed that they should be "outstanding lawyers of high moral qualities". Answering numerous questions, Ademović directly and clearly

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Herzegovina, European Diversity and Autonomy Papers (July 2004), p. 17 and 18

[33] The *Oslobođenje*, Sarajevo, 24 April 2010

confirmed the violation of the Constitution of BiH as a part of the international Dayton Agreement by the judges of the Constitutional Court of BiH whose task was to protect that Constitution. When asked: "How do you assess today's constitutional and legal system of BiH, given that the constitutional text failed to keep up with those changes?", Ademović answered: "**The constitutional and legal system does not correspond to the formal constitutional text.** It has been developing and changing intensively from Dayton to the present day, and the constitutional text did not follow those changes. The biggest gap lies in the area of the division of competences between the state and lower administrative and territorial levels of government, including in the field of the so-called financial constitution." When asked: "What are the possibilities for changes to the Constitution of BiH?", Ademović answered: "Unfortunately, I am not very optimistic. The past experience has shown that the **constitutional development was exclusively the consequence of international interventionism**." When asked: "What role does the Constitutional Court of BiH have when it comes to the development of the constitutional order?", Ademović replied: "The Constitutional Court of BiH is one of the most successful institutions and projects in BiH. **The Constitutional Court of BiH has given legitimacy to many imposed laws**, it has established a balance between the sovereignty of BiH and international administration."

The shameless and outrageous acknowledgement of the violation of the Dayton Agreement and adding the text to the Constitution of Bosnia and Herzegovina is the best illustration of illegal and unconstitutional actions of the judges of the Constitutional Court of Bosnia and Herzegovina, functioning according to the formula: two Bosniaks and three foreigners outvote two Serbs and two Croats. Consequently, the two key decisions of the Constitutional Court of Bosnia and Herzegovina were adopted.

The **FIRST** one is the so-called "Decision on the Constituency of Bosniaks, Serbs and Croats in the Entire Territory of Bosnia and Herzegovina", and not in the territory of the entities as prescribed

by the Constitution of Bosnia and Herzegovina, regulating the election of a Serbian member to the Republika Srpska Presidency, and a Bosniak and Croat member in the Federation of Bosnia and Herzegovina, as well as Serbian delegates from Republika Srpska to the House of Peoples, or Bosniak and Croat delegates from the Federation to that House at the level of Bosnia and Herzegovina. Alija Izetbegović, who appealed and eventually received the so-called "decision on constituency", knew in advance what the decision would be. In his dissenting opinion in Decision U 5/98, Judge Mirko Zovko of the Constitutional Court of Bosnia and Herzegovina wrote: "A decision was reached that was "extremely carelessly", but accurately, predicted by the applicant (Alija Izetbegović) at the end of 1998 when he said in an interview with the daily newspaper "Avaz": **"We need five votes for the decision, three foreigners will most likely vote for us, which means that in the worst scenario, we will have five votes."**[34] In 1998, Alija Izetbegović thus already knew what decision would be made in July 2000, and he knew that even the Serb and Croat judges would not vote for it. Two Bosniak judges (Kasim Begić and Azra Omeragić) and two foreign judges (Joseph Marko and Luis Favore) were in favour of the disputed decision, while the vote of Judge Hans Danelius was counted as the fifth vote, although he had dissented. The judge, Hans Danelius, voted in favour of the annulment of these provisions, but for different reasons. In his positive dissenting opinion, Judge Danelius rejected "the constitutional principle of collective equality of constituent peoples following from the designation of Bosniaks, Croats and Serbs as constituent peoples". Analysing the reference to the three constituent peoples in the preamble as the basis for the "collective equality" argument, Judge Danelius said: "**this provision does not contain any legal norm that specific rights or obligations may arise from.**"[35] Four judges (Professors Snežana

[34] Constitutional Court of BiH, U 5/98

[35] *Partial Decision U 5/98 III* of 1 July 2000, Positive dissenting opinion of judge Hans Danelius, Constitutional Court of BiH ("Dissenting opinion of judge Danelius"), 49.

Savić Vitomir Popovović, Zvonko Miljko and Mirko Zovko) also rejected the argument of "collective equality". Thus, the majority of judges rejected the argument that the High Representative used as a pretext for violent and extensive changes to the entity constitution.

The controversial "decision on constituency" later served to impose numerous amendments to the entity constitutions and to numerous unconstitutional laws. It was particularly harmful to the Croats in BiH, because it left them out from the constitution in the Federation of BiH, depriving them of political significance, leaving them at the mercy of the majority Bosniaks. The Federation of BiH thus effectively became a Bosniak entity, because Croat deputies were outvoted in the federal Parliament, and Croat ministers in the federal Government. Bosniaks have elected Željko Komšić as the Croat member of the Presidency four times (2006, 2010, 2018 and 2022). To illustrate this, it should be noted that Željko Komšić fought on the side of the Muslim Army of Bosnia and Herzegovina in the 1992-1995 civil war, which fought not only against the Army of Republika Srpska, but also against the Croatian Defence Council as the army of the Croatian Republic of Herceg-Bosna. Komšić was awarded the highest war decoration, the "Golden Lily", by Alija Izetbegović for his special merits.

The **SECOND** decision of the Constitutional Court of BiH proclaiming the Law on the State Court of BiH, imposed by High Representative Wolfgang Petritsch in 2002 as constitutional, devastated the constitutional division of jurisdiction according to which only the Constitutional Court as a specific judicial institution existed at the level of BiH while all other jurisdictions belonged to the entities. The consequences are far-reaching and have had a strong impact on the disintegration and stability of the post-Dayton BiH.

The Constitutional Court of BiH is the only judicial institution established by the Constitution of BiH. On top of that, it displays the limited sovereignty of BiH. Specifically, out of overall nine members – four of them from the Federation of BiH have been elected by

the Parliament of the FBiH and two from the Republika Srpska by the National Assembly of the Republika Srpska (in practice, two Bosniaks, two Serbs and two Croats each). Three foreign members are elected by the President of the European Court of Human Rights in consultation with the Presidency of BiH, who is not bound by the opinion of the Presidency of BiH. Therefore, an individual - a foreigner elects most of the judges in the Constitutional Court of BiH, from among the foreigners who do not necessarily know anything about BiH, speak the language, or know the legal system in BiH. This is another evidence of the limited sovereignty of BiH and its peoples and entities. A foreigner, an individual, even if he is the President of the European Court of Human Rights, elects three judges to the Constitutional Court of BiH and has broader rights and importance than the constituents of BiH – entities and peoples who elect only two judges each. Devoid of any logic, law, or sense.

Bearing in mind that the Constitutional Court is the only one out of the three bodies of BiH that, according to the Constitution of BiH, may have the qualifier "Bosnia and Herzegovina" in their name (the other two are the Presidency and the Central Bank), the Constitution provides for several members that regulate its election, competences and activities. Article VI.1 of the Constitution of BiH, titled the **Composition**, has a provision of an imperative nature (*ius cogens*) which reads: "The Constitutional Court of Bosnia and Herzegovina shall have nine members." Article VI.2, titled the **Procedures** reads: "A majority of all members of the Court shall constitute a quorum." Formerly, the Constitutional Court of BiH did not have 9 members in its composition, but it operated and made decisions by majority vote. The question is: could the Constitutional Court of BiH exist in its constitutional capacity if it did not have 9 elected members? Article VI.1 provide for no exceptions to the "nine members" rule. It neither stipulates the right of the Constitutional Court to be able to provide for and legally prescribed exceptions to that rule. Article VI.2 of the Constitution, as suggested by its title, exclusively regulates the procedures. Its formulation refers only to the quorum for decision-

making, and not to the very existence or incomplete composition of the Constitutional Court. Any interpretation cannot bypass the argumentation according to which the Constitutional Court of BiH exists only if it has nine elected members. If they are not there, then it cannot fulfil its constitutional role, but only exist in a temporary state, without the right to decide on the implementation of the Constitution. It can resolve technical issues, but it cannot decide under Article VI para 3, titled the "Jurisdiction; The Constitutional Court shall uphold this Constitution". If it does not have 9 members, then it will not be able to exercise constitutional jurisdiction. If it does the opposite, taking into account only the provision on the quorum for their work, it would mean acting beyond the framework given to it, which is to "uphold the Constitution". Only when the Constitutional Court of BiH has nine elected members as laid down in Article VI, para 1 a): "Four members shall be selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining three members shall be selected by the President of the European Court of Human Rights following the consultations with the Presidency", then the provision of Article VI, para 4 of the Constitution, titled: "Decisions; Decisions of the Constitutional Court are final and binding" shall be applicable. Under any circumstances not providing for nine members, where the rest of the judges make decisions in accordance with Article VI. 2 the "Procedures", the provision VI. 4 laying down that the decisions of the Constitutional Court shall be final and binding, will not be applicable. Those circumstances have been present in recent years, and still are, considering that the Constitutional Court of BiH has only seven members, with no elected members from the Republika Srpska, so none of its decisions can be final and binding.

Željko Komšić, a Croatian (and actually a reserve Bosniak) member of the Presidency of BiH has drawn attention to this situation. In an interview given to the Federal TV on 27 October 2022, he said: "The Constitutional Court has already lost one judge. Mato Tadić retired in mid-August. Miodrag Simović is retiring pretty

soon, thus leaving the Constitutional Court without two judges from the country, raising the question as to how the Constitutional Court will be able to work".

Since the beginning of its work, the Constitutional Court of Bosnia and Herzegovina has been an instrument of illegal and illegitimate revision of the Constitution of Bosnia and Herzegovina. The example of this were some key decisions adopted when four judges from among Serbs and Croats were overvoted by three foreign and two Bosniak judges. Such decisions were made upon appeals filed by Bosniak representatives, primarily the presidents of the SDA at the time when they were members of the Presidency of Bosnia and Herzegovina. Thus, in 1998, Alija Izetbegović filed an appeal that resulted in the aforementioned decision on constituency in the case U5/98.

3. ENTITIES OF BiH AS NATIONAL STATE

As mentioned before, the Constitution of BiH, presented in Annex 4 to the international Dayton Agreement, lays down that BiH consists of **TWO NATIONAL ENTITIES - the Republika Srpska as a single-national entity of Serbs and the Federation of BiH as a bi-national entity of Bosniaks and Croats**. According to the constitutional structure of BiH, the entities have an asymmetrical system - the Republika Srpska is a centralized entity that, according to the Constitution, has a President (directly elected by citizens), a government, and a unicameral National Assembly. The Federation of BiH is made up of cantons (10 of them). This also implies a different structure and division of power between the federal and cantonal levels. The Federation of BiH has a President and two Vice-Presidents elected by the House of Representatives of the FBiH, and it also has a second house - the House of Peoples, which is also a Dayton category (Article V, para 2 d of the Constitution of BiH). The cantons that make up the Federation of Bosnia and Herzegovina have substantial legislative, executive and judicial powers, constituting the Federation of Bosnia and Herzegovina as a complex state. The

Constitution of Bosnia and Herzegovina requires no symmetry of power within the entities, which the Bosniaks insisted on and still demand, due to which Petritsch's imposed amendments to the Constitution of the Republika Srpska established two vice-presidents of the Republika Srpska, without any constitutional powers or authorities, unlike the vice-presidents of the Federation of Bosnia and Herzegovina adopting decisions together with the president of the Federation of Bosnia and Herzegovina. Petritsch also imposed the Council of Peoples in the Republika Srpska, giving it the powers of the second parliamentary chamber, despite the fact that this does not follow from any provision of the Dayton Agreement and its 11 Annexes.

The Constitution of BiH consistently implemented the **constitutional provision on entities as national states** – constituent parts of BiH. When assigning the first Board of Directors of the Central Bank, the Presidency of BiH appoints three members - two from the Federation of BiH (one Bosniak and one Croat sharing one vote) and one from the Republika Srpska (Article VII, para 3 of the Constitution of BiH). The two thirds of appointed members of the Council of Ministers are from the territory of the Federation of BiH, and "the Chairman appoints deputy ministers (who shall not be appointed among the same constituent people as their ministers)" - Article V, para 4 b of the Constitution of BiH. The statehood of the entities is also confirmed by other provisions of the Dayton Agreement. Thus, Annex 1 A – "Agreement on the Military Aspects of the Peace Settlement" defines the following subjects: "Armed forces of the Republic of Bosnia and Herzegovina, the forces of the Croatian Defence Council and the armed forces of Republika Srpska" – paragraphs 7 and 8. To sum up, the Dayton negotiations included two regular armed forces that formally survived in the signed Dayton agreements. That is why Bosnia and Herzegovina is not a state but a state union/union of states. No state can have two different regular armies that still exist formally and in line with the constitution. This is confirmed by the formulation of "armed forces of entities" referred

to in Annex 1 A, which regulates that "no entity may threaten or use force against another entity, and under no circumstances may the **armed forces of one entity** enter the territory of another entity or reside there without the consent of the government of that other entity and the Presidency of Bosnia and Herzegovina" – Article I para 2 of Annex 1 A".

The armed forces are both the army and the police. The Dayton Agreement does not mention the armed forces of BiH, neither the army nor the police, in any provision. In addition to the fact that the Constitution of BiH confers no competence for defence and security to the BiH level, there is no constitutional authority for the Parliamentary Assembly to regulate these two competences by law or to establish the institutions of the army and police. This means that not only is there no constitutional grounds for the "Ministry of Defence of BiH" or the "Ministry of Security of BiH", but there is also no constitutional basis for any armed formations at the BiH level, and therefore neither for the "Armed Forces of BiH" nor SIPA.

4. EXTREMIST AGENDA OF BOSNIA POLITICS

The Bosniak side has never accepted the political structure of Bosnia and Herzegovina established by the Dayton Agreement. This is also evidenced by statements of prominent Bosniak intellectuals that reflect the position of Bosniak politics. Accordingly, Professor **Ćazim Sadiković**, who was both a judge of the Arbitration Tribunal for Brcko and a member of the Venice Commission, said:

"It turned out that actually, Annex 4 is not a constitution, so that Bosnia and Herzegovina has been practically without a constitution during these years and as such has been exposed to economic, political, democratic, moral and every other decline. Now, we should do what hasn't been done in previous years, and that is to start drafting a constitution for the sake of the progress of Bosnia and Herzegovina state". He also added: "we should focus all our efforts to create a constitution that will strengthening the state of Bosnia and

Herzegovina. Our primary goal is not the European Union, but the development of the state of Bosnia and Herzegovina, its democratic system, its economic progress, and then the European Union will come as a consequence and a product of such development."

Professor **Sulejman Redžić**, president of Sarajevo's "Circle 99", said:

"The Dayton Agreement, without any restrictions or political morality, extinguished the former legal state of the Republic of Bosnia and Herzegovina and launched the Republika Srpska with its political and geographical coordinates. This, in the opinion of many, was the paramount hypocrisy by the creators of the Dayton Peace Agreement. Additionally, the rest of Bosnia and Herzegovina, called the Federation, is so decentralized that it is difficult to carry out the elementary functions of statehood, and this way the Dayton Agreement gave the forces and centres of political power a chance to further decentralize it and weaken its vital functions." On the other hand, he stated that "the Republika Srpska is completely centralized and able to perform its functions more easily, very often even taking over the functions of the state of Bosnia and Herzegovina. "

Redžić did not explain which functions of the "state of BiH" are being taken over by Republika Srpska and how he came to such a conclusion. Redžić believes that there are diverse opinions and positions regarding achieving a sustainable solution for BiH. One is to reorganize BiH according to new principles and to neutralize the political activism of entities for the benefit of the state of BiH, "which is very difficult to achieve due to the lack of political will and increased nationalist actions in almost all parts of BiH. Or, one of the solutions could be an attempt to return to the Constitution of the Republic of BiH from the pre-Dayton period," said Redžić, adding that the Dayton Agreement is such a creation that it is extremely difficult to change it from the perspective of the elapsed 16 years."[36]

[36] The *Dnevni avaz*, 21 November 2011

Constitutional Law Professor **Edin Šarčević** stated: "Annex 4 is valid as a temporary regulatory act that maintains a provisional constitutional state for an unfinished social and political phenomenon. All three of the aforementioned characteristics, the ethnicization of the BiH constitution-creator, the internationalization of constitutional law and the establishment of a temporary constitutional and legal provisional status."[37]

Bosniak politicians are often supported by foreigners who support their agenda, one of them being **Marco Attila Hoare**, a British historian and former research officer at the ICTY's Office of the Prosecutor who participated in preparing indictments against Serbian defendants, stated in an interview: "Bosnia is de facto divided as a result of the Dayton Agreement, and this division is becoming more comprehensive and serious with years. Unless Bosnian patriots develop a strategy to annul the Dayton Agreement, I believe that Republika Srpska could one day become an independent state. I believe that Bosnian patriots should attack the Dayton Agreement where no one can stop them, the canton system should be dismantled [disbanded] because this agreement cripples the Federation of Bosnia and Herzegovina. "A campaign should be waged to merge the Bosniak-majority areas and the mixed cantons, and form a single centre from which a strong Bosnian state could be built. This would begin the process of revising the Constitution in a way that would bypass the Republika Srpska veto."[38]

4.1. Declarations of the Bosniak Party of Democratic Action

Ever since Alija Izetbegović's **Islamic Declaration** in the 1970s, the aspiration for the Islamization of society in the territory of present-day Bosnia and Herzegovina has been a persistent motive and guiding principle of Bosniak politics. The need and desire to dominate over the entire society in Bosnia and Herzegovina relies

[37] Edin Šarčević, professor, Faculty of Law, Leipzig, "The Dayton Constitution: Characteristics and Problems"
[38] Bosnjaci.net, 24 June 2010

on the perception of numerical dominance of Bosniaks, completely ignoring the rights of other peoples with whom they jointly make up the state community of Bosnia and Herzegovina.

Those aspirations were also confirmed by the **Program Declaration of the Party of Democratic Action, adopted at the 7th Congress held in Sarajevo on 14 September 2019**, in which the Bosniak political leadership expressed clear demands:

- Calling for the transformation of Bosnia and Herzegovina, which is in contradiction with Dayton Agreement:

"**Our primary and long-term objective** is to adopt a constitution that would define Bosnia and Herzegovina as a democratic, regionalized, legal and social state under the name of the **Republic of Bosnia and Herzegovina with three levels of government: state, regional and local, with the city of Sarajevo as the political, administrative, cultural and economic centre of Bosnia and Herzegovina**."

COMMENT: The above statement reveals the intention of the SDA is to erase the entities as constituents of the Dayton structure of Bosnia and Herzegovina, so that Sarajevo would become one city that will also include Eastern, Serbian Sarajevo.

- Reform of the present Constitution of Bosnia and Herzegovina:

"We will support reforms that are in the interest of all citizens of Bosnia and Herzegovina and that lead to **strengthening of a functional state structure**."

COMMENT: Instead of a highly decentralized state structure set forth by the Dayton Agreement and the Constitution of Bosnia and Herzegovina, the intention to strengthen the structure of Bosnia and Herzegovina is expressed, which radically violates the international Dayton Agreement, and in order to hide this, it is added that:

"future solutions must satisfy the principle of full equality of peoples and citizens **in every part** of Bosnia and Herzegovina state"

COMMENT: This indicates an unconstitutional and extremist aspiration for the domination of the majority people, since Bosniaks, according to the fabricated 2013 census, are the absolute majority (50.1%). How Bosniak politics sees the equality of "people and citizens" is illustrated by Bakir Izetbegović's statement addressed to Croats: "to put shackles on the people with three- or four-times bigger population, to create barriers for them, in my opinion is not a good thing. If the most numerous people in Bosnia and Herzegovina are shackled, **if they are not allowed to achieve what they voted for in the elections, then that people will organize themselves in a way that will surely break these barriers in future cycles and remove them."**[39]

If the same words about respecting the electoral will of the people would be applied to the 2018 elections in which representatives of the SNSD and coalition parties won the elections for the government of the Republika Srpska and for the level of Bosnia and Herzegovina, then it should be clear what steps to take.

The SDA Declaration continues:

"**In the first phase of constitutional reforms**, we will support amendments to the existing Constitution of Bosnia and Herzegovina to ensure the harmonization of the Constitution with the European Convention for the Protection of Human Rights and Fundamental Freedoms, the **establishment of the Supreme Court** as an institution that will guarantee equal standards to all citizens, and the provision of state jurisdiction in those areas that represent preconditions for Bosnia and Herzegovina's accession to **NATO and the European Union**."

COMMENT: The order of "priorities" reveals that the primary goal was NATO membership, knowing that the chances of

[39] The *Oslobođenje*, 21 August 2019

membership in the European Union are not only rather uncertain and far-off, but also irrelevant for Bosniak structures. Unlike the SDA Declaration, Professor Kasim Trnka described the first phase of constitutional changes in a different way. His work "**Specificities of the Constitutional Arrangement of Bosnia and Herzegovina**", talks about what needs to be done regarding the constitutional changes, that failed to be done in two attempts - the April and Butmir packages. Trnka claimed that "the necessary constitutional definition of **already achieved reforms** in the field of the **defence system, judicial system, taxation system, intelligence and security services and other relevant matters that have been laid down by laws, instead of the constitution,** should be carried out." [40]

The SDA Declaration calls for "the efficient functioning of the institutions of Bosnia and Herzegovina and the elimination of blockades in their decision-making"

COMMENT: Such demand threatens and violates the right of entity representation in joint bodies at the BiH level. The "blockades" that the SDA refers to are actually key protective mechanisms of the constituent peoples and entities woven into the Dayton Agreement, that ensure the functioning of the Dayton structure. No party that aspires to tyranny likes "obstacles and blockages" whose purpose is to verify and controlling their power, but the parties that conceived and participated in the negotiations to eventually, agree on the Dayton Agreement structure, foresaw the danger posed by dominance based on mere numerical superiority in BiH, and wisely built in mechanisms that the SDA now sees as thwarting its efforts to dominate the BiH society.

- Insisting on police reform:

"We will insist on **police reform** so that Bosnia and Herzegovina will have the integrated, functional and efficient police forces."

COMMENT: Here too, the SDA declaration violates the Dayton Agreement, attempting to put the unconstitutional police

[40] Revus, Ljubljana, 2009

reform back on the agenda, even though police and internal affairs fall under the exclusive jurisdiction of entities.

- Abolition of national identity of the peoples that make up BiH:

by calling for the "**affirmation and promotion of the "Bosnian" language**"

COMMENT: Anywhere in the world, the names of languages are given by the names of the people who use them, which is why there are no languages - Austrian, Luxembourgish, Swiss, American, Brazilian, etc.

by calling for the "**Creation of a Bosnian-Herzegovinian identity**"

COMMENT: This is an explicit call to ultimately annul all Serbian and Croatian culture and heritage in BiH. Since Bosnia and Herzegovina was formed, almost 25 years ago, none of the influential political parties in Bosnia and Herzegovina has ever made such a radical and offensive attack on the national traditions of the other constituent peoples in the country. The three constituent peoples have almost no common view of history and politics, nor a common culture; in sports, they rather support neighbouring countries or Turkey, and support Bosnia and Herzegovina only when they need to, for the sake of their participation in competitions.

Creating a common identity is not possible after the civil war in a series of interethnic conflicts in Bosnia and Herzegovina over the past two centuries. Moreover, as Robert Cooper mentioned in his political essays: "leading a democratic state with majority voting rights requires a strong sense of identity. Democracy implies a definition of political unity. In most cases, this coincides with the idea of a nation. A state which is legitimized from below, requires some degree of identification from its citizens. National identities are usually created by states out of the raw material of history, culture, and language."

Bosnia and Herzegovina has none of this, and will never again have it in the future, because everything that had any B and H mark disappeared forever in the last war, and even more so in the post-war period due to the undisguised and insatiable efforts of the Bosniak politics aimed to prevail and humiliate the other two peoples.

US President **Donald Trump**, at the 74th session of the United Nations General Assembly in 2019, said: "Wise leaders always put the good of their own people and their own country first," urging countries around the world to reject globalism. "The future does not belong to globalists. The future belongs to patriots. The future belongs to sovereign and independent nations who protect their citizens, respect their neighbours, and honour the differences that make each country special and unique. If you want freedom, take pride in your country; if you want democracy, hold on to your sovereignty. If you want peace, love your nation."

The positions of the Republika Srpska are clear and have been known for a long time. **Commitment to peace, respect for democracy through electoral will, achievement of the sovereignty and autonomy of the Republika Srpska confirmed by the Dayton Agreement and the Constitution of Bosnia and Herzegovina as the right to peace and freedom.**

4.2. Other activities in implementing the "Bosniak agenda"

Only a few activities, carried out at the level of BiH following the 2014 elections with the aim of weakening the Republika Srpska, will illustrate the intentions of the SDA and Bakir Izetbegović.

- The decision of the Constitutional Court of BiH of 25 November 2105, made by a majority vote of Serb judges, to abolish January 9 as the Day of the Republic, although this day dates back in the beginning of 1992 when there was no war and no BiH as an "internationally recognized state". The explanation that it is a religious holiday of St. Stephen and a date that discriminates against Bosniaks and Croats is, to say the least, incoherent, because the Law

does not mention St. Stephen's Day anywhere. The then President of the Republic reacted to this decision of the Constitutional Court of Bosnia and Herzegovina and convened a meeting of political parties from Republika Srpska on 29 November 2015, to reach a consensus on a joint response to such a drastic violation of the rights of Republika Srpska and the Serbian people. After a meeting that lasted several hours, all representatives signed a statement, it did not contain the key position on opposing the Bosniak abusing the Constitutional Court of Bosnia and Herzegovina instrument.

- Investigation by the Prosecutor's Office of Bosnia and Herzegovina against MPs, members of the Referendum Commission, the President and Prime Minister of Republika Srpska, on a kind of public order by Bakir Izetbegović given in an interview with the Turkish Anadolu Agency on December 17, 2015, in which it is said: "Speaking about the non-implementation of the decisions of the Constitutional Court of Bosnia and Herzegovina, he said that "everyone in this country should do their own job. The Presidency is not competent to implement the decisions of the Constitutional Court and if it started to do someone else's job, it would amnesty those who responsible for implementing those decisions. Everyone should do their part of the job, but the Prosecutor's Office should initiate them." Then Bakir, not interfering in someone else's job, said: "I believe that a verdict under Article 239 of the Criminal Code of Bosnia and Herzegovina, which is punishable by six months to five years for failure to implement the decisions of the Constitutional Court, would trigger a positive domino effect, so that everyone would rush to implement those decisions," said Izetbegović, giving a clear instruction to the Constitutional Court of BiH, and even referring to the Article of the law to the Prosecutor's Office of BiH to act accordingly. We know that both supposedly independent bodies carried out Bakir's order - the Constitutional Court by attempting to ban the referendum as unconstitutional, and the Prosecutor's Office of BiH by conducting a ridiculous investigation against members of parliament and officials of the Republika Srpska.

- The Constitutional Court of BiH has made one in a series of illegal and dishonourable decisions banning the referendum in the Republika Srpska because it is allegedly contrary to the Constitution of BiH, even though this issue is not treated at all by the Constitution of BiH as a highly decentralized state union. Not to mention the legal nature of referendums as one of the fundamental instruments of democracy.

- Such a Constitutional Court of Bosnia and Herzegovina, as a political, not a legal body, also adopted the decision on the invalidity of the results of the referendum held on 25 September 2016, in which the citizens of Republika Srpska voted overwhelmingly to keep January 9 as the Republic Day. Some of the political leaders of the SDS did not even support the referendum, for instance, the former President Mladen Bosić was not seen at the vote, while the SDS Minister of Security in the Council of Ministers, Dragan Mektić, publicly boasted that he did not even show up to vote.

- The census and unsupported results published in 2015, under pressure from Bosniak structures through the Prosecutor's Office of Bosnia and Herzegovina, identified SDS and PDP ministers as alleged supporters of such Bosniak policies, due to their failure to prevent this by withdrawing from the Council of Ministers.

- The most provocative and extremely destabilizing political step aimed at undermining the constitutional status of Republika Srpska was taken by the SDA in January 2019, announcing that it would request the Constitutional Court of Bosnia and Herzegovina to declare the name Republika Srpska unconstitutional. This is a direct violation of the Constitution of Bosnia and Herzegovina and its Article I that reads: " Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska ". It is absurd to argue that the Constitution violates the Constitution in its fundamental Article defining Bosnia and Herzegovina. The name of Republika Srpska is mentioned in ten other places in the text of the Constitution, including in the provisions

granting powers to the National Assembly of Republika Srpska. The repeated threat to submit such an initiative by the SDA is part of a relentless campaign run by the SDA to attack the legitimacy of Republika Srpska.

5. COMPLEXITY OF BIH

There is evidence of how the key officials of the American administration, perceived Bosnia and Herzegovina in the period before the Dayton peace talks. This is evidenced by a letter from Sandy Berger, the National Security Adviser, dated 20 July 1995, addressed to Madeleine Albright, the then Secretary of State, and other top officials of the Clinton administration, in which, among other, he wrote about proposals for how to end the conflict in Bosnia and Herzegovina. Independent newspapers under the headline: "**SANDY BERGER: US was ready to allow Republika Srpska to hold a referendum on secession**"[41] wrote on that matter**.**

Berger wrote in his letter: "If necessary, we should put pressure on the Bosniaks to allow the Serbs to hold a referendum after two or three years, as we agreed in the 1993 package. Our argument would be that if the Bosniaks will not be able to convince the Serbian population that their future lies in reintegration, there is no point in blocking a peaceful separation along the lines of the Czechoslovakian model." Madeleine Albright, the then US Secretary of State, in her response to Sandy Berger on August 3, 1995, did not rule out the possibility of a referendum on the secession of Republika Srpska, but she emphasized that she favoured the option of lifting the arms embargo on Bosniaks, air strikes against Serbs, and handing over responsibility for ending the conflict to Bosniaks, the *Nezavisne novine* wrote.

Have Bosniaks even tried to convince Serbs that their future lies in a "reintegrated Bosnia and Herzegovina" or have they practised quite the opposite? Not only in the first two or three years of peace, but throughout the entire 30 years since Dayton.

[41] The *Nezavisne novine*, 23 September 2013

How do statements, such as the one of Matthew Palmer, the acting Deputy Assistant to the US Secretary of State, sound today, namely: "The Dayton Agreement has never been developed as a fixed framework, but as a framework subject to changes. But I am more inclined to the evolution than the revolution of the impact of that Agreement," Palmer told for the Delo daily newspaper from Ljubljana, adding that the Dayton Agreement "is still alive."[42] One could say – still alive, despite the illegal "evolutionary" changes imposed or forced by the OHR, the Constitutional Court of Bosnia and Herzegovina and a part of the international community.

A political party of one people may be expected to strive to be dominant in a country, but the SDA has shown its extremist nature by demanding the destruction of the Dayton Agreement, which has served as the foundation of peace in Bosnia and Herzegovina for 30 years already. All citizens of Bosnia and Herzegovina who wish to keep peace and all members of the international community who care about the future of Bosnia and Herzegovina and the stability of the region should have vigorously condemned the SDA's stated efforts and condemned its latest declaration.

However, when all political parties from Republika Srpska and the Croatian National Assembly condemned the positions expressed in the SDA declaration as an intention to prevail and create Bosnia and Herzegovina to befit only Bosniaks as the most numerous nation, the SDA said that "these are their legitimate demands that they do not intend to implement with any violence, but that internal problems and open issues can and should be resolved through dialogue and compromise, in accordance with democratic principles".

After unanimous condemnations by the political parties of Serbs and Croats, the US Embassy, the OSCE and the concerned OHR ostentatiously did so, giving lukewarm statements, pointing out that the SDA declaration is redundant and harmful.

[42] „Dayton Agreement is not a Fixed Framework, ANP does not mean NATO membership", Klix.ba, 2 September 2019

The intentions of the SDA – both those expressed and hidden ones (in order to maintain the status quo with the powers taken away from Republika Srpska) were tacitly supported by all other Bosniak parties, which did not come as a surprise. The Bosniak intentions were revealed when the SDA, in agreement with some foreign embassies, prevented the formation of the Council of Ministers by retaining the former structure from the RS that lost the elections in Republika Srpska in both 2014 and 2018, in the form of three ministers - Mirko Šarović and Dragan Mektić from the SDS and Igor Crnatko from the PDP. When appointed as ministers at the level of Bosnia and Herzegovina by the will of the SDA, even though these two parties lost the elections in 2014, their appointment was aimed at them not hindering the achievement of Bosniak interests.

The activities of Republika Srpska have been focused on the protection of legitimate interests and legal rights, depending on the balance of power and the influence of other factors. Various mechanisms were used to prevent the (in)formal abolition of the Republika Srpska, the assignment of Brcko to the Federation of Bosnia and Herzegovina, amend the Constitution of Bosnia and Herzegovina intended to cement the seized competencies, abolish entity voting and a number of other similar obstacles. In a situation where the SDS was labelled a "criminal organization", and in some Hague indictments, a "joint criminal enterprise", the Republika Srpska was declared a "genocidal entity that cannot exist under international law", the way to mitigate such attacks was sought. The survival of the SDS on the political scene with all the 'wartime mortgages' suited the Bosniaks. Richard Holbrooke offered to provide foreigners' engagement to ban the SDS as a criminal organization, but Alija Izetbegović opposed this. He and his son Bakir are now comfortable with the existence of SDS, even with a changed leadership, so that they can blackmail them with their wartime past. This explains why SDS and PDP are the SDA's favourite coalition partners and why they are being brought into power in Republika Srpska despite their repeated electoral defeats.

6. THE COUNCIL OF MINISTERS IS NEITHER THE GOVERNMENT NOR AUTHORITY OF BIH

The Constitution of BiH, Article V – "Presidency", point 4 –titled: the "Council of Ministers" reads: "The Presidency shall propose the Chairman of the Council of Ministers, who shall assume office after the House of Representatives has given its consent. The Chairman shall propose the Minister of Foreign Affairs, the Minister of Foreign Trade and other ministers as necessary, who shall assume office after the House of Representatives has given its consent."

The procedure for electing the Council of Ministers is regulated in more detail by the Law on the Council of Ministers of BiH, adopted in 2003 (Official Gazette of BiH 30/03), and amended in the same year (Official Gazette: BiH 42/03), next in 2006 (Official Gazette of BiH 81/06), twice in 2007 – Official Gazette 76/07 and 81/07. The second time in October 2007, it was a law imposed by the High Representative. At that time, the Republika Srpska expressed its open disagreement and non-acceptance, and the Chairman of the Council of Ministers Nikola Špirić and Ministers Slobodan Puhalac and Sredoje Nović resigned from their positions, while Nebojša Radmanović, the Serb member of the Presidency of Bosnia and Herzegovina, made his position available to the authorities of the Republika Srpska. This caused the biggest crisis in post-war Bosnia and Herzegovina up to that point. The determination of the Republika Srpska authorities, formed from the Alliance of Independent Social Democrats, the Democratic People's Alliance and the Socialist Party, and their preparedness to take on responsibility and any sanctions imposed by the High Representative and the international community, forced the OHR to step down. As witnessed by the former OHR lawyer Philippe Leroux-Martin in his book "Diplomatic Counterinsurgency Lessons from Bosnia and Herzegovina", such deviations that led to the "Authentic Interpretation of the High Representative", which diluted and relativised the solutions from the imposed law, was a defeat from which the OHR never recovered. There were one more

amendment to the Law on the Council of Ministers published in the Official Gazette, Chapter 24/08.

6.1. Unconstitutionality of the Law on the Council of Ministers

a. The Constitution of BiH, Article V, entitled "Presidency" of BiH, lays down its election and mandate, work and decision-making procedures, and responsibilities as the executive power body at the level of BiH. The responsibilities of the Presidency of BiH under the Constitution of BiH, Article V.3 include:

b. Conducting the foreign policy of Bosnia and Herzegovina.

c. Appointing ambassadors and other international representatives of Bosnia and Herzegovina, no more than two thirds of whom may be selected from the territory of the Federation.

d. Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.

e. Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina.

f. Executing decisions of the Parliamentary Assembly.

g. Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly.

h. Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency.

i. Coordinating as necessary with international and nongovernmental organizations in Bosnia and Herzegovina.

j. Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities.

The aforesaid powers are exercised by executive authorities. In the majority of parliamentary systems, this is the government. According to the Constitution of BiH, such powers, as specified, belong to the Presidency of BiH. They are not exercised by the Council of Ministers that the Constitution mentions only in point 4 of the same Article V. It follows from the text of the Constitution of BiH that the Council of Ministers is a form of an auxiliary body to the Presidency of BiH, as is the role of the Standing Committee on Military Affairs, mentioned in point 5 of Article V of the Constitution of BiH.

This very clear definition of the position of the Council of Ministers is not mirrored in the Law on the Council of Ministers of Bosnia and Herzegovina. First, that Law unconstitutionally defines the Council of Ministers as "**the executive body** of Bosnia and Herzegovina, which exercises its rights and duties as **governmental functions**, in accordance with the Constitution of Bosnia and Herzegovina, laws and other regulations of Bosnia and Herzegovina."

Unlike the bodies of Bosnia and Herzegovina – the Presidency, the Constitutional Court and the Central Bank designated by the Constitution, the Council of Ministers does not have the qualifier "of Bosnia and Herzegovina" in its constitutional name.

This unconstitutional fabrication concerning the Council of Ministers of "Bosnia and Herzegovina" as an executive authority and government, could not go further with violating the constitution and therefore, the Law on the Council of Ministers does not contain any competencies thereof, but is limited to the formation, constitution, manner of work and decision-making, rights and duties of the Chairman and members of the Council of Ministers, and the relationship with other government bodies of Bosnia and Herzegovina.

7. NATO - COOPERATION WITHOUT MEMBERSHIP

The BiH Reform Program, conditionally adopted by the BiH Presidency at its session held on 19 November 2019, clearly provides that this PROGRAM DOES NOT PREJUDICE (note: it is without prejudice to) the FINAL DECISION ON NATO MEMBERSHIP, the adoption of which will require a decision by the BiH Presidency and the Parliamentary Assembly at the BiH level. If a Serb member of the BiH Presidency is outvoted when making such a decision, he may, in accordance with the BiH Constitution, declare such a decision harmful for the vital interests of the Republika Srpska and refer it for a FINAL vote to the National Assembly of the Republika Srpska. So far, this mechanism has been used by Serb members of the BiH Presidency from the SNSD, Nebojša Radmanović 3 times and Milorad Dodik once. In all those cases, the National Assembly rejected such a truncated decision of the Presidency of BiH by a two-thirds majority and it is considered NULL. Therefore, it is very important that there is a Serbian member in the Presidency of BiH who will protect the interests of Republika Srpska and, together with the National Assembly, prevent adoption of decisions harmful for Republika Srpska. Of course, if the Serbian member of the Presidency of BiH has legitimacy, that is, he/she has been elected by a majority of the votes of the Serbian people. It is quite important who represents the interests of the people - Željko Komšić and Mladen Ivanić were not elected by the will of majority of the Croatian, or Serbian people, and accordingly, their actions were in accord with, i.e. not opposed to Bosniak politics and its interests. In any case, before the decision on NATO membership, Republika Srpska will hold a referendum in accordance with the Resolution on the Protection of the Constitutional Order and Military Neutrality.

7.1. NATO and (in)stability

There is a number of other reasons for such stance of the Republika Srpska on the matter. The former French Permanent Representative to NATO Gabriel Robbin defined the NATO - the North Atlantic Alliance, as follows:

"The world has changed. There used to be blocs everywhere; today, they no longer exist. The world is now composed of a variety of sovereign nations, while only NATO continues to build its dungeon from the past. Its foundations used to be of a defensive nature; today, it sends out exclusively threats of occupation. NATO used to be homogeneous and compact, now it has become complicated and too big. NATO advocated the status quo and equality of forces; today it wants to impose its superiority and freedom to intervene wherever it wants. NATO used to prohibit action outside the zone of its member states, now it operates exclusively outside. In a nutshell, NATO has transformed from a defensive instrument into an apparatus of domination. Domination over the rest of the world, spreading its imperialist influence; domination over its member states, where formal equality cannot hide who is the boss and who are subordinates. The gap between what NATO once was and what, to some extent, it still pretends to be and what it has become, can only be filled with lies. The point is that, as any other military alliance, NATO also needs an enemy. Before, it used to be the Soviet Union, today, it is Russia."

The key goal of NATO membership, as often stated, is to achieve stability in new member states. We are witnessing the stability achieved in Albania, Montenegro and North Macedonia, as new members, where the society and the people are now more divided than ever. The contribution of NATO to stability was demonstrated by an agency news published on 15 July 2019 - ALBANIA IN A STATE OF MADNESS:

"Former Albanian Foreign Minister and university professor Besnik Mustafaj stated that Albania was in a state of madness and constitution violation. He believed that the Albanian economy had sunk into crisis, as acknowledged by the Statistics Office INSTAT and reported by the A1on portal. "The state has collapsed; the government is on its knees. The situation in the country is unconstitutional. Our economy has been destroyed. When the economy and the rule of law

do not function, what can you call such situation? It goes without saying that the situation is insane."

The views of former Slovenian President Milan Kučan, expressed in November 2017 at the conference "Challenges on the Road to the European Union" held in Montenegro, speak about the current NATO. Kučan believes that the situation in the Balkans is still delicate, primarily because the process of geopolitical alignment has not yet been completed, reported Podgorica's "Vijesti". He also said that "NATO, which Slovenia joined, has nothing to do with NATO, which Montenegro joined. Back then, it may have been part of the prestige, but today NATO has become a threat, a gendarme to be feared."

The examples of Montenegro and Macedonia joining NATO, each in its own way, illustrate the disregard for the will of the people in making decisions about membership. In Montenegro, the decision was made by the Parliament on 18 April 28 2017, with 46 votes out of a total of 81 Members of Parliament.

An interesting comment was made by US President Donald Trump to Voice of America on 18 July 2018. When asked by journalist Carlson: "Why would my son have to go to Montenegro to defend them from attack?"

Trump replied: "I understand what you're saying. I've asked the same question. Montenegro is a tiny country with very strong people..."

Carlson: "I have nothing against Montenegro, or Albania..."

Trump: "No. By the way, they have very strong people… They're very aggressive people. They may get aggressive and congratulations, you're in World War III. Now I understand that, but that's the way it was set up."[43]

[43] https://www.glasamerike.net/a/tramp-o-nato-u-crnoj-gori-i-tre%C4%87em-svetskom-ratu-/4487962.html

The example of Macedonia was even more drastic. The extensive engagement of NATO and numerous Western statesmen in the campaign before the referendum held on 30 September 2018, was insufficient for the citizens of Macedonia to express their commitment to the membership. According to the State Election Commission, only 36.87% of the over 1.8 million registered voters took part in the referendum, and 605,393 voters answered positively to the referendum question: "Are you in favour of joining the EU and NATO by accepting the arrangement between the Republic of Macedonia and the Republic of Greece?". This did not prevent the State Department from announcing that it "strongly supports the full implementation of the Prespa Agreement, which will enable Macedonia to take its rightful place in NATO and the EU, contributing to regional stability, security, and prosperity."

Following these referendum results, Macedonia changed its name to North Macedonia and introduced Albanian as its second official language. Today, national divisions and challenges to the existence of the Macedonian language and national history in the country have even escalated, with the risk of even losing its territory in the already advanced process of creating a greater Albania.

NATO has long since gone beyond the framework of its charter and its activities within the territories of its member states. War adventures in Afghanistan and other war zones have shown the attempt of making NATO an organization analogous to the United Nations, deploying political and military activities throughout the world. As such, NATO is the reverse of peace and stability in the world. That is why the European Union has considered the formation of a European army for years, as advocated by the German Minister of Defence, the current President of the European Commission, Ursula von der Leyen. US President Donald Trump is also very critical, almost an outright opponent of NATO, and had repeatedly expressed his dissatisfaction with the participation of European members in NATO's financing and operations.

NATO was formed as a result of ideological clashes following World War II and as a defence mechanism of Europe against Soviet communism. After NATO, the Warsaw Pact was established as a military and political organization of the Soviet bloc of Eastern European countries - the USSR, Bulgaria, Romania, Hungary, Poland, Czechoslovakia, East Germany. The Warsaw Pact was dissolved in 1991, after tectonic changes in Europe after the fall of the Berlin Wall as a symbol of the division of Europe into Western and Eastern blocs. The Soviet Union collapsed, West Germany annexed East Germany, Czechoslovakia was divided into two states - the Czech Republic and Slovakia. All states of the Eastern military bloc became members of the NATO pact, despite the naive belief of Gorbachev who had been deviously assured by American presidents that NATO would not expand to these countries. There are no more communist countries in Europe, but NATO still uses the same matrix - defence against Russian malign influence.

As an outdated organization, NATO does not even maintain peace among its members. There have been decades of tensions between its members, Greece and Turkey, and in 1974, Turkey invaded the independent state of Cyprus, which is made up of two peoples – Greeks and Turks. Turkey occupied one third of the territory, forming a separate state – the Turkish Republic of Northern Cyprus. The current focus is on the conflict between Greece and Turkey over the waters in the broader area of Cyprus, where Turkey is conducting oil and gas exploration. There are frequent reports of violations of airspace, the status of the Greek minority in Asia Minor, and the Ecumenical Patriarchate of the Orthodox Church. NATO's inefficiency was also proven in the case of the border frictions between Croatia and Slovenia. Even the membership of these countries in both NATO and the European Union hasn't led to an agreement on the contentious issues of several border points on the mainland or in the Piran Bay of the Adriatic Sea. Croatia, which has thousands of kilometres long coastline, would not allow Slovenia to have an access to the open sea, as if its survival depended

on it. So much for the Europe without borders and NATO as a factor of stability and non-controversy.

Bosniak general Fikret Muslimović, in his analysis entitled - **NATO in European Security**, wrote: "With the arrival of Donald Trump at the helm of the USA, transatlantic disagreements escalated due to: (a) Trump's arguing that NATO is obsolete and that US interest in NATO is waning, and that the US should focus on the Pacific instead of the Atlantic – though Trump changed those views later; (b) the US starting transatlantic trade disputes and conflicts; (c) US's undermining the integrity of the EU by supporting Brexit, and on top of that, advising other, most powerful EU countries to follow the path of Great Britain regarding the Brexit. In the light of that, the leaders of the most influential European countries emphasized that Europe must seek answers to security problems in reducing European security dependence on the United States, that is, by becoming more eager to build Europe's capacities and be able respond more independently to security threats. Before the escalation of US-European trade disputes, Trump's messages about reducing American interest in NATO provoked a European response in the direction of building an EU security and defence identity, by establishing the EU force, which Washington was not too happy about. German Chancellor Angela Merkel said: "We need to work on the vision of one day having a real European army", adding that the European army "would not be the opposite of, but a complement to, NATO". Similarly, French President Emmanuel Macron said: "Europe can no longer rely on the United States when it comes to its security. It is up to us to take responsibility and guarantee Europe's security, and therefore sovereignty. "President Trump is provoking and intensifying transatlantic differences that had become evident much earlier, especially in relation to more serious crises, such as the military invasion of Iraq, when the US strategy in that crisis was opposed by European countries. Disagreements between the US and its European partners have also been evident in relation to the Ukrainian crisis and the Russian annexation of Crimea, as well as

in relation to the escalation of the migrant crisis, in which European right-wing seemed to be closer to the US position than to those of the EU. Washington is indeed well aware that in the current balance of power, without the US, Europe could not respond to more complex issues of its security. "[44]

As reported by numerous European media, the topic of forming a European army has been discussed in EU countries for several years already. In November last year, Emmanuel Macron spoke about it:

"We will not be able to protect Europe unless we have a real European army. Faced with Russia on our borders, we must have a Europe that is capable of defending itself independently, in a more sovereign way and without relying on the United States alone."

Angela Merkel told the European Parliament that it should "work on a vision of one day establishing a real European army." She called for the creation of a "European Security Council with a rotating presidency and abandoning the principle of unanimity in decision-making." The United Kingdom's exit from the European Union, while remaining in NATO, is raising European suspicions that Britain will thus continue the Trojan Horse game in the interests of the United States. The US geopolitical shift towards Asia contributes to the acceleration, but also to the confusion of the European Union and its current defence and security mechanisms. This will be an essential element in restructuring and reshaping the European model as advocated by Macron, that will have relevant impact on preconditions in case of enlargement and admission of the countries of the Western Balkans. All this imposes additional responsibility in considering the directions that candidate countries will take. Should the European security architecture fall apart by abandoning and withdrawing from the missile arms treaties and obvious disorientation, military neutrality and equidistance towards the blocs would require a reasonable strategy and avoiding being

[44] http://www.globalcir.com/2019/06/18/59142/

placed in the line of fire as the former US Secretary of State John Kerry intended for the Western Balkans. Speaking about Russia's growing influence in Europe, Kerry said: "When we are talking about Kosovo, Serbia, Montenegro, Macedonia and other countries - Georgia, Moldova, Pridnestrovla - they are in the line of fire." [45]

The interview of French President Emmanuel Macron with the London "Economist" on 7 November 2019, attracted great public attention worldwide. Macron said that NATO's strategic goals should be clarified, but also work should be done to strengthen the European army and strategic dialogue with Russia. "Europe must wake up and start thinking of itself strategically as geopolitical power. Otherwise, it will no longer be in control of our destiny," the French president said. He added that he had tried tirelessly to maintain good relations with Donald Trump, but that for the first time, USA has a president who does not share the idea of the European project and is turned towards itself and China. He also wondered what the future of Article 5 of the North Atlantic Treaty Organization would be, concerning the military solidarity among the Alliance members in the event of an armed attack.

"What we are currently experiencing is the brain death of NATO. Europe is on the brink of an abyss. There is no longer any coordination in strategic decision-making between the United States and its NATO allies. None. We have an uncoordinated aggressive action by a NATO member, Turkey, in an area where our interests are threatened," Macron said. He declared his doubts about any further collective defence as one of the pillars of the NATO's founding Treaty. "I think we should re-examine the reality of what NATO represents for the United States, in light of its commitment," Macron added. The French president stressed that the United States was showing signs of "turning its back on us," as President Trump demonstrated with his sudden decision last month to withdraw troops from northeastern Syria without consulting allies. In an interview with The *Economist*,

[45] The Novosti.rs, 25 February 2015

Macron also addressed France's refusal to approve accession talks with Albania and North Macedonia. He noted that building a top-notch, integrated European Union is incompatible with the fact that the enlargement process was being opened, which, he said, needed to be reformed. "If there is a concern for the region, before Macedonia and Albania, there is the issue of Bosnia and Herzegovina," Macron said, stating that Bosnia and Herzegovina was the time-bomb ticking right next to Croatia, facing the problem of returning jihadists.[46] Macron's statements were followed by various comments, but he did not withdraw them.

After the inauguration of US President Donald Trump, after being elected to that position for the second time in the elections on 5 November 2024, the NATO is facing new challenges to its existence and goals. Trump is demanding from NATO members to allocate much more of their funds for defence needs, instead of the previous 2% of GDP. Although not all members have reached that amount, Trump will demand even greater commitments of 5% of GDP.

Initial and other activities for membership in the NATO were adopted in the period from the beginning of 2001, until the end of February 2006, during the SDS and PDP governments.

Representatives of various international bodies in Bosnia and Herzegovina should respect the constitutional order and complexity of Bosnia and Herzegovina. However, it seems that this is no longer the case. Thus, NATO has shown its bias and interference in the internal affairs of Bosnia and Herzegovina, using the example of so-called military property. The news published on August 16, 2018, read:

"NATO Headquarters in Sarajevo welcomed the Decision of the Constitutional Court of Bosnia and Herzegovina to reject the appeal of the Republika Srpska Attorney General's Office on military property, noting that this Decision is not sufficient to

[46] RTS, 7 November 2019

start the Membership Action Plan (MAP). The Decision will help register immovable military property as the property of Bosnia and Herzegovina for the needs of the Bosnian Ministry of Defence. The rule of law and enforcement procedures must be implemented. The decision is not sufficient to launch the MAP, but it is a step forward towards meeting the conditions from Tallinn."

NATO Headquarters reiterated that the registration of 57 potential immovable military sites as the property of Bosnia and Herzegovina was the only condition for activating the MAP for Bosnia and Herzegovina. "Allies will keep these developments under active review. We look to the leadership of Bosnia and Herzegovina to use the period ahead to accelerate efforts towards meeting the requirements set by NATO Foreign Ministers in Tallinn in April 2010 so that its first Membership Action Plan cycle can be activated as soon as possible, which remains our goal," was the statement by NATO HQ.

The Constitutional Court of Bosnia and Herzegovina dismissed as unfounded the appeal of the Republika Srpska filed against the judgments of the Court of Bosnia and Herzegovina ordering the registration of the military facility "Veliki Žep" in Han Pijesak in Bosnia and Herzegovina. The Republika Srpska Attorney's Office, in an appeal rejected by the Constitutional Court of Bosnia and Herzegovina on 6 July, stated that the judgments of the Court of Bosnia and Herzegovina on the property in Han Pijesak violated the right to a fair trial under the Constitution of Bosnia and Herzegovina and the European Convention for the Protection of Human Rights and Fundamental Freedoms. "[47]

This was followed by the Resolution on the Protection of the Constitutional Order and Military Neutrality, which the National Assembly of Republika Srpska adopted on 18 October 2017, without the participation of SDS and PDP MPs. At that time, MPs from these two parties, led by their presidents Vukota Govedarica and Branislav

[47] The *Nezavisne novine*, 16 August 2017

Borenović, using whistles and occupying the working space and table of the Presidency of the National Assembly of Republika Srpska, prevented the parliamentary session from taking place in the Great Hall, so the session continued in the Small Hall of the National Assembly. Thus, SDS and PDP took their stand against military neutrality, indirectly supporting BiH's membership in the NATO.

7.2. NATO as a foreign policy strategy of the Party of Democratic Progress

The PDP's stance was confirmed by the WikiLeaks website, which revealed a cable from the former US Ambassador to Bosnia and Herzegovina, Charles English, from May 2008, in which he expressed concerns about the position of the former Deputy Minister of Defence, Igor Crnadak. In the cable, English wrote: "**Crnadak has proven to be a strong and proactive Serbian voice when it comes to supporting the agenda for joining the NATO and the US security interests in Bosnia.**"[48]

The Foreign Policy Strategy of BiH was prepared by the Ministry of Foreign Affairs and Minister Igor Crnadak from PDP, that was adopted by the BiH Presidency on 13 March 2018 with the consent of the former member of the Presidency, Mladen Ivanić. Such strategy was contrary to the interests of Republika Srpska as expressed in the Resolution on the Protection of the Constitutional Order and the Proclamation of Military Neutrality of Republika Srpska, which the National Assembly of Republika Srpska adopted six months before the event, on 18 October 2017. The National Assembly, as the highest constitutional and legislative body of Republika Srpska, proclaimed its military neutrality, concluding that:

- The Republika Srpska is determined to coordinate any future status with the Republic of Serbia as a signatory of the Dayton Agreement. Accordingly, the National Assembly

[48] 14 May 2008

of the Republika Srpska adopts a decision to proclaim the military neutrality of the Republika Srpska in relation to any existing military alliances until a referendum is held in the Republika Srpska to make the final decision on this matter.

- The National Assembly obliges all representatives from the Republika Srpska acting in the joint institutions of Bosnia and Herzegovina to respect this Resolution, considering that they have been elected in the Republika Srpska, which is an electoral unit according to the Constitution and law. The obligation also applies to representatives from the Republika Srpska acting in international organizations and forums.
- Previously adopted acts of the National Assembly of the Republika Srpska concerning the full membership in military alliances shall cease to be valid.

Those clear and unambiguous positions of the Republika Srpska were violated by the will and voice of Crnadko and Ivanić expressed in the Foreign Policy Strategy, stating that:

"The continuance of the implementation of activities in relation to NATO remains a priority for the institutions of Bosnia and Herzegovina. Priority activities will be primarily directed towards the activation and implementation of the MAP. **The activation of the MAP, for which there is a broad political consensus in Bosnia and Herzegovina**, will enable all defence entities in Bosnia and Herzegovina (within their constitutional and legal competences) to continue with implementing their activities in relation to NATO, as set forth by the Law on Defence of Bosnia and Herzegovina.[49]

Ivanić, as a Serb member of the Presidency of BiH, voted for the obvious lie about a "broad political consensus for the activation of MAP", even though Republika Srpska had clearly opted for military neutrality and the cessation of all activities for the membership in

[49] http://www.predsjednistvobih.ba/vanj/default.aspx?id=79555&langTag=sr-SP-Cyrl

military alliances. Ivanić also voted for the Defence Review and the Plan for the Development and Modernization of the Armed Forces of BiH in the period 2017 - 2027. Enormous funds are being spent on the armed forces of BiH instead of demilitarizing BiH. The neighbouring states of Serbia and Croatia are also the mother countries of two constituent peoples. They will not attack BiH, nor can BiH attack them. If that were to happen by some miracle, the armed forces of BiH would immediately disband.

In his "NATO ANALYSIS", Bosniak General Fikret Muslimović wrote: "Key decisions for the continuation of BiH's integration into NATO membership were made in 2005, with political will from both entities and all national backgrounds. Such decisions were adopted by both houses of the Parliamentary Assembly of BiH. The opinions on the BiH's path towards NATO membership are included in the Law on Defence, as well as in the BiH Foreign Policy Guidelines. When, upon BiH's coordinated application, NATO approved the MAP for BiH at the end of 2018, Serbian leaders were divided on the continuation of the process. Opposition leaders - SDS and PDP - demanded that earlier decisions were respected, while the ruling leaders led by Dodik rejected the former decision and stopped the NATO integration process," wrote Muslimović.[50]

However, the president of the Party of Democratic Action (SDA), Bakir Izetbegović, declared that "BiH will not join NATO if the Serbs and Republika Srpska do not want it." Izebegović said that "in this country, no one will impose anything on anyone anymore. When it comes to the Serbs and Republika Srpska, if they do not want to join NATO, they will not join NATO. We must accept that there is no NATO membership without coming to a new agreement. That is quite enough to get out of this situation, so we will continue to negotiate. I do not know what will happen in 10 years," stated Izetbegović, for the political magazine *Pečat* on the RTRS."[51]

50 http://www.globalcir.com/2019/06/18/59142/

51 The *Nezavisne novine*, 1 November 2019

7.3. NATO: key positions and constitutional competence of Republika Srpska

In recent years, key NATO members have shown no desire to expand the Alliance. Moreover, the support within BiH for the accession is far from assured. The citizens of Republika Srpska overwhelmingly oppose BiH's NATO membership. Also, given the required NATO's target defence spending of 2% of GDP, NATO membership would mean a huge increase in defence spending. BiH simply cannot afford additional military spending at the time of excessive budgetary pressures. Increasing the already unprecedentedly high defence spending (around a quarter of BiH's institutional budget allocated for this purpose), as NATO membership requires, would entail very painful tax increases or heavy spending cuts, that would, undoubtedly, be to the detriment of the entities. In October 2019, Croatia was asked by NATO to produce an additional €140 million in 6 weeks, as a defence commitment.

Given the serious nature and political and legal consequences of joining NATO, referendums on NATO membership were held in many countries that considered a membership. Ratification of the Protocol to the 1949 North Atlantic Treaty is mandatory for BiH in order to join NATO. The referendum would have an important democratic role in informing the members of the Parliamentary Assembly representing Republika Srpska and the member of the Presidency of BiH from Republika Srpska about the position of the citizens of Republika Srpska - whether the North Atlantic Treaty should be ratified and whether it would be detrimental for the vital interests of Republika Srpska.

Moreover, the BiH Constitution has explicitly given the National Assembly of Republika Srpska a key role in the ratification of treaties. According to the BiH Constitution, the BiH Presidency negotiates and ratifies treaties with the consent of the BiH Parliamentary Assembly. However, according to the BiH Constitution, "a member of the Presidency who disagrees with a

decision of the Presidency may declare it to be seriously detrimental to the vital interests of the entity for the territory from which he or it was elected . . . Such a decision shall be immediately referred to the National Assembly of Republika Srpska, if such declaration has been made by a member from that territory." This provision gives the National Assembly of Republika Srpska a clear constitutional role in the ratification of treaties. If the BiH Presidency would attempt to ratify the North Atlantic Treaty – or any treaty – the question of ratification could be brought directly before the National Assembly of Republika Srpska. All parties interested in this matter must take into account the constitutional role of Republika Srpska with respect to the potential accession to any military alliance.

Many media wrote about the agreement reached by the Presidency of Bosnia and Herzegovina. On 19 November 2019, *Al Jazeera Balkans*, reported, under the headline: "**COOPERATION DOES NOT MEAN NATO MEMBERSHIP**,": "NATO spokeswoman Oana Lungescu stated for *Al Jazeera* that cooperation with NATO does not imply any form of potential future membership of Bosnia and Herzegovina in NATO, and that the Alliance fully respects the state sovereignty and independence of Bosnia and Herzegovina. We welcome the agreement reached by the members of the Presidency of Bosnia and Herzegovina on the formation of a government and the continuation of cooperation with NATO. This will pave the path for much desired reforms. "NATO has been supporting reforms and helping with building capacities that have benefited the people of Bosnia and Herzegovina for many years, and we will continue to do so," Lungescu said.[52]

8. PROTECTION OF THE RULE OF LAW AND THE DAYTON PRINCIPLES

In multinational countries, even those that have not experienced civil war, the predominant population bears the greatest responsibility for the stability, interethnic trust, and survival of such states. If this is

[52] Al Jazeera Balkan, 23 November 2019

not the case, then the collapse of those states is a historical necessity, sooner or later, initially this occurs *de facto*, and then formally. It is possible that today's anti-Dayton Bosnia and Herzegovina is on its irreversible path to collapse due to the will and actions of Bosniak structures partly supported by the international community, mostly by their diplomatic representatives serving in Sarajevo.

The institutions of the Republika Srpska, led by its highest legislative body – the National Assembly of the Republika Srpska, have an obligation to, using its autonomy, protective mechanisms and competencies recognized by the Dayton Agreement, insist on the consistent implementation of the Dayton Agreement, in particular, its Annex 4 – the Constitution of BiH, both internally and internationally. Taking into account the constitutional position of the National Assembly of the Republika Srpska and its role in articulating both the domestic policy of the Republika Srpska, and the foreign policy of BiH, it is necessary that it shows all its strength in the key moments and reach full national unity on issues that are of vital interest to the Republika Srpska.

On the international level, the Republika Srpska, in accordance with its responsibilities laid down by the Constitution of Bosnia and Herzegovina, must make every effort to accurately and truthfully report to the international community and the public about the situation in Bosnia and Herzegovina.

Internally, there is an urgent need to reform the judicial institutions at the level of BiH, since their composition, organization and functioning are not in line with the fundamental principles of the rule of law, and they represent an obstacle to the country's further progress towards the European Union. In addition, it is necessary to make thorough assessments of the effects caused by the unconstitutional transformation of BiH, both at the level of Republika Srpska and at the level of BiH, that has become an insatiable machine of inefficient and wasteful institutions whose needs are increasingly difficult to meet without creating serious

damage to the entity budgets, as the main holders of power, who are most responsible for the economic and social status of their citizens. To this end, it is necessary to consider the effectiveness of the concluded interentity agreements that led to the transfer of certain competencies to the level of BiH, and to review the imposed regulations and the consequences of their imposition on the legal system constructed at the level of BiH by force.

Protecting the rule of law and preserving the constitutional position of the Republika Srpska can only be achieved by the persistent work on preserving the Dayton structure, for the benefit of all citizens living in BiH, by strengthening the sovereignty of the state union and its entities, adhering to the principles of the Dayton Agreement, and by insisting on the legal establishment and functioning of joint institutions, along with work productivity and accountability towards the citizens.

8.1. Pointing to the problems and attempts to annul the Dayton structure while emphasizing the firm commitment to preserving the original Dayton structure of the state union

In view of the persistent attempts to dismantle the Dayton BiH, especially by acting of High Representatives, who, instead of fulfilling their mandate as defined by Annex 10 of the Dayton Agreement, reporting to the United Nations Security Council at least twice a year, they label Republika Srpska as a party violating the Dayton Agreement, without quoting any valid evidence. Therefore, Republika Srpska, as a signing party to all Annexes to the Dayton Agreement, started submitting its reports to the Security Council in 2009. By the end of 2024, 32 reports had been submitted. Beriz Belkić, the former Deputy Speaker of the House of Representatives of the Parliamentary Assembly of BiH opposed to the reporting and filed an appeal to the Constitutional Court of BiH against such practise. The Court issued the decision dated 27 March 2010, case no.

U-15/09 rejecting the request as unfounded, which only confirmed the right of the Republika Srpska to submit its reports to the UN. Over the past decade, using numerous arguments and evidence, the Republika Srpska had pointed to the one-sidedness of Valentin Inck's report, full of passionate attacks against the Republika Srpska. The Republika Srpska reports are continuingly warning about the violent distortion of the Dayton structure and the illegitimacy of the Bonn powers appropriated by High Representatives. Finally, each of the reports of the Republika Srpska insisted on the immediate closure of the Office of the High Representative, posing an obstacle to the full exercise of the country's sovereignty and its accession to the European Union. Regular reporting to the international community and officials, along with the dedicated advocacy of the rights and interests of the Republika Srpska by all its institutions, as well as those who represent it at the level of Bosnia and Herzegovina, is necessary so that representatives of the international community, foreign diplomats and the general public receive true and objective information about the position and rights of entities, in accordance with the Dayton Agreement. It is also necessary to regularly share any adopted standpoints of the institutions on the issues Bosnia and Herzegovina is facing, with all stakeholders, in order to clarify the position of the Republika Srpska to the members of the international community.

8.2. Commitment to the principles of the Dayton Agreement

Continuous attempts to forcibly unitize and centralize Bosnia and Herzegovina, to strip the entities of their powers, to subjugate and disempower the peoples - create distrust and disagreements between the peoples and lead to further dissonance. The preservation of the principles woven into Annex 4 of the Dayton Agreement is a prerequisite for its full implementation and the only future of the state community created in Dayton. This also means the respect for the right to self-determination of peoples, as set forth in the provisions of the Dayton Agreement, as an important and fundamental principle

of modern international law, on whose foundations the Dayton constitutional system lies.

The first Article of the General Framework Agreement for Peace in Bosnia and Herzegovina states that: "The Parties shall conduct their relations in accordance with the principles set forth in the United Nations Charter, as well as the Helsinki Final Act and other documents of the Organization for Security and Cooperation in Europe." The "purposes of the United Nations" set forth in the Charter of the United Nations include "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." In addition, Article 55 of the Charter of the United Nations calls for "respect for the principle of equal rights and self-determination of peoples." The Helsinki Final Act and the OSCE Charter of Paris for a New Europe also recognize the right of peoples to self-determination. The Constitution of Bosnia and Herzegovina states: "Bosnia and Herzegovina shall remain or become a party to the international agreements listed in Annex 1 to this Constitution." It also states: "The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

The Constitution of BiH, in its Article III.3(b) regulates that "general principles of international law shall be an integral part of the law of Bosnia and Herzegovina". This is further elaborated in points 7 and 8 of Annex 1 to Annex 4, which is the Constitution of BiH, according to which two documents are directly applicable in BiH: **the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which have identical text**.

„Article 1

1. All peoples have the right to self-determination. By virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

Therefore, the Dayton Structure of Bosnia and Herzegovina complies with the right to self-determination by maintaining a broad degree of entity autonomy and providing the constituent peoples of Bosnia and Herzegovina with essential protection mechanisms. Within the framework of the Dayton Agreement, the right of the Republika Srpska, or the Serbian people, to self-determination means the preservation of the Dayton Structure, or the preservation of broad entity autonomy, responsibilities assigned by the Constitution and mechanisms prescribed for the protection of the constituent peoples.

8.3. Working to protect constitutionally granted powers - reviewing imposed regulations and institutions

Since the signing of the Dayton Agreement, over one hundred different bodies, administrative organizations and other institutions have been established at the level of the State Union of Bosnia and Herzegovina. In addition to the eight (8) common-level institutions laid down by the Dayton Constitution and the four (4) institutions arising from other Annexes to the Dayton Agreement, only eight

(8) more stem from the constitutional division of competences. Overall six (6) institutions were established in accordance with the mechanisms prescribed by the Constitution (by inter-entity agreements, upon prior consent) or with some form of entity consent, while almost ninety (90) remaining institutions that currently exist were imposed, without any constitutional grounds, in various ways.[53]

The predominant number of those institutions emerged as a result of the decisions by the High Representative while a number of institutions owe their foundation to the Parliamentary Assembly at the level of BiH, which, in addition to the regulations adopted in accordance with the aforementioned orders by the High Representative, founded dozens of institutions by adopting laws contrary to the procedure prescribed by the Constitution. In the absence of a constitutional basis and legitimacy, the Parliamentary Assembly, when adopting regulations, refers to the principle of competence that, by free interpretation, it finds in the provision of Article IV, point 4(a) of the Constitution of BiH, and according to which it is competent only to adopt laws necessary for the implementation of decisions of the Presidency of BiH or in order to exercise of the competences of the Assembly granted to it by the Constitution.

The Council of Ministers and other bodies at the level of BiH have established, through by-laws and regulations, an array of additional administrative bodies and organizations at the level of BiH, whereas a certain number of institutions emerged as a result

[53] Apart from the institutions listed in the text of the Dayton Agreement, i.e. its Annexes 4, 6 and 8, and the bodies whose competences are based on Article III, point 1, which lists the competences of institutions at the level of BiH, and a few of those established in accordance with Article III, point 5. (a) of Annex IV of the Dayton Agreement, which presupposes the consent of the entity to assume any competence not granted to the level of BiH by the Constitution, all the remaining ones are the result of imposed regulations and procedures contrary to the constitution.

of projects and recommendations of various international bodies and organizations that have often conditioned their assistance and support for the development of BiH asking in return, the adoption of regulations enabling the establishment of new institutions at the centralized level.

The unconstitutional process of establishing institutions at the level of BiH went hand in hand with the improper transfer of competencies that, according to the Constitution, belong to the entities. Specifically, Article III, point 3(a) of the Constitution of BiH clearly established the division of competencies between the institutions of Bosnia and Herzegovina and the entities – using the positive enumeration method and the principle of the general clause, i.e. by the assumption of competencies in favour of the entities, in such a way that all state functions and powers not explicitly conferred to the institutions of Bosnia and Herzegovina by the Constitution belong to the entities. Unfortunately, even those institutions that were founded in accordance with the Dayton Agreement provisions or created with some form of entity consent, were often further expanded by subsequent interventions and pressures exercised by the High Representative, and their jurisdiction was further expanded in an unconstitutional manner.

The institutions of the Republika Srpska are obliged to find an appropriate modality to assess the work of all imposed institutions and review the effects of the transfer of competences from the Republika Srpska to the level of BiH. In this regard, it is necessary to review the regulations imposed by the High Representatives, and to seek the ways to restore the competences as set forth in the original text of Annex 4 of the Dayton Agreement.

8.4. Withdrawal from forced and dysfunctional political agreements (agreements) that harm the entities

In the years following the Dayton Agreement, the two entities - often under enormous pressure from the Office of the High Representative - reached several political agreements in which they agreed that BiH would exercise additional competencies. These agreements can and must be subject to review, especially in light of the dysfunctionality of the joint level of government in BiH.

Republika Srpska may be forced to consider the necessity of reclaiming some of the competencies that belong to it under the BiH Constitution and that have, over time, been illegally usurped for the purpose of being exercised by institutions not recognized by the BiH Constitution.

8.5. Entity Agreements did not amend the Constitution of BiH

Mutual rights and obligations of the entities have been regulated by the Dayton Agreement, including the Constitution of BiH. Agreements concluded by the two entities in accordance with the Constitution of BiH do not *per se* constitute amendments to the Constitution of BiH, nor can they amend them. The Constitutional Court of BiH, in its decision no. U 17/05 of 24 May 2006, correctly concluded that inter-entity agreements are not part of the Constitution of BiH, and that the Court does not have jurisdiction to determine whether the contested act is contrary to the Constitution of BiH.[54] The court explained:

"The claimant understands that the basis for the inconsistency of the contested provisions of the subject law with Article 3.5.b. of the Constitution of Bosnia and Herzegovina is supported by the fact that the contested provisions deviate from the Agreement by

[54] Decision on admissibility and merits, U 17/05, Constitutional Court of BIH, 24 May 2006, paragraph 16

which the entities transferred competences regarding the above-mentioned matters, to the State of Bosnia and Herzegovina. Therefore, the claimant indirectly requests the Constitutional Court to examine the contested provisions of the subject law in relation to the Agreement. Having this in mind, the Constitutional Court notes that it is competent to assess the constitutionality and legality of the contested legal provisions exclusively in relation to the provisions of the Constitution of Bosnia and Herzegovina and the European Convention, and not in relation to the provisions of the Agreement which **is not** a part of the Constitution of Bosnia and Herzegovina."[55]

Thus, the Constitutional Court of BiH confirmed that the entity agreements are not constitutional acts within its jurisdiction, and that the Court, therefore, cannot assess the contested act in relation to those provisions.

Article III.5(a) of the Constitution of BiH, as the basis for inter-entity agreements on the transfer of competences, reads: "Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities". One logical way to read this provision is that BiH assumes responsibilities for other matters as long as those matters are the subject of an "agreement" between the entities. If BiH's responsibility for other matters is no longer subject to an "agreement", BiH no longer has the right to have responsibility over those matters. Nothing in Article III.5(a) indicates that the consent of one entity government to the responsibility of BiH over a particular matter is permanent and binding on behalf of future governments.

Nothing in the agreements indicates the intention to give BiH new responsibilities on permanent grounds. Even if the entity governments had intended to give BiH permanent responsibilities that would be binding for the future governments, they could not do so; they are not allowed to give permanent responsibilities. Since those agreements are only of a political nature - and do not represent

[55] BiH Constitutional Court Decision U 17/05

constitutional amendments - each entity has the right to withdraw from them.

In view of the above, in the period to come it is necessary to proceed with a thorough analysis of all the so-called inter-entity agreements that prescribed the transfer of entity responsibilities to institutions formed at the level of BiH, as well as to assess the effects of the transfers of competencies done accordingly, in order to determine their efficiency and functionality.

8.6. Insisting on the efficiency and legal establishment and functioning of responsible joint institutions

All BiH officials and institutions must respect the rule of law. This particularly applies to the judiciary, whose legitimacy and authority depend on it. BiH must ensure to have a lawful, legitimate, efficient and accountable government. This, above all, means respecting the electoral will of citizens by forming institutions composed of legitimate representatives of each of the constituent peoples and state-forming entities.

Also, BiH institutions must be carefully scrutinized, in order to determine the efficiency and justification of their work, and excess and unnecessary burdens must be eliminated. This may include budget cuts or cancellations, cutting the number of employees, agencies and institutions. Irresponsible practise of institutions and officials, including activities that are illicit or exceed the limits of their authority, must be disclosed and corrected.

The actions of the Republika Srpska in the coming period must be committed to returning to the Dayton structure of Bosnia and Herzegovina, which has been violated for years. The end of illusions and misconceptions that the Bosniak side will ever give up its plans for centralization and unitarization, contrary to the international Dayton Agreement, will determine further activities that the National Assembly of the Republika Srpska should outline in its conclusions.

ANNEX: FACTS and QUOTES

The **GENEVA AND NEW YORK PRINCIPLES** were negotiated by the Republika Srpska and the Republic of Bosnia and Herzegovina, and they were used as the basis for the Dayton Agreement. [56]

FEDERATION OF BIH (initially the Muslim-Croat Federation in BiH) and regulating relations between Bosniaks and Croats, took the first 10 days out of a total of 21 days of the Dayton negotiations.[57]

IVO KOMŠIĆ: "Alija Izetbegović accepted the statehood of Republika Srpska before the Dayton negotiations, ordering Muhamed Šaćirbej, Minister of Foreign Affairs of the "Republic of Bosnia and Herzegovina", to conclude the Geneva Principles through the talks with Richard Holbrooke, with the participation of representatives of Republika Srpska, Belgrade and Zagreb"[58]

MIRO LAZOVIĆ - The Dayton negotiations began with the raising the issue of the name "Republika Srpska" by that person, but the Americans stopped him by asserting that this matter had been settled before Dayton, by Alija Izetbegović (according to Hajrudin Somun's statement) who accepted the name Republika Srpska in Istanbul, during his talks with R. Holbrooke, because Slobodan Milošević insisted on it as a precondition to start of peace negotiations. You can only create the Constitution of Bosnia and Herzegovina by transferring powers from the entity to the state, was the answer to Miro Lazović[59].

REPUBLIC OF SERBIA AS A PARTY TO THE DAYTON NEGOTIATIONS – Agreement between the Federal Republic of Yugoslavia and the Republika Srpska dated 29 August 1995, by

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[56] Preamble of General Framework Agreement for Peace in Bosnia and Herzegovina

[57] Derek Chollet: "The Secret History of Dayton"

[58] Interview with Ivo Komšić, the *Dnevni avaz*, 21 January 2011

[59] Same.

which the delegation of the FRY was authorized by the Republika Srpska to sign on behalf of the Republika Srpska the parts of the peace plan referring to the Republika Srpska[60]

MIROSLAV LAJČÁK: "Bosniaks regard the RS as illegitimate and potentially secessionist. Serbs and Croats, for their part, fear Bosniak domination in any unitary state. Everybody wants to have a state of their own. The system of government in Bosnia and Herzegovina will never cease to be complicated, because that is not possible in a multinational state like Bosnia and Herzegovina."[61]

VENICE COMMISSION: The Dayton Agreement is only a general framework, while the essential implementing part are its 12 Annexes signed by the Federation of Bosnia and Herzegovina and the Republika Srpska. The Annexes are considered an international treaty, and their character and interpretation are governed by international law, in particular the Vienna Convention on the Law of Treaties, from which it follows that the entities also indirectly have the status of states, because the Vienna Convention applies only to states.[62]

WOLFGANG PETRITSCH – when asked: "How do you see the future of Bosnia and Herzegovina?", replied: "Bosnia will always remain a weak state, but it is necessary for it to be decentralized and for that decentralization to be effective. This means a small but efficient state government. It is obvious that the Federation of Bosnia and Herzegovina has too many levels of government and is therefore stalling. The political system is too expensive, with its spiral structure and must necessarily be rationalized."[63]

WOLFGANG PETRITSCH – "The Dayton Peace Agreement

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[60] Preamble of General Framework Agreement for Peace in Bosnia and Herzegovina

[61] Miroslav Lajčák, meeting with OSCE, 2007.

[62] Legal opinion of the Venice Committee of 10/11 June 2005

[63] Interview with W. Petritch, 25 January 2011

has never envisaged and does not envisage a protectorate and is very precise in its description of the role of the High Representative of the international community, whose duty is to "assist the efforts made by the parties", to "monitor" and "coordinate".[64]

The Steiner-Ademović COMMENTARY ON THE CONSTITUTION OF BIH, published by the Konrad Adenauer Stiftung Foundation, Sarajevo, 2010, 983 pages, is the most comprehensive to date, with competent authors:

Dr Christian Steiner (judge of the Constitutional Court of Bosnia and Herzegovina); Dr Nedim Ademović (Chief of Staff of the President of the Constitutional Court of Bosnia and Herzegovina); Prof. Dr. Constance Grewe (judge of the Constitutional Court of Bosnia and Herzegovina); Prof. Dr. Joseph Marko (judge of the Constitutional Court of Bosnia and Herzegovina); Prof. Jeremy McBride, Birmingham Law School; Mr Mechtild Lauth (OHR); Mr. Philippe Leroux-Martin (OHR); Dr. Ric Bainter (OHR); Edouard d'Aoust (OHR); Prof. Dr. Urlich Karpen (University of Hamburg); Peter Nicholl (Governor of the Central Bank of Bosnia and Herzegovina); Mark Campbell (OHR), with forewords by Gianni Buquicchio, President of the Venice Commission of the Council of Europe and Dr. Stefanie Ricarda Roos, Director of the Rule of Law Programme South-East Europe.

MATTHEW PARISH: "Ashdown's approach was simple: place both the monopoly on force and control of taxation in the hands of central government, and the Entities would wither away."[65]

HIGH REPRESENTATIVES – based on fictitious and illegitimate "Bonn powers", made over 800 decisions to impose laws and other regulations and to remove legally elected officials.

INTERNATIONAL CRISIS GROUP states: "High

[64] Danijela Majstorović: *Moćni očevi i grešna djeca* (Powerful fathers and sinful children), 2007

[65] The Demise of the Dayton Protectorate

Representative Paddy Ashdown imposed laws creating vast new powers for the state, sometimes at entity expense. During his tenure, Bosnian leaders established many more state bodies and expanded state jurisdiction. Serb leaders challenged some of these new bodies and powers as unconstitutional departures from Dayton, but the Constitutional Court upheld them."[66]

DRAŽEN PEHAR, former employee of the OHR and the US Embassy in Sarajevo, contesting that the High Representative is the interpreter of the entire Dayton Agreement and even the Constitution of Bosnia and Herzegovina: "War mongering also has its more sophisticated forms. For example, when a high-ranking SDA official says that the High Representative is the final interpreter of the Dayton Agreement because 'it is written so', thereby, that official proves that he has not even read that agreement, because that agreement states nothing like that. Secondly, the official in question proves that he is prone to distorting or falsifying the truth. And thirdly, he proves that he has not read the document that should represent a definition of constitutional and legal and political relations that is binding for all. Therefore, he proves that he has no serious or credible attitude towards a peace framework, whatsoever. And that is a form of warmongering because it is a statement that shows unwillingness to stick to one's words, that is, it shows an intention to disrespect a signed written document, and even worse – the intention to distort and fictitiously add a text that has not been signed."[67]

GERALD KNAUS, president and founding chairman of the European Stability Initiative: "International institutions in BiH have an interest in portraying the crisis in BiH in order to justify their existence."

OHR eternally concerned about BiH, and especially about its position, in one of its numerous communiqués: The PIC Steering Board expressed its concern about recent political developments

[66] ICG Report from 2014, p. 27

[67] Dražen Pehar: The War in so-called BiH has never ended

in BiH, not least the adoption of the Conclusions on 14 May by the Republika Srpska. National Assembly. Statements and actions challenging the sovereignty and constitutional order of BiH, as well as attempts to roll back previously agreed reforms and to weaken existing state level institutions display open disrespect for the fundamental principles of the GFAP, are unacceptable and have to stop. These actions also run counter to the GFAP and the long-established efforts of the PIC Steering Board to support state building. Actions such as these will be taken into account when assessing the second condition set by the PIC Steering Board for OHR-EUSR transition, which is a positive assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement."[68]

PADDY ASHDOWN – The book "A Fortunate Life"

The task of the international High Representative in Bosnia and Herzegovina is to look after the implementation of the civilian aspects of the Dayton Peace Agreement – in other words to build on the peace that Dayton created. In effect, this meant that my job could be as broad as I wished to make it, ranging from education, to human rights, to the conduct of government, to the operation of the economy, to the restructuring of the transport system, to the reconstruction of houses, to the reform of the media, etc., etc. In this job, I could interfere in anything and get swallowed up in everything if I wanted to.

Replacement of politicians

And to help me interfere in everything if I wanted to, I had a staff in the Office of the High Representative (OHR) of approximately 800 and a budget of some €36 million. And to make interfering in other people's business even more fun, I had an array of formidable powers called 'the Bonn Powers', under which I could impose

[68] Communique of Steering Board (non-existent) of the Peace Implementation Council in BiH, 30 June 2009

laws, subject only to their eventual endorsement by the domestic parliaments, and remove officials and politicians who were blocking or undermining the implementation of the Dayton agreement.

Gradual dismantling of the Dayton structure

And that was our task in 2002: to start to build the institutions of effective government. And this meant beginning slowly to dismantle the structures of Dayton, to which most still clung for security, in order to build a state which many had fought and died to prevent coming into existence. The fact that we managed to make some progress down this road depended, not on the wisdom of the international community, but on the political courage and ability to compromise of many Bosnian leaders, whom we often insisted should take the kind of risks with their popularity which very few of our Western democratic leaders would ever have countenanced. The heroes of Bosnia's slow and painful rebirth are not the High Representatives or the international community, but the Bosnians themselves, and especially the longsuffering ordinary people of this remarkable little country, who, in the main, just want to try to live again as neighbors.

We united the Bosnian army

We took Bosnia's three armies, which had just fought a vicious war of annihilation against each other, and combined them into one army under the control of the state and on its way to joining NATO. We dismantled the entire complex, fractured and broken taxation system of the country and replaced it with a single VAT system, all in less time than any other country has ever brought in VAT. We got rid of the country's three secret services and created a single unified intelligence service, under the control of Parliament. We got rid of corrupt judges, created a state-wide judiciary and put together a body of modern law, consistent with Bosnian tradition and European standards."[69]

[69] Taken from autobiography: "A Fortunate Life"

JOSEPH MARKO, Austrian professor and judge of the Constitutional Court of Bosnia and Herzegovina on the confirmation of the High Representative's decisions: "There was a tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation."[70]

ROBERT GELBARD, former US special envoy to Bosnia and Herzegovina, once stated: "The US hadn't had a meaningful policy in the region for years, each ambassador pursued what was in his own interest, far from the headquarters and its interests and instructions."

Dr. MIRJANA KASAPOVIĆ – "Sarajevo turned into the world capital of the peace-building and democracy-promoting industry, where tens of thousands of foreigners lived and left billions of dollars there. Gromes stated that, for example, in 1999, approximately 15,000 foreign civilians lived in Sarajevo, paying minimum 60 million German marks a month for accommodation and food. By the end of 1995, the European Community had invested more than USD 200 million in the reconstruction and reunification of Mostar. Some Western European states, Turkey, Islamic countries, and Serbia and Croatia also invested significant amounts of money. So where is all that money if now, twenty years after the war, the people are hungry?"[71]

ON THE ISLAMIC STATE IN BIH

MUSTAFA ČENGIĆ, about Alija Izetbegović - "While in Bosnia and Herzegovina he most often spoke of a unified state as the only perspective, in Arab and other Muslim countries Alija Izetbegović emphasized that the best solution for Muslims in Bosnia and Herzegovina was to create their own state. In his speeches delivered at conferences of Islamic countries, he would emphasize

[70] Joseph Marko, Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina, European Diversity and Autonomy Papers (July 2004), pages: 17 and 18

[71] The *Večernji list*, 15 February 2014

the religious character of the war in Bosnia and Herzegovina as crucial, trying to convince the Islamic world that a crusade was being waged in Bosnia and Herzegovina against Islam, with a support of Western countries. In Riyadh, on 10 April 1993, he received the "King Fahd Award for service to Islam" and declared that Bosnian Muslims were being exterminated and killed "just because they are Muslims". In Kuala Lumpur, on 24 January 1994, addressing the press, he called upon the Islamic world to "unite against the American and Zionist forces that, together with the United Nations, want to wipe out Muslims and eradicate the Islamic faith". "This is the West's war against Islam", Izetbegović was conclusive. Such repeated statements unbecoming of a statesperson, targeting the countries on which the survival of Bosnia and Herzegovina depended had tragic consequences for the territorial integrity of Bosnia and Herzegovina."[72]

RASIM DELIĆ, wartime Chief of Staff of the Army of Bosnia and Herzegovina and convicted war criminal, and General **SAKIB MAHMULJIN**, who is on trial before the Court of Bosnia and Herzegovina, spoke at an event of farewelling the Mujahideen - Islamic warriors in Zenica, December 1995:

"According to the audio recording of this event, the addresses of General Rasim Delić, Sakib Mahmuljin and Emir Ebu Maali were particularly significant. **RASIM DELIĆ** first "conveyed the greetings of our President Alija Izetbegović, who due to political duties could not be present in person", but obliged Delić to greet the Mujahideens on his behalf. "My presence here speaks volumes that, when it comes to President Izetbegović and the command of the Army of Bosnia and Herzegovina, we have not forgotten, nor will we forget, everything you have done for the people of Bosnia and Herzegovina", explicated Delić. "I have never hidden that this unit existed, that it is a unit of the Army of Bosnia and Herzegovina, that it

[72] "Alija Izetbegović – Horseman of the Apocalypse or Angel of Peace", Sarajevo, 2015, p.190.

is a part of the system of command and control of the Army of Bosnia and Herzegovina. You have come here in Bosnia and Herzegovina, as everywhere else in the world, to defend the Muslim people and their faith, Islam. You have provided your support not only in the fight but also in returning to their faith and their traditions, their culture and their customs. This is only the first round, and we do not know when the second or the next one will come along. Therefore, your assistance from the Islamic world for this people who are on the border between Islam and Christianity is still needed and will be necessary until Islam wins in this world. Therefore, on my own behalf and on behalf of the Muslims of Bosnia and Herzegovina, I thank you only for the time being, because many more tasks await us on the path of Allah."

SAKIB MAHMULJIN, wartime commander of the Army of Bosnia and convicted war criminal who fled to Turkey: "You have come to fight in the way of Allah to help the Muslims of Bosnia. Your arrival is completely justified. You are going home to continue fighting on the path of Allah. As one of the best units of the Army of Bosnia and Herzegovina and the Third Corps, you have accomplished, with the help of Allah, all the tasks assigned to you, as well as the tasks of strengthening the faith in these areas. The roots of Islam are now strengthened in Bosnia and will continue to be strengthened with the help of Allah," said General Mahmuljin.[73]

SERVER DANIEL – "Serbia has an important role in creating security in Bosnia and Kosovo, where a vast Serbian population lives, about whom Belgrade rightfully cares. Milorad Dodik is striving towards an independent Republika Srpska, but that will not happen, and everyone must be aware of that. The independence of Republika Srpska would mean a completely Islamized Bosnia and Herzegovina, whom neither Serbia nor Croatia would want as a neighbour."

[73] Esad Hećimović, "Garibi: Mujahideens in BiH 1992.-1999., the *Danas*, 7 June 2009

STIPE MESIĆ

Mesić stated that he is against establishing a third, Croatian entity in Bosnia and Herzegovina, but that he is in favour of the constitutional abolition of the current two, both Republika Srpska and the Federation of Bosnia and Herzegovina. In his opinion, the disintegration of Bosnia and Herzegovina would cause instability in the region, and thus, according to the new constitution, Bosnia and Herzegovina should be a state of citizens that would protect the its constituent peoples through a second house of parliament. "Bosnia and Herzegovina must start behaving as a state because currently, some would wish to break it up," said Mesić, adding that the disintegration of Bosnia and Herzegovina and its division would lead to the creation of an "Islamic state in a hostile environment." And such a small state could only be maintained with the help of fundamentalist Islamist regimes. That is a situation that no one wants."[74]

Mesić: Bosnia and Herzegovina as Palestine in Europe – Former Croatian President Stjepan Mesić warned that the possible breakup of Bosnia and Herzegovina would create an Islamic state in the heart of Europe. Mesić alerted that such a state could only survive with the help of a fundamentalist regime, as in his opinion, in the event of the independence of Republika Srpska, Croats would also leave the present Bosnia and Herzegovina, and that in the remaining territory with a Bosniak population "new centres of terrorism would emerge in the next 50 to 70 years. That would mean creating a new Palestine in the heart of Europe."[75]

SENADIN LAVIC, the president of the BKZ "Preporod", commented on the decision about the "attempted revision" saying: "based on the Genocide Convention, the entity of 'rs' cannot be considered a legal and civilized form of existence because its criminal

[74] Slovenian portal Siol.net, broadcast by BH press agency, Patria
[75] Statement given to Austrian press agency APA, on 9 December 2015

background could never be hidden by anything... The legal logic will very soon lead to the question of the emergence of such a genocidal creation on the soil of the Republic of Bosnia and Herzegovina."[76] Please also note that Lavić deliberately writes "Republika Srpska" as "rs" (this is a constant practice in this interview given to the *Stav*), as something diminished, insignificant, pathetic.

SAKIB SOFTIĆ, former Bosnian agent at the Hague Tribunal - "Republika Srpska is the perpetrator of genocide and the consequence of genocide. Therefore, in accordance with international law and the constitutional order of Bosnia and Herzegovina, it is necessary to take all required measures to eliminate the consequences of genocide." Therefore, also to eliminate "Republika Srpska".[77]

GI METAN, Swiss journalist on a visit to Sarajevo in 1993 - "It never occurred to anyone that we were recruited into the propaganda service of the Bosnian President Izetbegović, a fierce instigator of Islamism in Bosnia ever since his Islamic Declaration. The famous Sarajevo daily newspaper, the *Oslobođenje*, that used to be the true embodiment of independence and multi-ethnicity, turned into a caricature and served only to promote Bosnian interests and propaganda that had not yet been called Islamist at that time."[78]

VICTIM STATUS AS A WEAPON

BOSNIAK STRATEGY: AGGRESSION, GENOCIDE, ETHNIC CLEANSING. At the beginning of the war, the Muslim side expressed its intention to portray the conflicts and war in Bosnia and Herzegovina as an aggression by Serbia through the Yugoslav National Army (the JNA), and later added the aggression of Croatia. At a session of the truncated Presidency of Bosnia and Herzegovina in early May 1992, three elements were listed, on which the Muslim side would build its story – aggression, ethnic cleansing and

[76] The *Stav*, 2 March 2017, p. 29
[77] The *Stav*, 16 March 2017
[78] Russia and the West, Novi Sad, 2017. p.10.

genocide. They chose to construct the status of the victim, which they later achieved – Markale, Tuzla Gate, Srebrenica. A number of texts by domestic and foreign authors demonstrated their awareness of the Muslim leadership policy.

VICTIM STATUS proved to be a powerful and lasting weapon. Sarajevo professor of psychiatry and political psychology **Dušan Kecmanović** wrote about this status. In the text **"The Splendour and Misery of the Victim**", Prof. Kecmanović deliberates on what the appeal of the victim was, claiming that:

"If you are a victim, you are the only or first person to be helped... Those in power, at least publicly, find it easier to justify any kind of support they provide to the weak, the vulnerable, the victims, than to help those who are believed to have been the cause of having the victims... Being a victim also means having a moral and material right to a revenge. Everyone will be more surprised if the victim forgave than forgot. It seems that everyone expects the victim to settle accounts sooner or later, return the favour, punish those who made a them a victim. If you are not a victim or have not been a victim, you have no right to start a new round of bloodshed. If you are or have been a victim, people will know why you took up arms and they will not be surprised by your belligerence. That is why it is better to be a victim than a winner. Whichever ethnic or national group wants to fight again tomorrow, in a few years or centuries – they should not give up the status of a victim, moreover, they should carefully nurture that status and repetitively remind itself and others of it. In addition, the victim always has a stronger motive for causing as much harm as possible, for destroying the other party or parties. In every conflict, the victim always has some kind of moral and psychological advantage over those who did not want to, or did not know how to create an image of themselves as victims…Victims are never able to, and must not free themselves from the past… Victims are the prisoners of the past, and everything they do is done for the sake of the future… In addition, the victim is always looked down

upon. They are forgiven, or more readily forgiven, for violating the agreement, not acknowledging the obvious, for stealing from or deceiving those who lend them a helping hand, for being stubborn with those they blame for their status of a victim and who never stop repeating to them that they themselves were, and still are, victims. It is up to the victim to benefit as long and as much as possible from being a victim, to justify everything they do for their own benefit and to the detriment of the other party, by being a victim, deeply surprised and even hurt if someone doubts their right to do even what is obviously wrong. As long as the victim is a victim, the other party is the perpetrator, worthy of every condemnation, the most suitable target of hatred, of any possible negative emotions. "The one who made me a victim will always be to blame for something being wrong with me, for being unsuccessful, incompetent, not very wise, for being politically short-sighted."[79]

CHRISTOPH FLUGE, a judge at the Hague Tribunal, whom Bosniaks call a "Srebrenica genocide denier" in a statement to *Der Spiegel* in 2009 saying that in his opinion, strictly speaking, the term genocide only denoted the Holocaust. "Is it any less unjust if a group of people is killed because they happened to be in a certain place, and not for national, religious or ethnic reasons. That's why I think we should find a new term for these crimes, perhaps a mass murder."[80]

ŽARKO IVKOVIĆ: "Bosnia and Herzegovina is a state of Muslims, Serbs and Croats are minorities"[81]

Bosnia and Herzegovina within the socialist Yugoslavia was a symbol of "Yugoslavia in miniature". Due to its geographical position as a "central republic", it symbolised the territorial homogeneity of the federal state, and the multinational composition of "equal peoples" in Bosnia and Herzegovina was an ideological argument of

[79] *Etnička vremena* (Ethnicity times), Belgrade 2001
[80] Statement for *the Spiegel*, 2009
[81] The Večernji list, Zagreb, 14 August 2017

the communist party about the resolved national question. However, already with the declaration of independence by Slovenia and Croatia in 1990, the process of disintegration of Yugoslavia began, and Bosnia and Herzegovina became the victim of its identification with the disintegrating state. **Alija Izetbegović** played a key role in these historical events, both as the president of the SDA and the undisputed leader of the Muslims (the official term for Bosniaks until 1994), and also as the president of the Presidency of the Republic of Bosnia and Herzegovina. Izetbegović was powerless to resist the Yugoslav Army and Serbian units that were occupying Bosnia and Herzegovina, however, he was equally not ready for a political compromise on the constitutional order of that country, because he refused to recognize the sovereignty of the constituent peoples.

Helpless Victim

Unprepared, disorganized and helpless from the military point of view, he turned his weakest side into his strongest weapon in the media: by portraying the helpless Muslim people as victims of genocide. The "helpless victim" strategy had several goals: to force international centres of political power to condemn the aggressor for carrying out genocide against Muslims in Bosnia and Herzegovina, to demand lifting of the arms embargo and to call for international military intervention to protect the victim, to provide material and political support from Islamic countries in order to save Islam, which was being suppressed in the heart of Europe, and, ultimately, to reject all international peace plans for introducing a (con)federal system in Bosnia and Herzegovina, because that would mean moral and legal recognition to the genocide perpetrators of not having the equal status as victims.

The thesis of genocide against the Muslim people have dominated political, military and scientific narratives even before Muslims were involved in the war. The Presidency of Bosnia and Herzegovina demanded international condemnation of the genocide immediately after the international recognition of the

state, and on June 20, 1992, it made a decision to declare a state of war because the aggression of Serbia, Montenegro, the Yugoslav Army and SDS terrorists was "accompanied by brutal genocide against the people of Bosnia and Herzegovina". At the congress of Muslim intellectuals held in Sarajevo in December 1992, Uzeir Bavčić stated that over the past two centuries, Muslims had been exposed to "genocidal campaigns" ten times, and in 1992, "three hundred thousand Muslim victims... represent the terrible price of introducing ethnic cantons in the state of Bosnian-Herzegovinian under the auspices of the EC."

The strategy of positioning Muslims as victims of a century-long genocide was aimed to evoke the conclusion that all Muslim demands are historically justified and democratic. Therefore, Muslim leaders believed that the international community was obliged to accept the demands of the genocide victims as the only legitimate and democratic ones, and reject the demands of the constituent peoples for the territorial organization of Bosnia and Herzegovina according to national criteria, as illegitimate and undemocratic. Izetbegović's tactical approach was to advocate a "civil state" while his strategic objective was to create a unitary state that would become the homeland of the Muslim people. He did not agree to a federal structure for Bosnia and Herzegovina because it would imply a moral balance between the Muslim and Serbian sides, which he accused of genocide. In all negotiations, he demanded that the international community's peace plans be based on moral and legal satisfaction for the genocide committed against Muslims. This meant that the national rights of Serbs and Croats would be reduced to a minimum (Serbs because they committed genocide, and Croats because they advocate an "ethnic" division of Bosnia and Herzegovina that implied the policy of genocide). Serbs and Croats would, at best, exercise the rights of national minorities, while Muslims would be given the moral right to dominate and politically control the state.

Military victory as the only solution

Izetbegović also made the signing of peace agreements conditional on the attitude the international community would take towards the committed crimes. He also made the signing of the Vance-Owen peace plan conditional on the international community's engagement in protecting Srebrenica in March 1993, and the top brass of the Army of Bosnia and Herzegovina rejected the agreement because it would allow the perpetrators of the genocide to "keep the role of organizers of a part of the government in the republic, especially in individual provinces", which was unacceptable, because the only solution was the military victory over the aggressor.

The orientation towards the military, rather than a political solution for the conflicting national interests of the three peoples in Bosnia and Herzegovina has been a continuous internationally recognized Muslim policy. Izetbegović was convinced that the very existence of Serbian and Croatian national interests and their affirmation would result in a "genocidal policy" towards Muslims. Therefore, the goal of his policy was to "stop the series of genocides" to which the Muslim people had been subjected for centuries. He repeated his promise in a speech at the summit of the Organization of the Islamic Conference in Casablanca on 13 December 1994: "We will, with God's help, finally stop the series of genocides against the Muslim people that began three centuries ago."

Izetbegović believed that the key determinant of the identity of the Muslim people was Islam, that is, that Muslims were not a nation, but primarily a religious community. Such an understanding of the identity of the Muslim people was crucial for understanding their policy of constitutional order in Bosnia and Herzegovina, but also for running the international affairs. Unitary Muslim policy rejected all proposals for constitutional solutions that would recognize equality in power, or sovereignty, for the

constituent peoples. They perceived any constitutional formulation on the sovereignty of the three constituent peoples as "genocidal" because it limited their right to a unitary state and challenged their entitlement to the "Ottoman heritage". Namely, it may easily be proven that, from the very beginning of the war in Bosnia and Herzegovina, the 'genocide thesis' was advocated by the Bosniak-Muslim elite mainly as the means of political struggle. How can this be proven? Knowing that it was impossible that already in April 1992, full evidence of the committed 'genocide' against 'Bosniaks' had already been collected, and that was also the time when Alija Izebegović began developing the idea of the need to prepare an international indictment against 'Serbia', or '(trunk of) Yugoslavia' "for the crime of genocide"[82]

THE TRUTH ABOUT "SFOR TANKS"

Recurrent and malicious lies are often used to describe the election of the Government of Republika Srpska, headed by Milorad Dodik, on 18 January 1998. The relentless repetition that Dodik came to power on SFOR tanks and helicopters is denied by the truth about the night between 17 and 18 January 1998. Franjo Majdandžić, who has an MP in the National Assembly of Republika Srpska, at the time gave an interview to journalist Darko Momić. The text reads:

"Milorad Dodik, the current President of Republika Srpska, first came to power two decades ago, on 18 January 1998, when he was given the mandate form the Government of Republika Srpska. It was completely forgotten that Franjo Majdandžić, who cast the decisive 42nd vote for the election of Milorad Dodik as the first non-SDS Prime Minister of Republika Srpska, was then the MP of the Party for Bosnia and Herzegovina. This 84-year-old holder of the Ph. D. in Electrical Engineering lives in Zagreb, where he enjoys his "retirement" and has hardly made any public appearances. Even

[82] Transcripts from sessions of the Presidency of BiH, 21 June 1991 – 6 May 1992; gazette *National Security and the Future* 7:3, Zagreb: Izetbegović's statement on the matter, p. 170).

today, there is a story going around that he was brought to the famous session of the National Assembly by SFOR members in a helicopter, on the stormy night between 17 and 18 January 1998. Majdandžić recalled that stormy night between 17 and 18 January 1998 and the famous session of the National Assembly at which Milorad Dodik was elected Prime Minister of Republika Srpska, and said:

– That session began as a regular and normal one, and the agenda included a request to dismiss the Speaker of the National Assembly, Dragan Kalinić. The truth is that Milorad Dodik, with his constructive statements and arguments, played a key role in securing 42 votes for Kalinić's dismissal. As far as I remember, the dismissal was voted at around 11 pm, after which the session was adjourned. The SDS and Radical MPs who were against the dismissal then left, and I asked if I could go too, because I had had a minor operation before the event and I was feeling uncomfortable to continue to sit in the parliamentary benches. I was allowed to leave. I was driven by UNHCR and we headed towards the Croatian border. We stopped at a restaurant near Orašje to rest and have a drink, and there I saw on television that MPs were being called to return to Bijeljina, because the session was supposed to continue. I asked UNHCR to drive me back to Bijeljina immediately, which they did, and I think I was back in Bijeljina around midnight. I found the opposition MPs there and as soon as I arrived, the session started.

- For two decades, it has been said that SFOR brought you to that session by helicopter?!

– That is not true, there was no helicopter. I was brought to the session from Zagreb in their car by UNHCR members, because I wore a splint on my arm after surgery and couldn't drive. There was no SFOR, no helicopter, that's not true.[83]

[83] The *Srpskakafe*, 7 February 2018

UNCONSTITUTIONAL CHANGE OF THE DAYTON STRUCTURE
OF BOSNIA AND HERZEGOVINA

IMPACT ON THE POSITION AND RIGHTS OF REPUBLIKA SRPSKA

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