



**REPUBLIC OF SRPSKA
GOVERNMENT**

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**His Excellency Mr. Sérgio França Danese
President of the UN Security Council
Permanent Mission of Brazil to the United Nations
747 3rd Avenue, 9th floor,
New York City, NY 10017**

Dear Ambassador:

To assist the Security Council in its upcoming meeting on Bosnia and Herzegovina (BiH), Republika Srpska (RS), as one of the two autonomous Entities that make up BiH and as a treaty party to the agreements comprising the Dayton Accords, presents the attached 30th Report to the UN Security Council. The Report emphasizes the RS's commitment to the Dayton Accords and its belief that BiH can succeed if the Accords are faithfully implemented.

Part I of the Report emphasizes the need for all relevant actors to respect and adhere to the Dayton Accords, including BiH's decentralized constitutional order, which is indispensable for BiH's stability and success. Part II focuses on BiH's progress toward EU membership as well as barriers to such progress. Part III of the Report examines the destabilizing role in BiH played by German politician Christian Schmidt, who lawlessly claims autocratic powers over the people of BiH.

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

Yours sincerely,

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

Republika Srpska's 30th Report to the UN Security Council

October 2023

Republika Srpska's 30th Report to the UN Security Council

Table of Contents

I.	The Dayton Accords must be faithfully implemented.	4
A.	To take away Dayton's power-sharing guarantees would be unthinkable.	4
B.	The RS is committed to the Dayton Accords.	5
1.	The RS's unshakable commitment to peace	5
2.	The RS's commitment to BiH's sovereignty, territorial integrity and constitutional order 5	
3.	The RS will continue to insist on implementation of the Dayton Accords through legal and peaceful means.	6
C.	Sarajevo politicians and their patrons must stop trying to undo the Dayton Accords.	6
D.	Under the BiH Constitution, public property belongs to the Entities.	7
E.	Foreign diplomats must stop cynically abusing the rule of law and disregarding international norms and the Dayton Accords, including BiH's democratic constitutional order.	
	9	
II.	EU integration	10
A.	The RS fully supports BiH's EU integration and the reforms necessary to achieve it. ...	10
B.	When BiH's leaders are left to work things out for themselves, political agreements on reforms are achievable.....	10
C.	EU integration requires closure of the OHR.	13
D.	The BiH Constitutional Court's foreign judges must be replaced with BiH citizens, as EU integration requires.....	13
III.	Christian Schmidt's illegal and destabilizing rule over BiH and its citizens must cease.	15
A.	Mr. Schmidt is the primary destabilizing element in BiH.....	16
B.	Mr. Schmidt's imposition of criminal code amendments	17
C.	Mr. Schmidt: "Nobody is above the law [except for me]."	19
D.	The RS's efforts to uphold the rule of law	19

Republika Srpska's 30th Report to the UN Security Council

Executive Summary

Republika Srpska (RS), a party to the treaties that make up the 1995 Dayton Peace Accords and one of the two autonomous Entities that make up Bosnia and Herzegovina (BiH), is pleased to submit this 30th Report to the UN Security Council.

The Dayton Accords have been a great success, and there is no chance of a return to war in BiH. Nevertheless, BiH's internal political situation today is unusually turbulent. BiH is a country with an extremely complicated and painful history. It is perfectly obvious that any international official in BiH hoping to improve the situation needs to have a deep understanding of the region, an abundance of diplomatic skills, a cautious and patient prudence, and great cultural sensitivity. It is equally obvious that Mr. Christian Schmidt, a dictator thrust into BiH by a handful of powerful countries acting without a shred of legality, has not a single one of these qualities. Indeed, he has shown himself to be their very antithesis. Worse, in a country in which many people can never forget the Nazi-inspired genocide against Serbs, Jews and Roma committed in the last century, this figure who claims unrestricted power to rule BiH by decree openly affiliates, unapologetically, with a group that honors the Nazi-era Wehrmacht.

Mr. Schmidt's constant alarmist statements tendentiously blame the elected leaders from the RS for BiH's political instability and falsely accuse them of undermining the rule of law and BiH's constitutional order. Mr. Schmidt lacks the comprehension to understand that it is his reckless, illegal diktats that have been the main cause of the recent turmoil in BiH and that a foreigner claiming autocratic powers over the people of BiH is, to say the least, an appalling abuse of the rule of law and a severe violation of BiH's constitutional order.

Certain members of the Security Council have decided to deny any role for the United Nations in appointing a High Representative (HR); recognizing that achieving a consensus on such an appointment would take hard diplomatic work, they instead took the easier path of usurping the authority of the Council and appointed a man of their own choosing, pretending that the appointment was legal. It is widely understood that it was not, but legality aside, to leave such a reckless and ill-qualified man as Mr. Schmidt in such a difficult and sensitive position, at such a turbulent time for the region, is flagrant diplomatic malpractice. When so many members of the international community have quietly admitted the dangers posed by the rash and heavy-handed Mr. Schmidt, to allow him to continue to cause turmoil in BiH, and to pretend that his heedless missteps are actually improving the situation, is an unconscionable dereliction of duty. The Council should act responsibly to rectify the situation, and finally close the Office of the High Representative (OHR).

Part I of this report emphasizes that faithfully implementing the power-sharing structures and mechanisms guaranteed in the BiH Constitution (Annex 4 of the Dayton Accords) is

indispensable for ensuring that BiH's three formerly warring ethnic groups feel safe and secure; taking those safeguards away is simply unthinkable to BiH's Serbs and Croats.

The RS reaffirms once again its dedication to the Dayton Accords, which includes a commitment to peace and to fully respecting BiH's sovereignty, territorial integrity, and constitutional order. Consistent with that commitment, the RS is resisting—and will continue to resist—the degradation of the BiH Constitution, which is the very heart of the Dayton Accords.

Among those trying to do away with the Dayton compromise are politicians representing BiH's majority Bosniak ethnic group, who frequently present themselves as post-nationalist reformers advocating what they call a BiH "civic state." No one should be fooled by this verbal sleight of hand. Because Bosniaks make up a slight majority of BiH's population, the "civic" BiH they desire would be a country ruled by Bosniak nationalists for Bosniaks.

Meanwhile, foreign diplomats accredited in BiH continue to violate their obligation under the Vienna Convention on Diplomatic Relations not to interfere in the host state's internal affairs, thus showing their utter disregard for BiH's sovereignty and the rule of law.

Part II of this report examines BiH's efforts to become an EU member. The RS continues to support BiH's drive for EU membership and implementation of the reforms necessary to achieve it, consistent with the BiH Constitution's division of competences. BiH's significant recent progress on reforms necessary to begin EU membership negotiations demonstrates what BiH's domestic leadership can achieve if it is given room to negotiate.

One step that is incontestably necessary for BiH to become an EU member is the closure of the OHR. The EU has long recognized that the OHR is inconsistent with the EU's standards and conditions for membership, and it is widely understood that the presence in BiH of a foreigner claiming dictatorial powers badly undermines EU integration.

Another reform clearly required for BiH's to move forward on the road to EU membership is for BiH's Constitutional Court to be composed of BiH citizens instead of having a controlling bloc of seats reserved for foreign judges (whose positions were intended to be a five-year transitional measure). The court, through its domination by its foreign judges, the corruption of judicial processes due to interference by the OHR and certain foreign powers, and a long series of decisions defying the BiH Constitution, has badly undermined its own legitimacy throughout BiH. The EU has rightly listed the replacement of the court's foreign judges among the key priorities for BiH's EU integration, and this reform must be completed without delay.

Part III of this report emphasizes the importance of ending Mr. Schmidt's illegal and destabilizing role as an unelected foreign dictator of BiH. No one knowledgeable about his tenure, watching his condescending outbursts, or reading his ill-considered dictates could reasonably argue that he has been a calming, stabilizing influence in BiH. Moreover, as detailed further below, his troubling associations with those who celebrate his country's Nazi past have been widely

criticized by journalists and politicians even in his own country, and to expect such affinities to be ignored in BiH is ludicrous.

Leaving aside the fact that Mr. Schmidt is not a legitimate HR, his heedless and rash assertions of unrestricted authority over BiH and its citizens are brazen and shocking abuses of the rule of law that many in the region have criticized. No one, including even a legitimately appointed HR, has any legal authority to enact laws in BiH by mere edict.

Mr. Schmidt has imposed ersatz statutes with reckless abandon, including an oppressive new “law” establishing criminal penalties for those who do not implement his illegal decisions. Mr. Schmidt has also threatened to directly impose extrajudicial punishments on RS officials who fail to follow his dictates, even when the law compels them to. Mr. Schmidt’s illegal rule by decree, and the extrajudicial punishments he has threatened, plainly violate the human rights of BiH citizens guaranteed by international conventions to which it is a party—international conventions that it is the duty of this Council to uphold.

Responding to Mr. Schmidt’s lawlessness and in order to uphold the rule of law, democratic principles, and domestic democratic institutions, the RS National Assembly in June approved a law ending the publication of the OHR’s illegal decrees in the RS’s Official Gazette. After the President of the RS took a legally required formal procedural step to implement the National Assembly’s legislation, the BiH Prosecutor’s Office absurdly indicted him based on Mr. Schmidt’s phony new criminal “statute.”

Despite BiH’s current turbulence, the RS is confident that BiH can succeed and become an EU member once the Dayton Accords and the BiH Constitution are faithfully implemented, including through respect for BiH’s constitutional structure and the restoration of democratic self-rule.

I. The Dayton Accords must be faithfully implemented.

A. To take away Dayton’s power-sharing guarantees would be unthinkable.

1. Adherence to the Dayton Accords, including Annex 4 of the Accords, the BiH Constitution, is the only way for BiH to succeed and prosper. No realistic alternative has ever been proposed, as there is none.

2. The Dayton Accords not only secured peace in BiH—a peace now uninterrupted for almost 28 years—but also established an ingenious power-sharing structure to ensure stability and democratic governance in a country with three deeply divided peoples (the predominantly Muslim Bosniaks, the predominantly Orthodox Christian Serbs, and the predominantly Roman Catholic Croats). The BiH Constitution—the core of the Dayton compromise—established a system designed to give each of BiH’s constituent peoples confidence that it will not come under the domination of one or more other peoples. The Constitution does this by assigning most governmental competences to the two Entities and incorporating mechanisms to protect the vital interests of BiH’s constituent peoples.

3. The democratic constitutional system created by the Dayton Accords has been a tremendous success. Citizens in BiH live in peace and freedom. City streets in BiH are safe, and there has not been any significant ethnic violence since the Dayton Accords were signed. Although BiH politics sometimes features strident rhetoric—as in most open democracies—differences are resolved peacefully. BiH has rebuilt and recovered from the 1992-95 war, joined the Council of Europe, and late last year became an official candidate for EU membership. BiH’s GDP per capita more than quadrupled between 2000 and 2018 and has continued to grow since then, except during the worst months of the COVID pandemic.

4. Attempts to unravel BiH’s constitutional order by centralizing authority in Sarajevo or to take away the ethnic protections guaranteed in the Dayton Accords are a recipe for disaster. BiH’s three constituent peoples have profoundly different—indeed incompatible—governing philosophies. [For example, the largest party representing BiH’s majority ethnic group, the Bosniaks, is explicitly Islamist in its ideology; the party’s revered founder wrote in 1990, the year the party was founded, that “the Islamic movement should and can start to take over power as soon as it is morally and numerically strong enough to be able to overturn not only the existing non-Islamic government, but also to build up a new Islamic one.”¹] For BiH’s Serbs and Croats, abolishing or eroding BiH’s constitutionally guaranteed power-sharing mechanisms is simply unthinkable.

¹ Alija Izetbegovic, Islamic Declaration (1990) at 56.

B. The RS is committed to the Dayton Accords.

5. The RS has never wavered in its commitment to the Dayton Accords. In the RS's semiannual reports to the Security Council, which the RS began submitting in 2009, the RS has consistently reaffirmed its dedication to the Dayton Accords, the faithful implementation of which the RS continues to believe is essential to BiH's stability and future success.

6. When the RS takes steps such as enacting a law banning the publication of the OHR's lawless edicts, the RS's opponents bizarrely accuse the RS of being "anti-Dayton." In reality, such measures by the RS are designed to protect the Dayton Accords, including the democratic constitutional order guaranteed in the BiH Constitution and Dayton's strict limits on the authority of the HR. Lawless actions by a foreign autocrat that violate the Constitution should never be entitled to respect as if they were laws. The fact that those lawless actions are taken by a foreigner should make them even more illegitimate, not less. Such actions subvert BiH's constitutional order, thus destabilizing the country and, potentially, even the broader region.

1. The RS's unshakable commitment to peace

7. The RS is—and will remain—dedicated to the peace and stability of BiH. For almost 28 years, the Dayton Accords have maintained an uninterrupted peace in BiH, and the RS will never do anything to jeopardize that. The RS and its leadership have consistently ruled out any use of violence, even as some leaders of BiH's Bosniak political parties have engaged in bellicose rhetoric. The RS fully supports and cooperates with the EU's Operation Althea in its vital mission of helping ensure that BiH's peace remains undisturbed.

2. The RS's commitment to BiH's sovereignty, territorial integrity and constitutional order

8. As part of its commitment to the Dayton Accords, the RS continues to fully respect BiH's sovereignty, territorial integrity, and constitutional order. The RS has no plan to secede from BiH, and it has not taken any steps in that direction. The RS is, in fact, the leading advocate for upholding BiH's sovereignty in a country where politicians from the most populous nationality seem content to be ruled by an unelected foreign autocrat or foreign capitals—an island of colonial dictatorship in the heart of democratic Europe.

9. The RS strongly supports the new proposal for BiH's political leadership to sign an Agreement on Full Sovereignty of BiH, which calls for the establishment of BiH's sovereignty, including by closing the OHR, and ending the utterly deleterious role of foreign judges on the BiH Constitutional Court.

3. The RS will continue to insist on implementation of the Dayton Accords through legal and peaceful means.

10. The RS will continue to use legal and peaceful means to push for the faithful implementation of the Dayton Accords, including adherence to the BiH Constitution, because it believes this is essential to BiH's long-term stability and success. All knowledgeable observers know there is simply no alternative.

11. Unfortunately, the decentralized structure and democratic political order that was supposed to have been guaranteed by the BiH Constitution has been steadily eroded, mostly through the lawless edicts of the HR and other foreign interventions. These incessant attacks on the BiH Constitution compel the RS to defend it using lawful and peaceful methods, and it will continue to do so.

C. Sarajevo politicians and their patrons must stop trying to undo the Dayton Accords.

12. Instead of openly calling for unchallenged Bosniak rule of BiH, Sarajevo politicians and their supporters often call for a "civic" BiH, which sounds progressive and post-nationalist to credulous Westerners' ears. But this drive for a "civic" BiH is, in reality, a Bosniak nationalist wolf in sheep's clothing. Sarajevo politicians—and indeed all citizens of BiH—understand that because a slight majority of BiH citizens are Bosniak, a "civic" BiH based on simple majority rule would, in effect, be a BiH ruled by Bosniak nationalists for Bosniaks. This goal is obvious from the Bosniak parties' current efforts to marginalize Serbs and Croats and ensure Bosniak domination of all governing institutions—anti-Dayton efforts that are ignored or actively supported by some members of the UN Security Council.

13. The rhetoric, policies, and actions of Bosniak politicians give Serb and Croat citizens every reason to doubt that a pseudo-civic BiH would respect their religion, language, culture, and other preferences. Even Sarajevo politicians from ostensibly non-ethnic parties often reveal themselves to be Bosniak nationalists with no respect for the traditions, beliefs, and sensibilities of other ethnicities.

14. For example, in August, the Bosniak member of the BiH Presidency, Denis Bećirovic, a member of the nominally multi-ethnic Social Democratic Party, met with and heaped praise on former Bosniak army general Atif Dudakovic, who is under indictment for war crimes against Serbs.² Just in case Mr. Bećirovic's contempt for Serb victims was not already clear, he later that

² *Denis Bećirović i Atif Dudaković poručili: 'Odbrana Bosne i Hercegovine je sveta dužnost'*, Radio Sarajevo, 6 Aug. 2023.

month accused the BiH Prosecutor's Office of "persecuting the heroes of the defense of Gorazde" after the indictment of 13 former members of the Bosniak army for the massacre of 56 innocent Serb civilians on Saint Nicholas Day in 1992.³

15. As explained above, the BiH Constitution features vital structures and mechanisms to prevent one or more peoples of BiH from dominating another people. Threats to scrap these safeguards in the name of transforming BiH into a "civic" state are deeply alarming to BiH's Serbs and Croats, and they heighten inter-ethnic tensions.

D. Under the BiH Constitution, public property belongs to the Entities.

16. Foreign diplomats have injected themselves into the issue of which level of administration owns public property, despite the fact that the BiH Constitution already resolved the issue by making clear that public property belongs to BiH's two Entities. As explained in detail in Attachment 2 to the RS's 23rd Report to the UN Security Council, the BiH Constitution, as well as the post-Dayton practice of all relevant actors, establish that it is the Entities that own public property.

17. Notwithstanding this, the US Embassy in BiH falsely claimed in a May 2023 statement that the BiH level of administration owns all public property in BiH. The Embassy's statement tried to support this statement by quoting part of the BiH Constitution as saying, "The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be 'Bosnia and Herzegovina,' shall continue its legal existence under international law as a state." The Embassy's statement, however, purposely and deceptively edited out the crucial end of the quoted sentence, which says, ". . . with its internal structure modified as provided herein and with its present internationally recognized borders."

18. Defining BiH's internal structure, the Constitution stipulates that BiH "shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska." The Constitution further provides that "[a]ll governmental functions and powers not *expressly assigned* in this Constitution to the institutions of Bosnia and Herzegovina *shall be those of the Entities*."⁴ Thus, ownership of public property, a function that the Constitution nowhere expressly—or even implicitly—assigns to the institutions of BiH, is a function of the Entities.

19. The staff of the US Embassy in Sarajevo is in no way qualified to interpret the BiH Constitution; it is extremely doubtful whether anyone in the US government would think them even competent to opine on the US Constitution, and yet, remarkably, they have not the slightest

³ *Podrška osumnjičenim za zločine nad Srbima*, Politika, 22 Aug. 2023.

⁴ Emphasis added.

reticence about making pronouncements on the terms of foreign constitutions. One wonders how the United States would react if BiH's embassy in Washington harangued the United States about its view of the proper interpretation of the US Constitution. Most importantly, the US Embassy's arrogant statement about public property is simply wrong about the BiH Constitution's disposition of public property, and displays a total ignorance of the history of the issue.

20. The OHR has also long stoked controversy regarding public property, and Mr. Schmidt has followed that tradition. The dispute over public property arose because of OHR meddling, and would have been resolved many years ago if not for additional OHR interference.

21. The public property issue initially caused no political controversy and was understood to be resolved by the Constitution. Even the ad-hoc group of countries calling itself the Peace Implementation Council Steering Board acknowledged the fact that the BiH level owned such property as was assigned to it by the Entities.⁵ Unfortunately, ten years after the Constitution took effect, then-HR Paddy Ashdown foolishly issued a series of edicts that plunged the issue into disarray. After Ashdown's meddling, BiH's Bosniak political parties began to demand, contrary to the Constitution, that all public property belong to the BiH level.

22. Hoping to resolve the controversy, the PIC Steering Board in 2008 called for the issue of public property to be resolved based on a "functional and territorial compromise." According to the statement, the compromise "sees the State-level institutions owning those properties needed for them to 'functionally' exercise their constitutional competencies, while other levels of government would own the remaining State Property based on 'territorial' principles."⁶

23. In November 2012, the Serb, Bosniak, and Croat parties then represented on the BiH Council of Ministers negotiated—without the OHR's help—an agreement on resolution of the public property issue based on the "functional and territorial compromise" proposed by the PIC Steering Board. A draft law was even prepared in 2013 to implement the agreement. Before the law could be enacted, however, then-HR Valentin Inzko, citing vague "concerns" about the draft law, intervened to scuttle it. (A more compelling demonstration of the problems caused by OHR meddling can hardly be imagined.)

24. Today, Mr. Schmidt—though not a legitimate HR—is continuing the OHR's destabilizing practice of roiling the public property issue. Mr. Schmidt has issued decrees purporting to nullify duly enacted RS legislation on public property. Moreover, this year, Mr. Schmidt formed a

⁵ Statement by the Ambassadors of the Peace Implementation Council's Steering Board, State Property: PIC Support For Functional And Territorial Compromise, 30 Oct. 2008.

⁶ *Id.*

secretive and illegitimate “Working Group” that has been holding non-public meetings about public property in certain foreign embassies that seem intent on ruling BiH through Mr. Schmidt. The group’s membership is secret, identified only as “distinguished local and international legal experts.”⁷ This meddling by Mr. Schmidt and certain foreign embassies can never rewrite the clear meaning of the BiH Constitution’s final word on the issue, nor can they expect the RS to ignore the Constitution.

E. Foreign diplomats must stop cynically abusing the rule of law and disregarding international norms and the Dayton Accords, including BiH’s democratic constitutional order.

25. Under the Vienna Convention on Diplomatic Relations, diplomats have an explicit “duty not to interfere in the internal affairs”⁸ of the receiving state. Unfortunately, it has become a habit for diplomats from certain countries to meddle in purely internal matters of politics and public policy within BiH. They routinely and cavalierly engage in activities that would promptly get a diplomat expelled from their own countries.

26. For example, some foreign diplomats—especially from countries that are part of the ad-hoc group PIC Steering Board—have criticized the RS’s new law establishing criminal liability—in the form of fines only—for certain forms of intentional defamation. These criticisms are astonishingly hypocritical, given that seven of the eight countries represented on the Steering Board themselves have criminal defamation liability.⁹ Indeed, laws in those countries, unlike the RS defamation law, include imprisonment among the punishments.¹⁰ They have no business whatsoever in issuing imperious pronouncements on the law, as the law has not the slightest relevance outside the borders of the RS.

27. In another example of a diplomat violating the Vienna Convention, in a June speech, US Ambassador to BiH Michael Murphy displayed his haughty disrespect for BiH’s sovereignty and self-government and for the sanctity of the Dayton Accords. During his speech, Mr. Murphy said the United States sees Dayton “as a starting point—a foundation to build on.” This could be viewed an admission that the current US leadership is seeking to undo the Dayton compromise, treating

⁷ First Expert Consultation Meeting on State Property takes place in Sarajevo, OHR, 24 Apr. 2023.

⁸ Vienna Convention on Diplomatic Relations, Done at Vienna, 18 Apr. 1961, art. 41.

⁹ France, Germany, Italy, and Turkey: International Press Institute Media Laws Database; USA (many states have criminal defamation laws): ACLU Map of States with Criminal Laws Against Defamation; Canada: Criminal Code of Canada, sec. 300 and 301; Japan: Mari Yamaguchi, *Japan toughens defamation penalties after wrestler’s suicide*, AP, 13 Jun. 2022.

¹⁰ *Id.*

Dayton not as a binding treaty, but as a temporary annoyance to be modified at the pleasure of US diplomats.

28. Mr. Murphy also said, “Intervention is never the first course of action, but quite frankly, the international community has often been far too patient and tolerant of obstreperous political leaders who are intent on pursuing narrow political interests at the expense of the people of this country.” Mr. Murphy implicitly threatened unspecified actions against leaders “pursuing narrow political interests,” as if that would be unusual behavior from politicians in Mr. Murphy’s own country.

29. Leaders at all levels of administration in BiH are democratically elected—as leaders have been for more than 27 years. Neither Mr. Murphy nor any other foreigner has the right to decide who will or will not serve in positions of leadership in BiH. To suggest that they do is the height of neo-imperialism. To suggest that it is up to the diplomatic corps of the United States to determine which BiH leaders are “obstreperous,” and which are to be allowed to serve in the offices to which they were elected, is provocative in the extreme.

II. EU integration

A. The RS fully supports BiH’s EU integration and the reforms necessary to achieve it.

30. The RS continues to support and work toward BiH’s eventual membership in the EU, understanding that reforms on the road to EU membership will improve people’s lives in the RS and BiH as a whole. The RS advocates quickly enacting reforms necessary for EU membership while ensuring that each level of administration’s constitutional jurisdiction is respected.

31. In accordance with its constitutional competences, the RS has worked diligently over the years on EU integration and has made important progress on the objectives outlined by the EU in its reports on BiH. Thousands of RS regulations have undergone the procedure of harmonization and assessment of conformity with the EU *acquis*.

B. When BiH’s leaders are left to work things out for themselves, political agreements on reforms are achievable.

32. BiH-level leaders, despite their deep differences on many issues, have in recent months made considerable progress on implementing reforms for BiH’s EU integration. Their accomplishments, which came through direct negotiations and without any involvement from Mr. Schmidt and his staff, demonstrate what BiH’s domestic leadership can achieve on its own when free from foreign interference.

33. The EU has identified 14 key priorities for BiH's EU integration. During the summer, the RS began advocating a proposal to resolve all 14 of those priorities in a single package, which would have marked a giant step forward for BiH's EU membership aspirations.

34. Although that proposal was not accepted, on 22 August, BiH-level leaders agreed on a sweeping set of reform laws addressing the 14 EU priorities.¹¹ The EU said, "We welcome the agreement signed today by state level coalition party leaders, [and] adoption of important EU-accession related legislation in BiH HoR. It is positive that BiH political leaders have shown political will to work together on reforms."¹²

35. Since the 22 August agreement, the BiH Parliamentary Assembly has enacted several laws that are part of the 14 EU priorities. BiH also recently established full cooperation with the EU's Agency for Law Enforcement Cooperation (EUROPOL) with the opening of new premises for the National/Joint Contact Point of BiH in the BiH Ministry of Security building.¹³ The EU called this an "important milestone" for BiH that "will greatly contribute to BiH's efforts in strengthening the prevention and fight against organised crime and corruption, which is one of 14 key priorities of European Commission's Opinion on BiH's application for EU membership."¹⁴

36. In another advance, the BiH Council of Ministers in October approved an agreement between the EU and BiH on BiH's participation in the customs program of the Union.¹⁵

37. In June, the governments of BiH's two Entities, the RS and the Federation of BiH, held a joint session to discuss cooperation on a wide range of issues and agreed on seven conclusions.¹⁶ After the meeting, RS Prime Minister Radovan Višković said, "The future of BiH is in dialogue, and if we want to respect each other, then we have to sit down and agree on issues that are of interest to all citizens in BiH."

38. The leaders of the parties comprising the majority in the BiH Parliamentary Assembly have held regular meetings, each of which has featured a positive and productive atmosphere. After a

¹¹ *Bosnia ruling coalition leaders agree on reform laws and remaining appointments*, N1, 22 Aug. 2023.

¹² *EU Delegation in BiH supports coalition agreement in Istocno Sarajevo*, N1, 22 Aug. 2023.

¹³ *Bosnia and Herzegovina establishes full cooperation with Europol*, *EU Delegation to BiH*, 22 Jun. 2023.

¹⁴ *Id.*

¹⁵ *BiH Council of Ministers held the Regular Session*, *Sarajevo Times*, 2 Oct. 2023.

¹⁶ *The Governments of the RS and the Federation of BiH agreed on seven Conclusions*, *Sarajevo Times*, 9 Jun. 2023.

meeting in September, the president of the largest Bosniak party in BiH's governing majority (SDP), Nermin Nikšić, praised the level of readiness for dialogue and compromise¹⁷ and said of the parties at the meeting, "Today we showed that we are ready to look for solutions."¹⁸ Commenting on the same meeting, the leader of BiH's main Croat party (HDZ) said, "I think we have taken a step forward with every law. . . . We will need to sit down two or three more times. I assure you that we will get candidate status."¹⁹ The leader of the largest Serb party in BiH's governing majority (SNSD), Milorad Dodik, praised the "promising atmosphere" at the September meeting.²⁰

39. In August, at the Bled Strategic Forum in Slovenia, BiH Council of Ministers Chairperson Borjana Kristo said that BiH had made great progress on harmonizing its legislation with the EU and in meeting the conditions from the European Commission's Opinion on BiH's membership application. "I expect that the representatives of the European institutions will be able to recognize this and that very soon BiH will open the negotiation process for joining the European Union," Ms. Kristo said."²¹

40. Officials of the EU and EU member states have also praised the cooperative efforts of BiH's political leadership to implement reforms for EU integration. EU Enlargement Commissioner Oliver Várhelyi said that BiH's leadership is "delivering, be it the rule of law area, be it other areas where long deadlocks have been on the table for a number of years."²²

41. Aurelie Valtat, the Head of European Integration, Political, Press and Information Section at the EU Delegation to BiH, said, "We have all seen a new positive momentum in Bosnia and

¹⁷ *Coalition Meeting in a 'Good Atmosphere', but without concrete Solutions*, Sarajevo Times, 25 Sep. 2023.

¹⁸ *Nikšić: Spremni smo tražiti rješenja i za Ustavni sud BiH*, Večernji list, 25 Sep. 2023.

¹⁹ *Coalition Meeting in a 'Good Atmosphere', but without concrete Solutions*, Sarajevo Times, 25 Sep. 2023.

²⁰ *Id.*

²¹ *Kristo expects talks on Bosnia's EU accession to begin soon*, N1, 28 Aug. 2023.

²² Remarks by Commissioner Várhelyi at the joint press conference with Borjana Krišto, Chairwoman of the Council of Ministers of BiH, after the first meeting of the High-Level Political Forum in BiH, EU Delegation to BiH, 17 May 2023.

Herzegovina, we have seen a more positive atmosphere, and faster government formation across the country, but we have also seen some progress on the EU integration plan.”²³

42. Croatian Foreign Minister Gordan Grlić-Radman said in August that the opening of accession negotiations between BiH and the EU is expected by the end of 2023 or the beginning of 2024.²⁴

C. EU integration requires closure of the OHR.

43. The progress on EU integration described above came about in spite of, not because of, the presence of the OHR. Indeed, one reform that the EU has identified as essential for BiH’s EU integration is ending the OHR’s despotic overlordship of BiH and its citizens. European Commission reports have made clear that the dictatorial powers lawlessly claimed by the OHR are totally incompatible with BiH’s path to EU membership. Thus, those supporting the OHR’s continued dominion over BiH are hindering BiH’s EU integration.

44. International recognition of the harm caused by the continued presence of the OHR continues to rise. Former HR Wolfgang Petritsch said regarding the OHR in an interview in May, “It’s not going to work, and you cannot enter the European Union with such an overlord who will take these decisions.”²⁵ Every decision Mr. Schmidt makes, Mr. Petritsch said, “brings Bosnia and Herzegovina farther away—pushes it away from the European Union.”²⁶ Similarly, former HR Carl Bildt has written, “the continued existence of the OHR as the custodian of the push of Dayton has often tended to dilute the impact of the EU efforts.”²⁷ He also noted that the OHR “has gone from being part of the solution to part of the problem.”²⁸

D. The BiH Constitutional Court’s foreign judges must be replaced with BiH citizens, as EU integration requires.

²³ *EU's Valtat: Positive momentum in BiH in legislation and EU integration*, N1, 14 Jun. 2023.

²⁴ *Croatian FM: BiH's EU entry talks by end of this or start of next year*, N1, 29 Aug. 2023.

²⁵ *Petritsch tells N1 – BiH can't go on if High Rep will make all decisions*, N1, 9 May 2023.

²⁶ *Id.*

²⁷ Carl Bildt, *Bosnia to war, to Dayton, and to its slow peace*, European Council on Foreign Relations, 28 Jan. 2021.

45. One element of the 14 key priorities identified by the EU for BiH's EU integration is "addressing the issue of international judges" on the BiH Constitutional Court, i.e., replacing the court's foreign judges with BiH citizens. The Constitution envisaged that five years after the Constitution took effect, the foreign judges on the Constitutional Court would be replaced with BiH citizens. Yet more than 27 years later, the foreign judges remain in place

46. The parties representing two of BiH's three constituent peoples (Serbs and Croats) support enactment of a law replacing the three foreign judges on the Constitutional Court with judges who are local citizens, as in every other constitutional court in the world. The leader of the largest Croat party in BiH, Dragan Čović, said in July, "Foreigners should not have a place in the Constitutional Court and in judicial institutions, so I support throwing them out."²⁹ Asked whether the foreign judges should depart the Constitutional Court, Ilija Cvitanović, the leader of BiH's second-largest Croat party, said, "Foreign judges, from my point of view, should have left the Constitutional Court five years after the Dayton Agreement was signed. If we want to move towards Europe, to be a sovereign country, we cannot have foreign justices on the Constitutional Court."

47. Unfortunately, parties representing the other constituent people (Bosniaks) are refusing to make this necessary reform. The leader of the largest Bosniak party in BiH's governing majority (SDP), Nermin Nikšić, recently acknowledged that it is "clear" that BiH "cannot be [an EU] member and have foreign judges on the Constitutional Court."³⁰ However, Mr. Nikšić has resisted efforts to enact the necessary law on the Constitutional Court.

48. The reason Bosniak political parties have blocked all reasonable attempts to replace the foreign judges with BiH citizens is that those foreign judges maintain a political alliance with the court's Bosniak judges to centralize BiH in flagrant violation of the Constitution. undermining BiH's sovereignty, steadily degrading the Constitution that the Court is supposed to uphold, and preventing the development of a judiciary constituted in line with EU standards.

49. Dominated by its foreign judges, the Constitutional Court has steadily undermined its own legitimacy not just in the RS but throughout BiH. Indeed, non-implementation of the court's decisions is more prevalent in the Federation of BiH than it is in the RS. The court is widely considered to be an OHR-dominated political instrument. A former foreign judge on the Constitutional Court admitted that there is a "tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation."³¹ This

²⁹ *Bošnjake, Srbe i Hrvate mogu ujediniti jedino EU reforme*, Večernji list, 16 Jul. 2023.

³⁰ *Nikšić o Ustavnom sudu BiH: "Nećemo pristati na ucjene"*, Una.ba, 21 Sep. 2023.

³¹ Joseph Marko, *Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina*, European Diversity and Autonomy Papers (July 2004) at 17 and 18.

corruption of the judicial process has resulted in many constitutionally indefensible decisions that have badly, and understandably, undermined respect for the court.

50. When the Constitutional Court once dared to show a measure of independence from the OHR by taking issue with OHR violations of due process rights, the HR responded by nullifying the court's decision and decreeing that no OHR action can be subject to any review by any BiH authority. This decree and the lack of international objection to it expose the cynical hypocrisy of demands by the OHR and its allies that all Constitutional Court decisions be treated as final and binding.

51. It should also be noted that, unlike virtually every constitutional court in the world, the BiH Constitutional Court is not regulated by a Law on the Constitutional Court or other law enacted by the legislature. In 17 of 18 EU member states that have a constitutional court—all but a single microstate—the court is regulated by a Law on the Constitutional Court or other law enacted by the legislature. Thus, BiH must enact a Law on the Constitutional Court in order to meet EU standards.

52. It was only after decades of intransigence by the Bosniak parties on the long-overdue replacement of the foreign judges that the RS National Assembly voted in June to temporarily suspend implementation of certain decisions of the Constitutional Court until the issue can be addressed by the BiH Parliamentary Assembly. The RS is hopeful that with internal dialogue, the issue of foreign judges can be resolved soon, along with the rest of the 14 key priorities for EU integration.

53. Resolving the issue of the foreign judges—the importance of which is widely recognized among international scholars, jurists, and EU advisors as necessary to provide BiH with a truly functional judiciary in line with EU standards—would serve to prevent the constant crises caused by the bloc of foreign and Bosniak judges issuing rulings that many citizens in BiH cannot possibly accept as legitimate.

III. Christian Schmidt's illegal and destabilizing rule over BiH and its citizens must cease.

54. In 2021, a retired German politician named Christian Schmidt arrived in BiH falsely claiming to hold the title of HR and preposterously claiming authority to rule BiH by decree, even though such dictatorial authority is plainly forbidden by BiH's democratic constitutional order, by the Dayton Accords, and by the most basic principles of international law. Since his arrival in BiH, Mr. Schmidt, by repeatedly using his illegal despotic authority, has ravaged the rule of law and jeopardized BiH's political stability.

55. The current government in Germany would never see fit to have Mr. Schmidt rule Germany, or even any part of Germany, even with democratic limitations in place that he does not recognize in BiH—and yet the German Government thinks he is qualified to exercise unlimited

power to rule BiH, a country about which Mr. Schmidt knows almost nothing, and whose political dynamics are far more complicated than those of Germany. It would seem that the leadership in Berlin believes that the mere fact that Mr. Schmidt is German is considered qualification enough to rule another country.

A. Mr. Schmidt is the primary destabilizing element in BiH.

56. No neutral, informed observer could possibly conclude that BiH has become more stable during Mr. Schmidt's tenure. Indeed, perhaps the only opinion that BiH's Bosniaks, Serbs, and Croats agree on is that Mr. Schmidt has been damaging and destabilizing to BiH. Bosniaks have held large street demonstrations against Mr. Schmidt's rule, and BiH Presidency member Željko Komšić in September called Mr. Schmidt a "disoriented clown."³²

57. Mr. Schmidt's short time in BiH is a cautionary tale demonstrating the dangers of endowing a single man with unchecked authority over a country, particularly a country not his own. Mr. Schmidt poses as a firefighter, but has proven himself to be a reckless arsonist, having quickly amassed a record of one destabilizing blunder after another. Instead of helping to resolve crises, he has repeatedly created them and then escalated them. He shows no appreciation for the gravity of the despotic powers he claims to hold over citizens of a country where he is a guest.

58. Mr. Schmidt is not the solution to political instability in BiH, but its primary cause. He has no training, no experience, and no skills suitable for the task he has taken up as the author of BiH's future. As he so often reminds members of the press, Mr. Schmidt is not a diplomat, and his lack of diplomatic skills is, unfortunately, woefully apparent. He is temperamentally, culturally, and professionally ill qualified for the role he has been assigned by the handful of countries that illegally chose him.

59. Moreover, as explained in more detail in the Annex to this report, Mr. Schmidt's political career, and his association with groups and individuals celebrating the military heroes of Germany's past, have been marked by what can most charitably be described as extreme insensitivity to the wartime victims of Nazi Germany. The many commentators who have called Mr. Schmidt a Nazi or a Nazi sympathizer are perhaps unfair; however, it is clear from his associations that Mr. Schmidt is not offended by Nazis the way any right-thinking person is, must less a person who has assumed for himself the power to rule a country ravaged by World War II. For any person to act as a dictator of BiH is unconscionable. For a person of Mr. Schmidt's background and proclivities to act as a dictator of BiH is sickening.

³² *Komšić: Schmidt je dezorijentirani klaun. Srbima su od oružja ostali još samo balvani i tupani*, Dnevnik.ba, 14 Sep. 2023.

60. Even observers among Mr. Schmidt’s own countrymen have been extremely critical of his tenure and role. In Europe’s largest news weekly, *Der Spiegel*, columnist Maximilian Popp wrote last year that “many BiH citizens perceive [Mr. Schmidt] as a dangerous interference in the affairs of the country.”³³ Mr. Popp also wrote, after a particularly intemperate outburst by Mr. Schmidt in 2022, “The choleric appearance once again raises the question of whether Schmidt is the right man for the job as a top diplomat. However, the problem goes further. In truth, the office of High Representative should be abolished. It’s undemocratic, neocolonial. It is an impertinence for the people of Bosnia and Herzegovina.”³⁴

61. Similarly, Michael Martens of the leading German daily *Frankfurter Allgemeine Zeitung* summarized earlier this year, “Christian Schmidt is the wrong man in the wrong place at the wrong time,” adding that “a colonialist structure like the Office of the High Representative has no place in modern Europe.”

62. Leaders in the region have also recognized Mr. Schmidt’s pernicious role. For example, Croatian President Zoran Milanovic characterized BiH under Mr. Schmidt as “a clumsy, sloppy, incompetently managed colony.” Mr. Milanovic said that “in order to protect his backside and his reputation, [Mr. Schmidt] changed the criminal law according to which what Dodik did is a criminal offense. That’s called colonial administration and it’s destroying that country.”³⁵ Mr. Milanovic asked, “Is this a way of calming the situation in Bosnia and Herzegovina, of de-escalation?”³⁶

B. Mr. Schmidt’s imposition of criminal code amendments

63. In July 2023, a new darkness descended on BiH as Mr. Schmidt, deeming his word to be law, imposed on BiH a criminal statute establishing five-year prison sentences for “Failure to Implement Decisions of the High Representative.” Although HRs have defied the BiH Constitution and the Dayton Accords to impose many laws on BiH over the years, no HR ever dared to criminalize refusal to collaborate with HRs’ make-believe laws. Mr. Schmidt’s attempt to criminalize failure to implement his illegal decrees marks a dangerous and despicable escalation in foreign repression of BiH that, in effect, turns BiH into a police state commanded by an unelected German despot.

³³ Maximilian Popp, *Wie ein Kolonialherr*, *Der Spiegel*, 18 Aug. 2022.

³⁴ *Id.*

³⁵ *Milanović nazvao BiH ‘trapavom, traljavom, nesposobno vođenom kolonijom’*, *Al Jazeera*, 12 Aug. 2023.

³⁶ *Id.*

64. The BiH Prosecutor's Office, ignoring the fact that Mr. Schmidt's new criminal prohibitions were not duly enacted in accordance with the Constitution, recently brought indictments against two RS officials for failing to do Mr. Schmidt's bidding. The indictments are a shocking attack on democracy and the rule of law, piling illegality atop illegality, in a tyrannical effort to disable the RS's democratically elected and legally appointed public servants.

65. The "law" the RS officials are accused of violating, which criminalizes failure to comply with a decision of the HR—is not a law at all, because it was never enacted by the BiH Parliamentary Assembly as is explicitly required by the BiH Constitution. Instead, this ersatz "law" was handed down in July as an edict by Mr. Schmidt, a man with no lawmaking power whatsoever.

66. Making this assault on the rule of law even more egregious, Mr. Schmidt has not even been legally appointed to the position that he claims to hold.

67. Moreover, the recent indictments against RS officials are based on the officials' carrying out formalities they were constitutionally and legally bound to perform. Each is accused of breaking Mr. Schmidt's "law" by implementing two laws adopted by the RS National Assembly that Mr. Schmidt later pronounced—illegally—to be null. The indicted officials, however, legally had no choice but to implement the acts of the democratically elected RS National Assembly.

68. To add yet another layer of illegality, the prosecutor's office that proposed the indictment and the court that confirmed it were both illegally created by the decrees of former HRs in flagrant violation of the BiH Constitution—both its legislative procedures and its clear division of competences between the BiH level of administration and the two Entities.

69. In addition, the preliminary hearing was presided over by a judge with a clear conflict of interest—a former OHR attorney standing in judgment of defendants charged with disobeying OHR orders. Moreover, the judge assigned to the trial in the case is a former officer in the wartime Bosniak army.

70. In short, the RS officials are being prosecuted under a fictitious law by an unconstitutional prosecutor's office, in an unconstitutional court, presided over by conflicted judges, acting to enforce a tyrannical, anti-democratic, illegal decree of a foreigner, against legally elected and appointed officials who simply carried out formal procedures they were legally required to execute. The indictments are an intolerable attack against BiH's sovereignty and democratic constitutional order and a rejection of rule of law in favor of rule by one man backed by foreign power.

71. It is astounding that a man with such modest capabilities as Mr. Schmidt should claim the unlimited powers over the people of another country. That he should exercise those powers so arrogantly, imprudently, and wantonly in a country he knows so little about, among people so offended by his association with groups celebrating German's wartime past, is shocking. That he

should do so with the approval of certain influential members of the international community who are fully aware of his limitations and objectionable associations, at such a turbulent time for the region, is unconscionable.

C. Mr. Schmidt: “Nobody is above the law [except for me].”

72. In August, Mr. Schmidt, responding to RS President Milorad Dodik’s refusal to pretend Mr. Schmidt’s decrees are legitimately enacted laws, said, “Respecting the legal and constitutional framework and upholding the rule of law is essential to every democratic society. That is an obligation for all, and nobody is above the law.” Mr. Schmidt’s blundering lack of self-awareness continues to astound. By claiming unfettered power to decree what is law in BiH, Mr. Schmidt puts himself entirely above BiH’s legal and constitutional framework and makes a mockery out of the rule of law.

73. Mr. Schmidt’s hypocrisy is not harmless. For a man who persists in ranting about the rule of law, no one has ever done more harm to the rule of law in BiH than Mr. Schmidt and his handful of supporters in the international community. Mr. Schmidt’s use of dictatorial powers brazenly violates his legal mandate, BiH’s sovereignty, and the democratic procedures for passing laws explicitly required by the BiH Constitution. In the two years Mr. Schmidt has claimed to hold the position of HR, he has employed this bogus authority promiscuously, imposing no fewer than 18 laws on the citizens of BiH, including criminal prohibitions carrying long prison sentences. When Mr. Schmidt refers to the rule of law, every citizen of BiH knows that the “law” in BiH is what policymakers in Berlin, Washington, and London say it is, and nothing more.

D. The RS’s efforts to uphold the rule of law

74. In June, the RS National Assembly acted to uphold democracy and the rule of law by approving a law to end the publication of OHR decrees in the RS’s Official Gazette. The law is a simple recognition that OHR decrees have no basis in law, are directly contrary to the constitutions of BiH and the RS, and constitute gross violations of citizens’ human rights. The RS National Assembly rightly refused to be a parliament of collaborators selling out democracy and the rule of law in favor of foreign dictatorial rule.

75. The RS hopes all countries that value, freedom, democracy, and sovereignty will condemn Mr. Schmidt’s illegal and tyrannical decrees and make clear that BiH must be governed by its own citizens in accordance with its democratic constitutional order rather than ruled by a reckless German autocrat. The path of EU integration on which BiH is embarked demands no less.

76. The RS is confident that BiH, notwithstanding its current political tensions, can succeed and achieve EU membership if the Dayton Accords, including the BiH Constitution, are faithfully implemented, including through upholding BiH’s constitutional structure and restoring democratic self-rule.

Christian Schmidt's Pernicious Role in Bosnia and Herzegovina

The main body of the 30th Report to the UN Security Council by Republika Srpska (RS) emphasizes Christian Schmidt's destabilizing role in Bosnia and Herzegovina (BiH) and his utter disregard for the rule of law. This Annex further illustrates Mr. Schmidt's damaging impacts on BiH, examining the patent illegality of Mr. Schmidt's claimed dictatorial authority, his violation of BiH citizens' human rights, the illegitimacy of his claim to be High Representative (HR), and his extreme insensitivity to victims of Nazi Germany.

Mr. Schmidt's claim to authority plainly violates the Dayton Accords.

Besides the fact that Mr. Schmidt is not a legitimate HR, it is indisputable that no person—BiH citizen or foreigner—has legal authority to impose laws on BiH by decree.

Annex 10 of the Dayton Accords, which is the sole source of the HR's lawful mandate, restricts the HR's authorization to activities such as reporting on the implementation of Dayton, coordinating international efforts in BiH, and acting as a facilitator. No provision of Dayton or any other source of law makes even the slightest suggestion that the HR has authority to impose laws.

Moreover, the Dayton Accords require—through the BiH Constitution (Annex 4 of the Accords) that all BiH laws be approved by both houses of the BiH Parliamentary Assembly. The Constitution further provides that BiH “shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.” A foreign diplomat's imposition of laws by decree, of course runs roughshod over these constitutional provisions.

These facts are plainly known to anyone with the slightest familiarity with the Dayton Accords. It is time for those in the diplomatic community who so frequently beat their chests about the rule of law in BiH to end their blatant hypocrisy and stop supporting the outrageous abuse of the rule of law by the HR.

Mr. Schmidt tramples the human rights of BiH citizens guaranteed under international law.

The use of the dictatorial authorities that Mr. Schmidt claims, in addition to violating the Dayton Accords and the BiH Constitution, are widely understood to be flagrant breaches of the human rights of BiH citizens guaranteed by international conventions to which BiH is a party.

Under the BiH Constitution, the European Convention on Human Rights and its protocols “apply directly in Bosnia and Herzegovina” and “have priority over all other law.”¹ Condemning the HR’s asserted authority to enact laws by decree, the European Commission for Democracy through Law (the Venice Commission) observed, “Art. 3 of the (first) Protocol to the [European Convention on Human Rights] requires the election of the legislature by the people, and this right is deprived of its content if legislation is adopted by another body.”²

Not content just to decree criminal prohibitions designed to send uncooperative public officials to prison, the HR has repeatedly threatened to bypass the justice system entirely and impose extrajudicial punishments, including the summary removal and banning of individuals from public office.

Summary measures against individuals, such as removals from elected and appointed office, blatantly violate the right to a public hearing under the European Convention.³

Moreover, Mr. Schmidt’s rule by decree and threats to remove elected officials violate the right to free elections guaranteed under Protocol No. 1 of the European Convention⁴ and the International Covenant on Civil and Political Rights (ICCPR),⁵ which apply directly within BiH under the BiH Constitution.⁶

The obvious irreconcilability of summary decisions by the HR with European standards has long been recognized by international authorities. For example, in 2004 the Council of Europe’s Parliamentary Assembly held, “[T]he Assembly considers it irreconcilable with democratic principles that the High Representative should be able to take enforceable decisions without being accountable for them or obliged to justify their validity and without there being a legal recourse.”⁷

¹ BiH Constitution, art. II (2).

² 2005 Venice Commission Opinion at para. 88.

³ European Convention on Human Rights, art. 6.

⁴ Protocol no. 1, European Convention on Human Rights, art. 3.

⁵ International Covenant on Civil and Political Rights, art. 25.

⁶ BiH Constitution, art. II (4) and (7), Annex I.

⁷ Parliamentary Assembly of the Council of Europe, Res. 1384 (2004), June 23, 2004.

Mr. Schmidt is not even a legitimate HR.

A minimum of respect for the rule of law requires that any person acting as HR in BiH be appointed in accordance with the rule of law by which he or she obtains his or her authority. Mr. Schmidt is not the HR, because he has never been approved for the position by the only body with the legal authority to do so, the UN Security Council.

Mr. Schmidt claims, instead, to have been appointed by an informal gathering of countries calling themselves the Peace Implementation Council (PIC) Steering Board. But the Dayton Accords, which constitute the sole legal basis for the existence of the HR, do not give the PIC or its Steering Board any authority to appoint the HR. Indeed, the Dayton Accords do not even *mention* the PIC, which is, as the European Court of Human Rights has confirmed, merely an “informal group of states.”⁸

Nor is there any alternative legal authority giving the PIC or its steering board any power to appoint the HR. Mr. Schmidt has cited UN Secretary-General António Guterres’s personal view that the PIC Steering Board is the “relevant body” for appointment of the HR, but Mr. Guterres has no authority to interpret the Dayton Accords or to amend them by giving powers to the PIC Steering Board.

In short, whatever “authority” the PIC Steering Board wields now rests not on law at all, but only on the coercive military and political power of certain states on the Steering Board. To pretend otherwise and wrap the PIC’s actions in a veneer of legitimacy is an utter sham.

A message posted on the OHR website earlier this month attempting to legitimize Mr. Schmidt’s spurious appointment as HR claims that, as the HR, Mr. Schmidt has authority to interpret Annex 10’s requirements for appointment. But that claim to interpretive authority, of course, presumes the answer to the very question at issue. Using such obviously circular logic, *anyone* could claim to be HR and then interpret Annex 10 as confirming that his or her appointment is legitimate. The message on the OHR website also claims that Mr. Schmidt was appointed HR by the PIC Steering Board, but the message conspicuously neglects to identify any legal source for the PIC Steering Board’s supposed authority to appoint the HR. It was unable to do so because none exists.

⁸ *Berić v. Bosnia and Herzegovina*, Eur. Ct. H.R., decision of 16 Oct. 2007, at para. 26; available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-83109%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83109%22]}).

Annex 10 of the Dayton Accords, under which the HR is appointed, provides that the HR is to be appointed “consistent with relevant United Nations Security Council resolutions”⁹ The BiH Constitutional Court, moreover, has confirmed that an HR’s appointment must be approved by the UN Security Council.¹⁰

Until recent years, members of the international community have followed the requirements of the Dayton Accords with respect to appointment of HRs. The Security Council has duly agreed to the appointment of all seven HRs, all but once through formal resolutions. If the Security Council had no need or authority to do so, then one wonders why the Council took the trouble to engage in such useless acts.

In contrast to these prior appointments, the Security Council has never agreed in any way to the appointment of Mr. Schmidt. The only time Mr. Schmidt’s appointment as HR was put to a vote in the Security Council, the vote failed to win a majority. Thus, anyone who respects the rule of law must not treat Mr. Schmidt as if he were a duly appointed HR.

In fact, treating Mr. Schmidt as if he were a legitimately appointed HR constitutes a total abdication of authority by the Security Council, which, as explained above, is the only body legally authorized to approve the appointment of an HR. For countries to acquiesce in Mr. Schmidt’s fraudulent appointment by a self-selected, ad-hoc group of powerful countries amounts to a rejection of international law and the UN system, surrendering to naked power politics.

If the Security Council disclaims any authority to oversee the appointment of Mr. Schmidt, or indeed any High Representative, then presumably the Council would have no role in dismissing an HR either—in which case one wonders what purpose there is to the Council’s regular meetings on BiH, or why the Council’s members should listen attentively twice a year to the HR’s self-serving reports.

Mr. Schmidt’s disrespect to the victims of Nazi Germany.

Mr. Schmidt is an unapologetic member of *Kameradenkreises der Gebirgstruppe* (Circle of Comrades of the Mountain Troops), an organization that has frequently honored Nazi “heroes” of World War II. The organization was long led by Wehrmacht General Hubert Lanz, who was sentenced in the Nuremberg trials to 12 years in prison for war crimes committed in the Balkans.

⁹ Agreement on the Civilian Implementation of the Peace Settlement, Annex 10 of the Dayton Accords, art. I(2).

¹⁰ BiH Constitutional Court, Decision AP-935/05 (2006), para 46 (A High Representative’s “appointment is confirmed by the Security Council of the United Nations . . .”).

Kameradenkreises der Gebirgstruppe has never distanced itself from its longtime leader, and, more to the point, nor has Mr. Schmidt.

Moreover, at a *Kameradenkreises der Gebirgstruppe* event in 2007, Mr. Schmidt, alongside Nazi war criminal Josef Scheungraber and other veterans of the Nazi Wehrmacht, paid tribute to fallen mountain troop soldiers,¹¹ including troops who committed massacres in Yugoslavia during World War II. Such heinous sentiments by Mr. Schmidt have not gone unnoticed among his fellow Germans. For example, a 2023 segment by German public broadcaster ZDF explained,

*Wehrmacht veterans and Bundeswehr soldiers gathered to commemorate the Third Reich's mountain infantry, which committed numerous war crimes. . . . Also present was Christian Schmidt, the state secretary at the Defense Ministry. The CSU politician seemingly had no problem with this type of tradition.*¹²

Furthermore, as Parliamentary State Secretary of Defense in the 2000s, Mr. Schmidt took great efforts to rehabilitate Werner Molders, a Nazi fighter pilot who had close ties with Hermann Göring and was awarded as a “hero of National Socialism.”¹³

It is reprehensible for the international community to overlook Mr. Schmidt’s celebration of Germany’s Nazi past; for any international diplomat to expect the citizens of BiH to do the same is both reprehensible and ludicrous.

¹¹ *Alle Jahre wieder in Mittenwald*, AG Friedensforschung (from Neues Deutschland, 3 May 2008).

¹² *How a German politician threatens democracy in Bosnia-Herzegovina*, ZDF Magazin Royale, 17 Feb. 2023.

¹³ Deutscher Bundestag Drucksache 16/6724, 10 Oct 2007.