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May 30, 2018

The Honorable Scott Perry
1207 Longworth House Office Building
Washington, DC 20515

Dear Rep. Perry:

My law firm serves as legal counsel on matters of international law for Republika Srpska (RS), one of the two Entities that comprise Bosnia and Herzegovina (BiH). The RS remains grateful to the United States for helping to make the Dayton Accords possible, ushering in the peace BiH has enjoyed for more than 22 years. The RS is committed to the Dayton Accords, including the BiH Constitution, and thinks their full and faithful implementation is the key to BiH's future. The RS also continues to appreciate the U.S. role in peacekeeping in the years following the war, including your own military service in BiH.

I read with interest your March 23 letter to Assistant Secretary of State Wess Mitchell about BiH's continued impasse with respect to its Election Law. The RS agrees with you that it is crucial for BiH to replace the parts of the Election Law struck down by the BiH Constitutional Court so that the results of this autumn's elections can be implemented without disruption. Without such amendments, it will be impossible to form the BiH House of Peoples, or the Presidency, government, and House of Peoples of BiH's other Entity, the Federation of Bosnia and Herzegovina (FBiH). Unfortunately, BiH's largest Bosniak party, the SDA, is blocking the necessary amendments because it wants to retain the ability for Bosniaks to choose representatives not just of the Bosniak people but also the Croat people. This has happened in the past, such as when Zeljko Komsic was elected, primarily by Bosniak voters, as the Croat People's representative in the tripartite BiH Presidency from 2006 to 2014. This violates one of the main tenets of the Dayton Accords, namely, equality among the Constituent Peoples.

Because of your interest in the current situation in BiH, I thought it would be helpful for you and your staff to have the latest report of the government of the RS to the UN Security Council, dated April 2018. This is the 19th of such reports, which are submitted every six months prior to the UN Security Council's meetings on BiH. For information on the Election Law issue, please see Section IV of the report.

With BiH's 2018 elections approaching, there has been much misinformation circulating with respect to peace and security in the country. One such piece of misinformation is the claim

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that the RS is militarizing through the support of Russia. There is no truth to the allegation that the RS is militarizing. The RS police's recent procurement of rifles from a Serbian manufacturer, which was necessary to modernize police weaponry, was conducted with total transparency and the permission of all relevant BiH agencies. The weapons expenditures of the RS police are comparable to those of individual canton police forces in the FBiH.

Contrary to claims by some who oppose the RS government, RS police have never trained with Russian personnel, nor do they have plans to do so. RS police do, on the other hand, frequently train with U.S. armed forces and European police. In addition, contrary to baseless allegations, RS authorities have no affiliation with any paramilitary group. There are no such formations operating on RS territory, and RS leaders—elected in a free and democratic system—would never become affiliated with such a group.

The RS is committed to resolving political disputes solely through peaceful and constitutional means. As President Dodik recently said, RS "authorities will not make a single move that could destabilize the situation or spread violence, because peace and stability is a holy thing in Srpska."¹ In contrast, BiH's Bosniak leaders often threaten the use of violence and even war in response to political differences. To cite a recent example, Bakir Izetbegovic, the Bosniak member of the BiH Presidency and leader of the SDA party, in February said that Croats "cannot get a third entity in Bosnia without a war."² In 2016, when the RS planned a referendum about the date of its RS Day holiday, Izetbegovic warned that the RS holding the referendum about RS Day would "most probably lead to the collapse of peace in this part of Europe."³ On January 13, 2018, Bosniak politician Reuf Bajrovic's Civic Alliance party called on the SDA to prepare for war, including by strengthening the police of the Federation and cantons in which the Croat HDZ party has no control (i.e., the Bosniak cantons).⁴ Such bellicose statements should be condemned.

The RS's commitment to the peaceful resolution of political disputes and its response to false allegations of militarization are outlined in Sections I and II of the attached report to the Security Council.

Thank you for your interest in the peace and stability of BiH. I would be happy to discuss any of these issues, or other issues related to BiH, with you or your staff.

Very Truly Yours,



Edward B. Rowe

¹ *Dodik: Srpska Protects All Regardless of Ethnicity*, SRNA, 1 Oct. 2017.

² *Izetbegovic: Bosnian Croat Entity 'Impossible Without War'*, BALKAN INSIGHT, 5 Feb. 2018.

³ *Izetbegovic: Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

⁴ *GS: Gradani, nemojte mirno spavati*, Gradanski savez (Civic Alliance) website, 13 Jan. 2018.

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Attachment

Republika Srpska's 19th Report to the UN Security Council

April 2018

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Republika Srpska's 19th Report to the UN Security Council

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Republika Srpska's 19th Report to the UN Security Council

Introduction and Executive Summary

I. The Dayton Accords must be faithfully implemented.

Republika Srpska (RS) remains fully committed to the Dayton Accords and insists on their full implementation. This includes respect for the BiH Constitution, which is Annex 4 of the Dayton Accords, and the structures and protections it created. The RS also remains committed to resolving political disputes solely through peaceful and constitutional means. It asks the international community to condemn threats of violence by Bosniak leaders.

II. Allegations of RS "militarization," under Russian influence or otherwise, have no factual basis and are intended as a pretext for heightened foreign intervention and to weaken the RS and its government.

As BiH's 2018 elections approach, some political opponents of the RS Government have spun a wholly false narrative that the RS is militarizing. The RS's recent procurement of rifles, which was necessary to modernize antiquated police weaponry, was fully transparent and conducted with the permission of all relevant BiH agencies. Notwithstanding claims of the RS's political rivals, RS police have not trained with Russian personnel but do frequently train with U.S. armed forces and European police. The RS enjoys friendly relations with Russia, as well as with Western countries. There is no basis, however, for claims that the RS is a proxy for Russia, fabricated in an attempt to persuade western policy makers who oppose Russia to punish the RS and its leaders. The RS does not and will not act as a proxy for any foreign country. Moreover, contrary to baseless allegations, RS authorities have no affiliation with any paramilitary group; indeed there are no paramilitary formations operating on RS territory. The RS, unlike some Bosniak leaders, rules out the use of violence in political disputes.

III. BiH's elections must be conducted free from foreign interference.

In this year's elections, BiH citizens must be able to choose their own leaders without interference from any foreign state. The United States, according to U.S. Government reports, has long sought to affect elections in BiH through its funding of BiH media, and it appears to be intensifying such efforts. The United States should fully disclose its spending on BiH media and stop using the funds to influence elections.

IV. The SDA party is obstructing the implementation of judicial decisions critical to elections.

The SDA and other Bosniak parties have resisted implementing important decisions of the BiH Constitutional Court and European Court of Human Rights concerning elections. The BiH Constitutional Court's 2017 nullification of a portion of the BiH Election Law means that without amendments to the law, there can be no formation of the Federation House of Peoples, BiH House of Peoples, Federation Presidency, or Federation Government. The SDA is blocking the necessary amendments because the SDA wants to retain the ability for Bosniaks to choose not only Bosniak but Croat representatives. These amendments are necessary to avoid a

constitutional crisis. Contrary to some suggestions, it would be unlawful and unwise for the High Representative to try to resolve the issue by decree. The SDA has also blocked implementing the Constitutional Court's 2010 decision on Mostar elections, thereby preventing local elections from being held since 2008. Moreover, the SDA has resisted implementing the European Court of Human Rights' 2009 Sejdić-Finci decision. Despite the importance of implementing these decisions, the United States and others in the international community have been notably silent in the face of the Bosniak parties' refusal to implement them.

V. The growing jihadist threat to BiH

As the Islamic State has lost its territorial base, the danger of terrorism in BiH has risen. BiH citizens who joined the Islamic State are returning to a BiH that remains a safe haven for jihadists. The SDA invited mujahidin to Bosnia and Herzegovina during the war and has continued its close ties to radical Islamists. BiH policies and the failure of BiH's SDA-dominated security apparatus have also helped make the country a jihadist haven. The growing jihadist threat in BiH is not only a concern to the citizens of the RS, but also to EU member states.

VI. The RS supports BiH's EU accession process and is continuing to implement reforms.

The RS strongly supports BiH's EU integration efforts. The Coordination Mechanism for EU integration has proven effective despite opposition to establishing it by Bosniak political leaders. BiH's different levels of government effectively used the Coordination Mechanism to prepare BiH's answers to the European Commission's Questionnaire consistent with constitutional competencies. The RS has been working diligently to implement the Reform Agenda for EU integration and enact other reforms to promote economic growth. One reform that is essential for BiH to become an EU member is the replacement of the foreign judges on the BiH Constitutional Court with BiH citizens. This reform has the support of all Serb and Croat leaders, but Bosniak leaders have blocked it because they see the Constitutional Court's foreign members as allies.

VII. The international community should respect the Dayton Accords and BiH sovereignty.

The RS asks the international community to respect the Dayton Accords and BiH sovereignty. BiH's friends in the international community should support reforms to restore the Dayton structure, refrain from intervening in BiH politics, and close the Office of the High Representative, which is incompatible with BiH sovereignty and EU membership. Moreover, the UN Security Council should end the unjustified application of Chapter VII of the UN Charter to BiH.

The RS will continue its commitment to the Dayton Accords, EU integration, and reforms to improve the wellbeing of its citizens.

I. The Dayton Accords must be faithfully implemented.

A. The RS has no plans for secession but insists upon full implementation of the Dayton Accords and the Dayton political structure.

1. During this reporting period, there have been increased efforts by political opponents of the RS and its government to create a sense of crisis by blatantly misrepresenting the political situation in BiH. The purpose of this endeavor is to create false facts meant to incite support for a return to heavy-handed international intervention into the affairs of BiH and to affect the upcoming elections. Such actions, if successful, would undermine the BiH Constitution and fundamental principles of international law. At the same time, serious threats to the Constitution that violate the Dayton structure continue due to the refusal of Bosniak political leaders and their allies to adhere to the rule of law and the obligations of the Dayton Accords.

2. Despite these challenges, the RS government remains fully committed to the Dayton Accords. It respects the legal structure, rights, and obligations set forth in these agreements—including those set out in the BiH Constitution—and it insists that other signatories to the Dayton Accords also do so. This means respecting RS autonomy and the rights of Constituent Peoples as guaranteed under the BiH Constitution, as well as refraining from interfering in the domestic affairs of BiH. Contrary to the allegations of some of the RS's critics, the RS has no plans for secession from BiH. The RS's critics often mischaracterize RS officials' statements that condemn unlawful changes to—and attempts to change—the Dayton structure, along with the resulting dysfunction of BiH. The RS government continues to support BiH as it is defined in the BiH Constitution and will continue to seek, through political and legal means, the full implementation of the Dayton Accords.

3. Those involved in bringing about the Dayton Accords intended and produced an agreement more significant and comprehensive than merely a means for ending military hostilities. The Accords provided a long-term structure for a sustainable political system in BiH. Unfortunately, the political structure carefully established under Annex 4 of the Accords, which sets forth BiH's Constitution, has been under attack in an unlawful effort to change the mandated structure in dangerous ways. BiH's long-term stability depends upon changing course in order to restore what was so wisely constructed.

B. Threats of violence and armed aggression by Bosniak political leaders in response to political disputes undermine the Dayton Accords and must be condemned.

4. Dangerously, BiH's Bosniak leaders frequently threaten the use of violence and even war in response to political differences. For example, in a speech on 16 April 2018, Bakir Izetbegovic, the Bosniak member of the BiH Presidency and leader of the Islamist SDA Party, said, "Bosniaks must never be weak again" and boasted about the heavy weapons the Bosniaks are producing.¹ Izetbegovic said:

¹ *Urgent Meeting Not Held for Lack Of Quorum*, SRNA, 20 Apr. 2018.

We will produce a moving howitzer and we are already working on it. Also, we will create a mobile transporter, we have made a rifle, we will make the good tactical 12.7, multipurpose throwers of all possible calibre and all possible ammunition for it, and drones. So, we will be like that little man who is not big, but he is angry and well-armed, and everyone will have to think carefully whether they should get into conflict with him. They will never be able to knock on our doors again, without us having nothing to answer it with.²

5. Since the Bosniak MPs failed to respond to a summons for emergency session of the BiH House of Representatives, called by the caucus of RS MPs, to discuss the armament of the Federation and warmongering statements of Bosniak officials, RS President Milorad Dodik has proposed, for the purpose of strengthening mutual trust in BiH, that a joint commission of RS and Federation representatives be set up to understand the facts regarding the production of weapons and munitions in the Federation which production is outside of the oversight of BiH institutions.³

6. President Dodik has stated that this is a very important topic in need of joint deliberation given the fact that it concerns "the fact that someone is producing, without authorization, mortars and rockets using the resources secured for Bosniaks, because we in the Republic of Srpska were forced to close all our factories producing weapons and munitions, whereas there are six such factories in the FBiH."⁴

7. Izetbegovic's most recent threatening remarks continue a long pattern. On 5 February 2018, for example, Izetbegovic said that Croats "cannot get a third entity in Bosnia without a war."⁵ In 2016, when the RS planned a referendum about the date of its RS Day holiday, Izetbegovic warned that the vote about the holiday would "most probably lead to the collapse of peace in this part of Europe."⁶

8. On 24 March 2018, Federation Prime Minister Fadil Novalić, a member of the SDA, said at an SDA meeting:

You have witnessed that defense industry does not serve only export purposes, it increases the security of our country at the time when Serbia and Croatia have been arming themselves. During this term of office, we have almost finalised the production of self-propelled howitzers 155 mm, the production of a rifle, we have

² *Izetbegović threatens with heavy weapons*, INDEPENDENT BALKAN NEWS AGENCY, 18 Apr. 2018.

³ ДОДИК: ФОРМИРАЊЕ КОМИСИЈЕ ЗА ОРУЖЈЕ ОЈАЧАЛО БИ МЕЋУСОБНО ПОВЈЕРЕЊЕ, BHRT, 22 Apr. 2018.

⁴ *Dodik: Formirati komisiju koja će utvrditi činjenice o proizvodnji oružja*, OSLOBODENJE, 21 Apr. 2018.

⁵ *Izetbegovic: Bosnian Croat Entity 'Impossible Without War'*, BALKAN INSIGHT, 5 Feb. 2018.

⁶ *Izetbegovic: Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

new RPGs. Our shells can fly 42 instead of 20 kilometers. We are aiming at 50 kilometers. We are constructing a gunpowder factory. I think that combat personnel carriers will leave our factories by the end of the year. We have dramatically strengthened our defense industry, not only for the purpose of export.⁷

9. The leader of another Bosniak party, Sefer Halilovic, threatened war against the RS if it held its holiday referendum and boasted that the RS could hold out for only 10 to 15 days.⁸ No leaders of the SDA or any other Bosniak party distanced themselves from these threats. On 13 January 2018, Bosniak politician Reuf Bajrović's Civic Alliance party called on the SDA to prepare for war, including by strengthening the police of the Federation and cantons in which the Croat HDZ party has no control (i.e., the Bosniak cantons).⁹ Such bellicose statements threaten the Dayton Accords and should be condemned by the international community.

10. Notwithstanding such provocative statements from Bosniak political leaders, the RS wishes to reemphasize its full commitment to peace and to reiterate statements of its political leaders rejecting violence as an option for resolving political disputes. As President Dodik recently said, RS "authorities will not make a single move that could destabilize the situation or spread violence, because peace and stability is a holy thing in Srpska."¹⁰ On another occasion, President Dodik emphasized that the RS's "options are all political, without any war ones."¹¹ Despite RS leaders' clear and consistent statements calling for the peaceful resolution of disputes, Bosniak political leaders and their supporters often falsely accuse the RS of the opposite. They hope to provoke U.S. and EU intervention and punitive measures against the RS and its elected leaders to further weaken the decentralized structure set out in the Dayton Accords. Nonetheless, the RS will continue to seek resolution of BiH's internal disputes solely through political dialogue and other constitutional means.

II. Allegations of RS "militarization," under Russian influence or otherwise, have no factual basis and are intended as a pretext for heightened foreign intervention and to weaken the RS and its government.

11. Certain recent media reports have propagated a series of distortions and outright falsehoods that depict the RS as being in the process of militarization. The main source of these allegations is BiH's minister of security, who is a member of the Serb Democratic Party (SDS), the main opposition party in the RS and coalition partner with the Bosniak SDA party at the BiH level. Unfortunately, during this election year, those who oppose the RS Government's efforts to

⁷ *Atmosfera straha do izbora*, N1 TV, 27 Mar. 2018.

⁸ *Bosnia's Republika Srpska to hold controversial referendum despite ban*, BNA Intellinews, 23 Sept. 2016.

⁹ *GS: Građani, nemojte mirno spavati*, Gradanski savez (Civic Alliance) website, 13 Jan. 2018. The statement by Mr. Bajrović's party is ironic, given Mr. Bajrović's recent false claim and criticism of President Dodik for threatening war.

¹⁰ *Dodik: Srpska Protects All Regardless of Ethnicity*, SRNA, 1 Oct. 2017.

¹¹ *Dodik: Even Putin can't change our decision on referendum*, B92, 21 Sept. 2016.

protect the RS's rights under the Dayton Accords have chosen to use the media and other means to falsely attack its elected officials. The RS Government expects this only to continue and considers it important that the international community see these actions for what they really are. The RS thus wishes to set the record straight about the spurious allegations against it.

A. The RS's procurement of rifles for police officers was transparent, lawful, and, necessary.

12. The importance of a properly equipped RS police force was underlined in 2015 when a terrorist attacked the RS police station in Zvornik. Shouting, "Allahu Akbar," he opened fire on RS police, killing Officer Dragan Djuric and wounding two others. When one police officer tried to shoot the attacker, his 30-year-old gun jammed. As explained in Section V below, BiH faces a serious terrorist threat, especially as the many BiH citizens who fought in Iraq and Syria return to their home country.

13. The RS Ministry of Interior (MoI), which oversees all RS police, recently procured 2,500 rifles for police from the Serbian manufacturer Zastava for nearly 2 million BAM (about 1 million euros). The procurement has been conducted legally and with total transparency. Before procuring the weapons, the MoI requested and received consent from the BiH Ministry of Foreign Affairs, BiH Ministry of Defense, BiH Ministry of Security, and the Intelligence-Security Agency of BiH.¹²

14. The procurement is necessary for the RS MoI's mission of protecting RS residents. The RS MoI's current weapons are antiquated and inadequate, especially given the current terrorist threat to BiH. The average weapon used by RS police is more than 20 years old. There is nothing unusual about a procurement of rifles for a European police force. Nor is there anything extraordinary about the level of the RS MoI's expenditure. To put the RS MoI's 2 million BAM purchase in perspective, the Ministry of Interior of the Sarajevo Canton (just one of the 10 cantons of the Federation of Bosnia and Herzegovina—a fraction of the population of the RS) this year will buy firearms and equipment costing 2 million BAM.¹³ The Ministry of Interior of another canton of the Federation, Herzegovina-Neretva, plans this year to purchase hundreds of thousands of BAM in arms, including automatic weapons and sniper rifles.¹⁴

B. RS police train with U.S. armed forces and European police, not Russian personnel.

1. RS Police have never undergone Russian training.

15. The RS police have never conducted special forces training or any other type of training with Russian police. Nor does the RS have plans to conduct such training. At the same time, it should be noted that there would be nothing illegal or inappropriate for the RS to have Russian

¹² OSA dala pozitivno mišljenje na uvoz oružja za MUP RS, DNEVNI AVAZ, 15 Feb. 2018.

¹³ *RS police purchase of firearms - real threat or media exaggeration?*, Independent Balkan News Agency, 14 Feb. 2018.

¹⁴ *MUP HNK nabavlja snajpere, automatske puške i pištolje*, N1 TV, 2 Mar. 2018.

police assist in its training. Russia is a member of the Peace Implementation Council, and its police forces are highly skilled.

16. In 2015, the RS MoI signed a Memorandum of Understanding with the police administration of the city of Moscow. The agreement was legally based on the 2004 Agreement of Cooperation of the BiH Ministry of Security and Russian Ministry of Interior. The MOU expressed the interest of the parties to engage in cooperation and training typical of two police authorities from different countries. However, no binding agreement has been signed by the parties to implement the cooperation and training set forth in the MOU. Consequently, there has been no training by Russian police, and there are no concrete plans for such training in the future.

2. RS police do train regularly with U.S. armed forces and European police.

17. The RS MoI trains frequently with U.S. armed forces. Members of the RS MoI Special Anti-terrorist Unit (SAU) undergo training with U.S. Navy Seals and U.S. Army Green Berets on a frequent basis. Moreover, the United States' Special Operations Forces Liaison Element (SOFLE) team has been assigned by the U.S. Embassy to communicate daily with to the RS MoI SAU. SAU members are regularly vetted, and the cooperation is mutually considered excellent.

18. It is also common for the RS's SAU compound to host U.S.-led exercises with SAU members, special forces of BiH's State Investigation and Protection Agency (SIPA), and forces of the Federation of BiH Ministry of Interior. In addition to its close cooperation with U.S. agencies, the RS MoI also conducts training with police from European states.

3. The RS's new training center

19. The RS MoI will soon open a new training center, funded by the RS Government, in Zalužani, a place near the RS's largest city, Banja Luka. The training center will be a resource not just for RS MoI personnel but also for partner police agencies within Bosnia and Herzegovina and in the region. Contrary to claims appearing in some press reports, the training center has no connection whatsoever to Russia. The Zalužani training center has been visited on several occasions by representatives of the U.S. Embassy and U.S. armed forces. No Russian delegation has ever visited the center.

C. RS authorities have no affiliation with any paramilitary organization.

20. Some media reports have falsely alleged that RS authorities are connected in some way with an organization called Srpska Cast (translated as "Serbian Pride"), which some claim to be a paramilitary group. Srpska Cast is an association registered in Nis, Serbia. There is no such association registered in the RS, though the group evidently has a few local admirers. The RS has no information to indicate that Srpska Cast is a paramilitary organization or that it plans to become one. RS authorities have no affiliation at all with Srpska Cast. Nor would RS leaders—elected in a free and democratic system—become affiliated with any paramilitary group. There are no paramilitary formations operating on RS territory.

D. Attempts to paint the RS as the next battleground for a proxy war are baseless.

21. Some in the international community (primarily from the U.S.) who support the anti-Dayton centralization of BiH, and seek a new round of forceful intervention to accomplish it, have sought to deceptively cast BiH as the next political battleground of a proxy war between the U.S. and EU members against Russia. They believe that if they can deceptively persuade key decision makers in these countries that RS relations with Russia pose a threat to their own national security interests, these leaders will take strong measures against the RS and its officials. This narrative, however, lacks substance and should be seen for what it is. The RS is not and will not be a proxy for any other nation. The RS enjoys friendly relations with Russia, as it does with many countries in the "West," and intends to continue those relations. If there is any justifiable concern for undue influence in BiH by foreign powers that pose a threat to the U.S. and EU, it is the close relations that Bosniaks in the Federation have with Iran and Saudi Arabia and its radical Wahhabi influence.

E. RS leaders rule out the use of violence in political disputes.

22. As previously stated, BiH's Bosniak leaders frequently employ bellicose rhetoric and the threat of war. In contrast, RS leaders are committed to peace and rule out violence as an option for resolving political disputes. The threat of armed hostilities as a means to resolve disputes should be condemned by the international community. The false narrative of RS militarization is intended to provoke U.S. and EU intervention and punitive measures against the RS and its elected officials to further weaken the RS.

23. The RS expects that this will continue and even increase during the election year in a desperate attempt to affect the outcome of elections or even prevent certain candidates from participating in elections. This, of course, would greatly undermine democracy and stability in BiH. The RS will of course vigorously oppose such efforts and continue to seek resolution of BiH's internal disputes solely through political dialogue and other legal and constitutional means.

III. BiH's elections must be conducted free from foreign interference.

24. Foreign interference in a state's electoral politics threatens the free and fair elections on which representative democracy depends. Around the world, concern about foreign interference in elections is rising, and governments are taking action to curb it. Sweden, for example, recently decided to create a new agency mandated to safeguard the country's upcoming elections from meddling from foreign governments.¹⁵ After the 2016 U.S. Election, the U.S. Congress enacted legislation to create a Global Engagement Center (GEC) to counter foreign propaganda. Allegations by U.S. authorities of Russian attempts to meddle in U.S. elections have drawn considerable attention. However, as the *New York Times* recently reported, the United States itself has often intervened in foreign elections, including, for example, the 2000 election in

¹⁵ *Sweden warns of 'certain foreign powers' meddling in the 2018 election*, THELOCAL.SE, 22 Feb. 2018.

Serbia.¹⁶

25. Foreign meddling in BiH's elections threatens to undermine BiH's democracy. In this year's elections, BiH's voters must be able to choose their own leaders without interference from any foreign country. That interference comes in both direct and indirect forms, including from foreign embassies. The RS has reasons to be concerned regarding both but will not set forth those reasons in this report. However, the RS does consider it important to raise one particular long-standing practice that is intended to affect BiH elections.

A. U.S. Influence on BiH Media and the Elections

26. The U.S. government has devoted significant resources to fund media in BiH since the end of the war in 1995. Although the oft-stated purpose of this funding is to bolster independent media, quality journalism, and civil society more generally, its impact on local politics is controversial. The U.S. government has provided over \$100,000,000 in media funding to BiH since the end of the war, possibly the largest per capita U.S. expenditure in media assistance. This funding is largely channeled through the U.S. Agency for International Development (USAID) and the U.S. Department of State (DoS) through the U.S. embassy in Sarajevo.

27. The OHR also has played a role in overseeing the funding and administering of the media organizations and institutions within BiH. The U.S., through these programs, provides millions of dollars in funding every year to a limited number of media organizations it selects with specific mandates it defines. By USAID's own admission, the U.S. expects this funding to affect local politics, including elections.

28. While calls for acute scrutiny of foreign influence in elections have been growing globally, in the run-up to the fall 2018 elections in BiH, an assessment of U.S. financial support reveals a sharp increase beginning last year and continuing in 2018. U.S. funding to BiH media raises serious concerns about additional foreign political influence into BiH's free and fair elections in a critical election year.

B. Reports on U.S. funding of BiH media shows OHR involvement and intent to influence elections.

29. At the end of the war in 1995, the U.S. invested heavily in the BiH economy, infrastructure, government structures, media and civil society, *inter alia*. In its 2005 10-year assessment, "[d]emocratic Elections, NGOs, and an Independent Media" constituted one of the six areas of assistance for the U.S.¹⁷ According to USAID's assessment of media support in BiH between 1996 and 2002, "Bosnia was the first country in which USAID and other bilateral and multilateral agencies and organizations made a large investment (\$80–100 million) to build and

¹⁶ Scott Shane, *Russia Isn't the Only One Meddling in Elections. We Do It, Too.*, *NEW YORK TIMES*, 17 Feb. 2018.

¹⁷ US Department of State, Bureau of European and Eurasian Affairs, "U.S. Assistance to Bosnia and Herzegovina - Fiscal Years 1995-2005", Fact Sheet (2005), <https://2001-2009.state.gov/p/eur/rls/fs/57223.htm>.

strengthen independent media in the aftermath of civil war.”¹⁸ It reported that “[b]y 1999, USAID and the Department of State had spent \$30 million on the effort, possibly the largest ever per capita U.S. investment in media assistance (USAID/Bosnia 1999).”¹⁹

30. The U.S. supported media organizations, national broadcast networks such as the largely DoS-funded Open Broadcast Network (OBN), and even the national broadcasting regulator (the Independent Media Commission (IMC), which became the Communications Regulatory Agency (CRA)).²⁰ This support was substantial. For example, according to USAID, the CRA required \$19 million from its main sponsors, the U.S. and the E.U., over less than 5 years of existence.

31. A 2011 UN Educational, Scientific and Cultural Organization (UNESCO) report, entitled, *Professional Journalism and Self-Regulation – New Media, Old Dilemmas in South East Europe and Turkey*, highlights the politicization of international media aid in BiH. For example, the Press Council of BiH, a self-regulation body for the journalism community, was largely funded and imposed by foreign donors:

When Bosnia and Herzegovina was established as a specific entity, it was effectively administered as an international protectorate. As a part of this administration, a number of international practices and institutions were imported into – it would even be true to say, imposed on – the local environment, which did not necessarily take into consideration features of the domestic culture and society. The Press Council of Bosnia and Herzegovina is one example. It was established in 2000 under the auspices and guidance of the international community, in an effort to contribute to the peaceful reconciliation of the country. Nominally this was the first press council in SEE, but again it should be underlined that the initiative and the drive towards its creation came from outside the local community.²¹

32. However, the top-down nature of these efforts naturally alienated the populations in BiH. For example, USAID readily admits that “OBN found it difficult to repair its image—accurate or not—as a network that was directed exclusively by foreigners and foreign ministries.”²² Media-funding operations were supported by the OHR, which oversaw much of the funding and administration of media bodies. But USAID noted that “[t]he OHR took on multiple and contradictory roles: as a political actor and ultimate international authority in Bosnia, founder of

¹⁸ USAID, “Assessment of USAID Media Assistance in Bosnia and Herzegovina, 1996–2002”, at iv (Sep. 2003) (USAID 2003 assessment), http://pdf.usaid.gov/pdf_docs/pnacr756.pdf.

¹⁹ *Id.* at v (emphasis added).

²⁰ *Id.* at 8.

²¹ Ognian Zlatev, *Media accountability systems (MAS) and their applications in South East Europe and Turkey*, in “Professional Journalism and Self-Regulation – New Media, Old Dilemmas in South East Europe and Turkey”, UNESCO, at 26 (2011) (emphasis added), <http://unesdoc.unesco.org/images/0019/001908/190810e.pdf>.

²² USAID 2003 assessment, at 5.

a regulatory agency, fundraiser for a specific broadcasting project, and advocate for media legal reforms.”²³ The OHR’s and donor governments’ approach to the BiH media was informed by electoral concerns, which ultimately undermined its effectiveness according to USAID:

Donor governments and the high representative often viewed media initiatives as a potential tool to quickly reshape the troubled political climate. As a result, the OHR’s strategy in media assistance—as in other policy areas—was often influenced by successive election cycles. The OHR’s expedient approach to federation television illustrates those short-term pressures.²⁴

33. From the outset, U.S. media funding was equally tied to local politics, as conceded in USAID’s own report:

Although not always stated officially, USAID expected that, with other development efforts, assisting alternative media and would help transform the political landscape and break the dominance of nationalist parties and attitudes.²⁵

34. The 2003 report suggests that these objectives were at least partially met, asserting, “By putting a high priority on media development in Bosnia, U.S. efforts made significant headway in a relatively short time.”²⁶ The report makes evident that a clear expectation of U.S. funding was to influence elections in BiH:

Although the purpose of U.S. media assistance varied and was not always coherently defined, there were clearly expectations that media assistance could help transform Bosnia’s political climate and enable the election of more civic-minded, moderate political parties.²⁷

35. Also, in USAID’s 2006 final report on the *Assessment of USAID/Bosnia and Herzegovina Media Interventions*, the authors emphasized the importance of focusing on elections in prospective media-funding strategies:

Post-Election Follow-up – As described earlier, USAID has made an important outlay of funds to support elections-related programming throughout BiH. Maximizing the impact of this investment—and the impact on the electorate—should be a priority for continued USAID funding. Utilizing the current coordination and monitoring role of the MCS, the Media Centar leadership

²³ *Id.* at 11.

²⁴ *Id.* (emphasis added).

²⁵ *Id.* at vi.

²⁶ *Id.* at viii.

²⁷ *Id.* at 19 (emphasis added).

should be tasked with formulating a series of initiatives with leading media outlets to follow up on the effect of issue-oriented campaign reporting on post-election activities of newly elected parties and candidates.²⁸

36. A 2012 USAID strategy paper underlined the fact that “[t]he USG is the largest donor in political processes in BiH,”²⁹ and that “USAID/BiH and other sections of the U.S. Embassy are major donors in civil society.”³⁰

37. More recently, a 2016 USAID assessment of media in BiH illustrated the political divisiveness of U.S. funding of BiH media among the population:

Without being asked, four key informants said explicitly that the US is seen at times as politically selective in its approach to BiH media, supporting the anti-nationalist political agenda, but also favoring opposition-oriented media rather than non-partisan media organizations.³¹

C. Increase in Current U.S. funding of BiH Media in Election Year

38. Between 2010 and 2017, no new major BiH media-specific funding program appears to have been initiated by the U.S. In 2017-2018 however, at least three major funding programs largely benefitting BiH media were initiated by USAID and DoS, totaling more than \$12 million.³² In the U.S. Department of State Congressional Budget Justification for fiscal year 2018 (including USAID), Congress allocated \$18 million for the Economic Support and Development Fund to BiH.³³ In particular, the 2018 allocation is meant to “reduce vulnerabilities to Russian pressure, particularly in the energy and media sectors,”³⁴ as well as “support independent media, elections, and democratic political processes.”³⁵

D. The U.S. should fully disclose the allocation and use of its funds and discontinue usage to influence elections.

²⁸ USAID, “Assessment of USAID/Bosnia and Herzegovina Media Interventions – Final Report”, at 31 (Aug. 14, 2006) (emphasis added), http://pdf.usaid.gov/pdf_docs/Pnadh275.pdf.

²⁹ *Id.* at 28.

³⁰ *Id.*

³¹ *Id.* (emphasis added).

³² These include Balkan Media Assistance Program (BMAP); USAID Media Program in BiH; and Democracy Commission Small Grants Program.

³³ Department of State, “Congressional Budget Justification - Department of State, Foreign Operations, and Related Programs Fiscal Year 2018”, at 281 (2017), <https://www.state.gov/documents/organization/271013.pdf>.

³⁴ *Id.*

³⁵ *Id.*

39. Many of the recipients of funding have strong affiliation or provide support to political parties and leaders in BiH. Anyone familiar with the situation in BiH will clearly see how providing significant funding to media recipients and NGOs in BiH is inherently troublesome because of the political influence the funding provides.

40. In light of the current political situation in BiH, any type of foreign funding should be awarded in a perfectly transparent manner. Accountability is particularly important given the vast amount of funding that the U.S. has provided, the role of the OHR and U.S. embassy in managing the use of the funds, the stated intent that the funds influence elections, and the clear history of unlawful foreign intervention in BiH. This is in the interest of BiH citizens who deserve to be fully informed on the financing of their media. It also should be in the interest of citizens whose taxes pay for operations intended to interfere in the affairs of a European country's elections. Indeed, the current opacity of these processes ultimately undermines one of these funds' claimed core objectives, which is to restore the trust in media and institutions. The U.S. should end its practice of using funding to BiH media to influence elections within BiH.

IV. The SDA party is obstructing the implementation of judicial decisions critical to elections.

41. Another risk to fair elections consistent with the BiH Constitution and the rights of each of the Constituent Peoples is the Bosniaks' refusal to implement decisions of the BiH Constitutional Court and the European Court of Human Rights related to elections. The Bosniaks have resisted implementing such decisions—in some cases for many years—because they want to retain their ability for Bosniaks to choose Croat representatives. Perhaps the most egregious example of this political abuse was the election of Zeljko Komsic as the Croat People's representative in the tripartite BiH Presidency from 2006 to 2014. Komsic was elected primarily by Bosniak voters in the Federation, defeating the candidate who received the most votes from the much smaller Croat population in the Federation. Komsic's election as the "Croat" member of the presidency gave the Bosniaks two representatives on the Presidency and the Croats none.

42. As a general matter, the RS has a much better record than the Federation or the BiH level with respect to implementing Constitutional Court decisions. On 11 April 2018, the president of the Constitutional Court, a Bosniak, said there are nine decisions of the court that have not been implemented, and just one of those—a decision involving the RS law on enforcement procedure—is to be implemented by the RS.³⁶ As a report on the court president's comments observed, "This means that the BiH Constitutional Court holds that the RS complied with the previous decision of the Court by having enacted a new law on 9 January as the Day of the RS."³⁷ The other eight decisions that have not been implemented at the Federation and BiH levels.

A. The BiH Constitutional Court's decision on the BiH Election Law

43. Last year, the BiH Constitutional Court nullified the BiH Election Law's provisions on the election of delegates to the Federation House of Peoples. The Court's decision requires the

³⁶ *Devet odluka nije provedeno*, BN Televizija, 11 April 2018.

³⁷ *Id.*

BiH Parliamentary Assembly to amend the law. So far, members of the Assembly—particularly those from the SDA and other Bosniak parties—have refused to make the Election Law consistent with the BiH Constitution. As a result, there have been calls by a few in the media and international community for the High Representative simply to impose a change to the law. As a matter of law and sound policy, however, the necessary amendments must result from a compromise within BiH, not an illegal decree by the High Representative.

44. The provisions of the Election Law recently nullified by the Constitutional Court have, for years, helped the Bosniak parties to dominate the Federation House of Peoples, contrary to constitutional safeguards for the Croat minority. Bosniak political leaders took advantage of the Election Law's provisions that enable "Croat" and "Serb" representatives to be elected by the larger Bosniak population instead of being elected by their own Constituent Peoples. The leader of one of the Croat parties, Božo Ljubić, challenged those provisions in the BiH Constitutional Court, and the court held them unconstitutional in December 2016.³⁸ The court determined that the provisions violated the equality of Constituent Peoples by failing to provide them adequate political representation.

45. Because the BiH Parliamentary Assembly failed to make the necessary amendments to the BiH Election Law's provisions on election of the Federation House of Peoples, the Constitutional Court in July 2017 repealed the offending provisions entirely. Thus, if the BiH Parliamentary Assembly does not enact legislation to implement the Constitutional Court's decision soon, the 2018 election of the Federation House of Peoples cannot be carried out. Election of the Federation House of Peoples is crucial, especially because without it, it will be constitutionally impossible to elect the BiH House of Peoples, the Federation Presidency, or the Federation Government.

1. The SDA has blocked implementation of the decision on the Election Law.

46. Despite the fact that implementation of the Constitutional Court's decision is essential for the functioning of BiH and the Federation, the SDA and other Bosniak parties have resisted enacting the necessary amendments. They have refused to consider any legislation that does not preserve Bosniak domination of the Federation House of Peoples. The SDA and other Bosniak parties must abandon their insistence on preserving their domination and compromise with the Croat parties.

2. Reforms to implement the decision on the Election Law must be a product of domestic agreement.

47. A few politicians and commentators, rejecting the need to find a compromise, are hoping the High Representative will disregard constitutional processes and impose the necessary legislation by decree. This would be unlawful and unwise. As EU Special Representative to BiH Lars-Gunnar Wigemark recently emphasized, the reform of the Election Law must be based on a compromise of domestic parties. Ambassador Wigemark said, "We cannot impose solutions. I think it would be a step back if [the Office of the High Representative] did it. This is a sovereign

³⁸ Case No. U-23/14, Decision on Admissibility and Merits, BiH Constitutional Court, 1 Dec. 2016.

country.”³⁹ High Representative Valentin Inzko, however, has refused to rule out imposing changes to the Election Law by decree.⁴⁰

48. The international community should recall the fiasco that resulted the last time High Representative Inzko intervened in electoral matters. In March 2011, the largest Bosniak party formed a Federation Government in brazen violation of the Federation Constitution. The BiH Central Election Commission promptly declared the formation of the Federation Government unlawful and annulled it. Inzko, however, responded by handing down a decree overruling the CEC’s decision. As described by the International Crisis Group (ICG), the High Representative’s “ill-judged decision to suspend rulings of the state Central Election Commission allowed an illegally elected executive to take office and appoint a government excluding the major Croat parties.”⁴¹ Inzko’s decree, as the ICG’s President wrote, “undermined state bodies and the rule of law.”⁴² Journalist Srećko Latal recently observed that Inzko’s “decision not only damaged relations between Bosniak and Bosnian Croat politicians but also undermined the international community’s confidence.” The Federation Government that was formed in 2011, existing solely because of a foreign diplomat’s unlawful decree, was seen as illegitimate for its entire term.

49. BiH’s friends in the international community should make clear that the authority and responsibility to amend the Election Law belong to the BiH Parliamentary Assembly, not a foreign diplomat. It is the responsibility of the Bosniaks to act in good faith and agree to amend the law.

B. The SDA has blocked implementation of the Constitutional Court’s decision on Mostar, preventing elections in the city.

50. In 2010, the BiH Constitutional Court held that the law with respect to elections in the city of Mostar, which diluted the voting power of the Croats, violated anti-discrimination and voting rights provisions of the BiH Constitution and the International Covenant on Civil and Political Rights. Unfortunately, the SDA, the main Bosniak party in Mostar, has refused to compromise with the HDZ, the main Croat party, to find a solution. As a result, citizens of Mostar have been prevented from voting in local elections since 2008.

C. The SDA has blocked implementation of the European Court of Human Rights’ *Sejdić-Finci* decision.

51. The European Court of Human Rights’ 2009 *Sejdić-Finci* decision rejected provisions of the BiH Constitution that make individuals who are not members of BiH’s three Constituent Peoples ineligible to run for BiH’s three-member Presidency or its House of Peoples. The RS has long advocated a simple solution for members of the BiH Presidency and House of Peoples

³⁹ *Vigemark: EU neće nametati rješenja BiH*, ATV, 12 Feb. 2018.

⁴⁰ *Interview with HR Valentin Inzko*, *Nezavisne Novine*, 18 Dec. 2017.

⁴¹ International Crisis Group, *Bosnia’s Gordian Knot: Constitutional Reform*, Crisis Group Europe Briefing N°68, 12 July 2012, p. 14.

⁴² Letter from Louise Arbour, President and CEO of International Crisis Group, to PIC Steering Board Ambassadors, May 2, 2011.

representing the RS: to simply eliminate all ethnic qualifications. For office holders representing the FBiH, the RS has for years made clear that it would accept whatever solution the FBiH's Croat and Bosniak parties agreed to. Unfortunately, the SDA and other Bosniak parties have rejected any proposal designed to prevent the election of two members of the Presidency representing Bosniaks and none representing Croats. Because of the SDA's stubbornness on this issue, BiH has now failed to implement the Sejdić-Finci decision for more than eight years.

D. The International Community has failed to condemn the Bosniak parties for resisting implementation of these critical court decisions

52. Notwithstanding the need to implement the decisions of the Constitutional Court and European Court of Human Rights—particularly the Election Law decision, implementation of which is necessary to avoid an unprecedented constitutional crisis—the United States and others in the international community have been silent in the face of the Bosniak parties' resistance to implementation. This silence stands in stark contrast to the strident attacks on the RS when it was accused of failing to implement a court decision on the comparatively trivial matter of a public holiday.

V. The growing jihadist threat to BiH

53. The danger of Islamist terrorism in BiH is rising amid the collapse of the Islamic State's territorial base in Iraq and Syria. BiH exported more fighters to Iraq and Syria, per capita, than any other European country.⁴³ As the Islamic State has lost territory in the Middle East, hundreds of jihadist fighters have returned to BiH and other countries in the Western Balkans.⁴⁴

54. Fighters from BiH are returning to a country that remains a haven for Islamic extremists. The SDA party, as detailed in a recent RS paper submitted to the UN Security Council,⁴⁵ over the years has helped turn BiH into a sanctuary for jihadists. In a June 2017 article, the journal *New Eastern Europe* observed, "Despite the Bosnian government claiming to control the religious situation, there are increasing reports of what is known as 'Sharia villages,' where most families live in polygamy under Islamic law, and symbols of ISIS are freely displayed in public places in breach of the established constitutional order."⁴⁶ Germany's *Der Spiegel* recently wrote, "German investigators believe there are around a dozen places in Bosnia where Salafists - - followers of a hardline Sunni interpretation of Islam -- have assembled radicals undisturbed by the authorities."⁴⁷ In testimony to the UK House of Lords in September 2017, Gen. Michael Rose, former Commander of the UN Protection Force in BiH warned of "a rising element of radicalization" in BiH, "particularly amongst the Muslim communities" and of "jihadists who are

⁴³ *Foreign Fighters in Iraq & Syria—Where Do They Come From?*, RADIO FREE EUROPE/RADIO LIBERTY, 29 Feb. 2016; John Schindler, *Operation CUT: Bosnia versus the Islamic State*, 22 Dec. 2015.

⁴⁴ Filip Rudic, *250 Islamist Fighters Return to Balkans: Report*, BIRN, 24 Oct. 2017.

⁴⁵ *How Bosnia and Herzegovina Has Become a Terrorist Sanctuary*, Attachment to Republika Srpska's 16th Report to the UN Security Council, Oct. 2016.

⁴⁶ Tatyana Dronzina and Sulejman Muca, *De-radicalising the Western Balkans*, NEW EASTERN EUROPE, 22 June 2017.

⁴⁷ Walter Mayr, *Sharia Villages: Bosnia's Islamic State Problem*, DER SPIEGEL, 5 Apr. 2016.

coming through and being exported.”⁴⁸

55. Concerns about BiH's use as a jihadist sanctuary are rising among European leaders. Czech President Milos Zeman has said ISIS could form its European base in BiH, where the group's "black flags are already flying in several towns.”⁴⁹ Similarly, Croatian President Kolinda Grabar-Kitarovic warned of "thousands of fighters returning to Bosnia from Syria and Iraq.”⁵⁰ In September 2017, the Croatian newspaper Globus reported that Croatia's secret service had told Grabar-Kitarovic that Islamic radical groups have increasingly been establishing themselves in BiH near the Croatian border and that there are between 5,000 and 10,000 Islamic radicals living in BiH.⁵¹

56. In a recent interview, Ms. Marijana Petir, an HDZ member of the EU Parliament from Croatia expressed concern with respect to the growing jihadist threat in BiH. She stated: "EU and NATO representatives have expressed their concerns over the situation in BiH at a session discussing security in BiH and Kosovo. Their assessment of the situation is based on analyses, studies and reports." One of the concerns Ms. Petir cited was the reported increase of Wahhabi settlements in BiH funded by Saudi Arabia. She explained:

The fact is that Saudi Arabia is financing, with hundreds of millions of euros, different activities that are not only of a religious but also educational character. All this serves the purpose of expanding conservative Islam in the region. The reports demonstrate that Saudi Arabia had and still has a strong influence in the region, which started during the war. So, their aim is to disseminate their interpretation of Islam, which is political Islam. It is different from the Islam that has always been practiced in BiH. In 1995, in the Dayton Accords, it was agreed that foreign fighters should leave BiH, but it has never happened. A large number of them have remained in rural areas in BiH.⁵²

57. The growing jihadist threat in BiH is not only a concern to the citizens of the RS, but also to European states and their citizens.

58. BiH has become a haven for Islamic radicals because its largest Bosniak political party, the SDA, is Islamist. SDA founder Alija Izetbegovic' *Islamic Declaration*, published in 1990, states, "There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions.”⁵³ Consistent with this ideology, the SDA invited mujahidin to

⁴⁸ The testimony is available at www.parliamentlive.tv/Event/Index/a4551237-3e0f-4c02-afbe-8c0cefa94948.

⁴⁹ Daria Sito-Sucic, *Islamic State flags not flying in Bosnia – PM*, Reuters, 12 Sept. 2017.

⁵⁰ *Id.*

⁵¹ Igor Spaic, *Bosnia War Victims Slam Croatia President's Terror Claims*, BIRN, 7 Sept. 2017.

⁵² *Petir za N1: Sve što sam rekla se temelji na izvješćima EU*, N1 TV, 30 Mar. 2018.

⁵³ ALIJA IZETBEGOVIC, *ISLAMIC DECLARATION*, p. 30.

Bosnia and Herzegovina during the war and has continued its close ties to radical Islamists. A recent demonstration of the SDA's Islamist orientation is party president Bakir Izetbegovic's president's proud statement in October 2017 that his father, Alija, "bequeathed" BiH to Recep Tayyip Erdogan, Turkey's Islamist president.⁵⁴

59. BiH policies also help make the country a jihadist haven. The BiH justice system has handed down amazingly lenient sentences—usually involving no prison time—to returned ISIS fighters. The BiH Prosecutor's Office has failed to seek justice for wartime mujahidin atrocities against Serbs. In addition, BiH's SDA-dominated security apparatus is failing to curb the jihadist presence in BiH. As Nenad Pejic of Radio Free Europe/Radio Liberty observed, "There are countless examples of local authorities in Bosnia failing to act properly against Islamic extremism."⁵⁵

60. An additional threat to security is the continued spread of Wahhabi ideology among BiH's Bosniak population. In February 2018, *Bosnia Times* editor Nedžad Latic, a journalist known for criticizing the SDA, was attacked in Sarajevo by a group of men he described as Wahhabis.⁵⁶

61. Members of the international community should hold Bosniak officials accountable for allowing the threat of jihadists to grow and support action to address it.

VI. The RS supports BiH's EU accession process and is continuing to implement reforms.

A. BiH's Coordination Mechanism is working.

62. The establishment and implementation of the Coordination Mechanism for EU integration was difficult, but it is now operating successfully. In July 2015, all levels of government had reached agreement on a Coordination Mechanism. In early 2016, however, the BiH Council of Ministers unilaterally tried to replace the agreed Coordination Mechanism with one that violated the BiH constitutional structure. Later in 2016, SDA members blocked vital IMF financing for BiH in an attempt to coerce the RS into agreeing to amendments to the agreement on the Coordination Mechanism. Once the Coordination Mechanism was finally adopted, Bosniak officials resisted properly implementing it. Bosniak officials claimed that the Coordination Mechanism would not work and that BiH would need to centralize, ignoring the constitutional competencies different levels of government.

63. In spite of BiH's well known political divisions and the Coordination Mechanism's unpromising beginnings, it is now being used effectively to harmonize the positions of BiH's different levels of government. In December 2017, after a meeting of the European Integration Collegium, the Coordination Mechanism's highest body, Federation Prime Minister Fadil

⁵⁴ Izetbegovic says his father "bequeathed" Bosnia to Erdogan, BETA, 20 Oct. 2017.

⁵⁵ Nenad Pejic, *Wahhabist Militancy in Bosnia Profits from Local and International Inaction*, JAMESTOWN TERRORISM MONITOR 9, Issue 42, 17 Nov. 2011.

⁵⁶ Mladen Lakic, *Bosnian Journalist Says "Wahhabis" Assaulted Him*, BIRN, 21 Feb. 2018.

Novalić said, "It turns out that the Coordination Mechanism is functioning, which is the greatest achievement of today's meeting."⁵⁷

64. A key test of the Coordination Mechanism has been its use in arriving at BiH's answers to the European Commission (EC) Questionnaire. These answers were submitted to the EC on 28 February 2018, marking an important step for BiH in its path to EU membership. In February 2018, just before BiH submitted its answers to the EC Questionnaire, BiH Council of Ministers Chairman Denis Zvizdic said, "What matters is that we have a really organized and well-established Mechanism of Coordination that will help us to respond to additional questions quickly and efficiently."⁵⁸ As BiH moves down the road of European integration, the RS will continue to participate in the Coordination Mechanism in a cooperative spirit.

B. The RS is leading the way for BiH's EU integration.

65. The RS has worked vigorously to implement the Reform Agenda for EU integration. By the end of 2017, the RS Government had fully implemented 58 out of 78 measures from the Reform Agenda, and the remaining 20 measures are being realized.⁵⁹ The European Commission's 2018 report on BiH observed, "The Republika Srpska entity National Assembly continued to adopt legislation aimed at implementing the Reform Agenda with a focus on health and social protection sector. The disagreements between Federation ruling coalition parties adversely affected the adoption of Reform Agenda measures at the level of the Federation entity parliament."⁶⁰ The RS is continuing reforms to spur economic growth. Among the RS's top priorities in 2018 are reforms to reduce burdens on private businesses, including abolishing parafiscal charges and reducing labor costs.⁶¹

C. BiH cannot become an EU member as long as its Constitutional Court includes foreign judges; their mandate must end.

66. Reforming the BiH Constitutional Court is essential for BiH to become a fully sovereign state and an EU member. In private meetings, EU officials have made clear that BiH cannot become an EU member as long as it has foreign judges sitting on its Constitutional Court. As explained below, the presence of foreign judges on BiH's highest court is inconsistent with BiH sovereignty and, as then-EU Enlargement Commissioner Olli Rehn said in a speech to the BiH Parliamentary Assembly in 2009, "there is no way a quasi-protectorate can join the EU."⁶²

⁵⁷ Mladen Dragoljovic, *Only seven more questions to be answered*, INDEPENDENT BALKAN NEWS AGENCY, 20 Dec. 2017.

⁵⁸ Zvizdic: *The sooner we negotiate, the faster our EU Path will be*, SARAJEVO TIMES, 23 Feb. 2018.

⁵⁹ *The RS Government implemented 74 percent of the Reform Agenda Measures*, SARAJEVO TIMES, 2 Feb. 2018.

⁶⁰ Commission Staff Working Document, Bosnia and Herzegovina 2018 Report, 17 Apr. 2018, p. 4..

⁶¹ *Minister of Finance Zoran Tegeltija: Unburdening economy is priority*, THE SRPSKA TIMES, 3 Jan. 2018.

⁶² Olli Rehn, EU Commissioner for Enlargement, *Towards a European Era for Bosnia and Herzegovina: The Way Ahead*, Address to Parliament of Bosnia and Herzegovina, 24 July 2009.

67. The foreign judges' continued presence is inconsistent with Chapter 23—Judiciary and fundamental rights—of the *Acquis Communautaire*, which is the body of EU laws a candidate country has to comply with in order to become a member state. The European Commission specifies that compliance with Chapter 23 of the *Acquis* requires the “establishment of an independent and efficient judiciary [which] requires a firm commitment to eliminating external influences over the judiciary.”⁶³ The presence of foreign judges on the BiH's Constitutional Court is therefore inconsistent with the BiH accession to the EU.

68. EU Council recommendation CM/Rec(2010)12 states that “[j]udges, who are part of the society they serve, cannot effectively administer justice without public confidence. They should inform themselves of society's expectations of the judicial system and of complaints about its functioning.”⁶⁴ Foreign judges are hardly part of the BiH society, because, in addition to being foreign nationals, they live abroad, work in a foreign language, and sit on a limited number of cases.

1. A Constitutional Court with foreign members is inconsistent with sovereignty and democracy.

69. The presence of foreign judges on the BiH Constitutional Court is incompatible with BiH's sovereignty.

70. As Professor Robert Hayden has observed, the role of foreign judges on the Constitutional Court “of course, compromises the sovereignty of Bosnia and Herzegovina, since it gives decision-making powers to people who may not, by constitutional mandate, be citizens of the country.”⁶⁵

71. Writing about the BiH Constitutional Court, the University of Antwerp's Stefan Graziadei observes:

Even more at odds with national sovereignty is the idea that international judges may sit in national apex courts: “Because of the doctrine of state sovereignty, it sounds almost inconceivable that a foreign citizen should serve on the bench of a national supreme court or a separate constitutional court of another country.” This is particularly true because such courts operate at the boundary between politics and law: they have the power to

⁶³ European Commission, European Neighborhood Policy And Enlargement Negotiations, *Chapters of the acquis*, COM (2017).

⁶⁴ Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, art. 20 (Nov. 17, 2010).

⁶⁵ ROBERT M. HAYDEN, BLUEPRINTS FOR A HOUSE DIVIDED: THE CONSTITUTIONAL LOGIC OF THE YUGOSLAV CONFLICTS (1999) 131.

review legislation, which is based on the will of the people, for conformity with the national constitution.⁶⁶

72. Even one recently retired foreign Constitutional Court judge, Constance Grewe, admits that the presence of foreign judges “can be seen as an intrusion into the national affairs” or “as an attempt at supervision.”⁶⁷ That is exactly what it is.

73. The presence of foreign judges on the BiH Constitutional Court is also incompatible with BiH democracy. As an international expert panel on Cyprus observed, “Leaving the final decision in case of stalemate to foreign citizens in such critical organs as the Supreme Court and others is in stark contradiction to the principle of democracy.”⁶⁸

2. The politicized Constitutional Court reliably upholds unconstitutional centralization.

74. The BiH Constitutional Court as currently constituted lacks independence from the High Representative, making it impossible to successfully challenge OHR’s unconstitutional centralization of BiH.

75. The example of the HR’s creation of the Court of BiH is instructive. The BiH Constitution, as the International Crisis Group has observed, “allotted judicial matters to the Entities, apart from a state Constitutional Court.”⁶⁹ Disregarding this, the High Representative decreed a law to create the Court of BiH in 2000. Despite the law’s obvious unconstitutionality, the Constitutional Court upheld the law in a 5-4 decision because the three foreign judges voted as a bloc, along with the two Bosniak judges, to protect the HR’s creation. One of those foreign judges later admitted that there was a “tacit consensus between the Court and the High Representative that the Court . . . *will always confirm the merits of his legislation*”⁷⁰

76. The Constitutional Court’s obeisance to the High Representative continues. During a press conference earlier this month, when asked why the court had not yet made a decision with respect to its review of parts of the Federation Constitution, judges of the BiH Constitutional Court gave a telling response—they explained that the court was awaiting the High Representative’s opinion on the matter before issuing its decision. One judge called this “a

⁶⁶ Graziadei at 4 (quoting Joseph Marko, *Foreign Judges: A European Perspective*, in *Hong Kong’s Court of Final Appeal: The Development of the Law in China’s Hong Kong*, ed. by Simon Young and Yash Ghai (New York: CUP, 2014), pp. 637-65 (p. 637)). (footnotes omitted).

⁶⁷ Constance Grewe and Michael Riegner, *Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared*, MAX PLANCK YEARBOOK OF UNITED NATIONS LAW, Vol. 15, p. 41.

⁶⁸ International Expert Panel Convened By The Committee For A European Solution In Cyprus, *A principled basis for a just and lasting Cyprus settlement in the light of International and European Law*, 2005 (quoted in Graziadei at 4).

⁶⁹ 2014 ICG Report at 27 (footnotes omitted).

⁷⁰ JOSEPH MARKO, FIVE YEARS OF CONSTITUTIONAL JURISPRUDENCE IN BOSNIA AND HERZEGOVINA, *European Diversity and Autonomy Papers* (July 2004) at 17 and 18 (emphasis added).

relatively common practice.”⁷¹ Mirsad Ćeman, President of the Constitutional Court, said that “in this case, the High Representative was a legislator, even a constitution-maker, and since he is, and it is undisputed that this is so, then he is provided with an opportunity to give his opinion.”

77. The High Representative clearly has no legal authority under the Dayton Accords or from any legal instrument to act as a legislator or “constitution-maker” nor to influence the deliberations and decisions of what must rightly be an independent Constitutional Court. Such practice does not exist in any country of the world. It is unacceptable for the highest judicial authority mandated to uphold and interpret the BiH Constitution impartially to ask for guidance and direction from the High Representative. These statements represent a confession that the BiH Constitutional Court is unlawfully governed by foreigners, led by the High Representative.

3. All Serb and Croat parties support ending the role of foreign judges on the Constitutional Court but have been prevented from doing so because Bosniak leaders do not want to give up this political tool.

78. The BiH Constitution authorizes the Parliamentary Assembly to pass a new law replacing the foreign judges five years after their initial appointment, which occurred in 1996.⁷² All of the Serb and Croat political parties in BiH are united in support of replacing the foreign judges on the Constitutional Court with BiH citizens.⁷³ As the president of the Croat National Council, which represents all of the Croat parties, recently said, “Twenty years after the war, Bosnians are ready to take full control of this court.” On 20 December 2016, leaders of the SNSD and HDZ, the largest Serb and Croat parties in BiH, announced that their parties are jointly preparing a new Law on the Constitutional Court.⁷⁴ Unfortunately, the SDA is refusing to reform the Constitutional Court by passing a new law because it does not want to break up the alliance of former SDA leaders and foreign members that controls it.

VII. The international community should respect the Dayton Accords and BiH sovereignty.

79. BiH’s friends in the international community, especially witnesses to the Dayton Accords, should support the Accords’ faithful implementation. This includes opposing efforts to use BiH institutions as political instruments to unlawfully undermine the Dayton Constitution. It also includes supporting reforms necessary to restore the structure established under the Dayton Accords.

A. The Office of the High Representative must close.

80. In order to qualify for EU membership, BiH must become a self-governing country whose sovereignty is fully respected. This is impossible as long as the High Representative

⁷¹ *Vrh državnog Ustavnog suda o provedbi presuda i političkom uticaju*, TV 1, 11 April 2018.

⁷² BiH Constitution, Art. VI(1)(d).

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

⁷⁴ Danijel Kovacevic, *Bosnian Serbs Threaten Showdown over Foreign Judges*, BIRN, 20 Dec. 2016.

remains in BiH and claims authority to decree laws, constitutional amendments, and punishments completely outside the Dayton constitutional system. As journalist Srečko Latal recently observed, "Many Western officials . . . turned against the OHR, declaring the very existence of such an organization - which is neither a part of local government structures nor overlooked by any concrete international body - contradicts Bosnia's intention to join the EU."⁷⁵ It is also impossible as long as the High Representative furtively supports the use of BiH institutions to unlawfully advance an agenda to centralize the structure of BiH contrary to the Dayton Accords. If BiH is to become a fully sovereign state and an EU member, the High Representative's presence in BiH must come to an end.

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

81. The Security Council has authority to take certain measures under Chapter VII of the UN Charter "to maintain or restore international peace and security" only where there is "the existence of any threat to the peace, breach of the peace, or act of aggression."⁷⁶ BiH, despite its political divisions, has been peaceful and secure for many years; there is no security threat that could possibly justify the Security Council acting under Chapter VII of the UN Charter. The Security Council should thus end the application of Chapter VII measures. Continuing to act under Chapter VII casts an unwarranted stigma on BiH and hampers BiH's progress toward EU membership.

⁷⁵ Srečko Latal, *Bosnians Look to Forgotten 'Governor' to Avert Crisis*, BALKAN INSIGHT, 15 March 2018.

⁷⁶ See Chapter VII of the UN Charter.

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May 30, 2018

The Honorable Joe Barton
2107 Rayburn House Office Building
Washington, DC 20515

Dear Rep. Barton:

My law firm serves as legal counsel on matters of international law for Republika Srpska (RS), one of the two Entities that comprise Bosnia and Herzegovina (BiH). The RS remains grateful to the United States for helping to make the Dayton Accords possible, ushering in the peace BiH has enjoyed for more than 22 years. The RS is committed to the Dayton Accords, including the BiH Constitution, and thinks their full and faithful implementation is the key to BiH's future.

I read with interest your March 23 letter to Assistant Secretary of State Wess Mitchell about BiH's continued impasse with respect to its Election Law. The RS agrees with you that it is crucial for BiH to replace the parts of the Election Law struck down by the BiH Constitutional Court so that the results of this autumn's elections can be implemented without disruption. Without such amendments, it will be impossible to form the BiH House of Peoples, or the Presidency, government, and House of Peoples of BiH's other Entity, the Federation of Bosnia and Herzegovina (FBiH). Unfortunately, BiH's largest Bosniak party, the SDA, is blocking the necessary amendments because it wants to retain the ability for Bosniaks to choose representatives not just of the Bosniak people but also the Croat people. This has happened in the past, such as when Zeljko Komsic was elected, primarily by Bosniak voters, as the Croat People's representative in the tripartite BiH Presidency from 2006 to 2014. This violates one of the main tenets of the Dayton Accords, namely, equality among the Constituent Peoples.

Because of your interest in the current situation in BiH, I thought it would be helpful for you and your staff to have the latest report of the government of the RS to the UN Security Council, dated April 2018. This is the 19th of such reports, which are submitted every six months prior to the UN Security Council's meetings on BiH. For information on the Election Law issue, please see Section IV of the report.

With BiH's 2018 elections approaching, there has been much misinformation circulating with respect to peace and security in the country. One such piece of misinformation is the claim that the RS is militarizing through the support of Russia. There is no truth to the allegation that

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the RS is militarizing. The RS police's recent procurement of rifles from a Serbian manufacturer, which was necessary to modernize police weaponry, was conducted with total transparency and the permission of all relevant BiH agencies. The weapons expenditures of the RS police are comparable to those of individual canton police forces in the FBiH.

Contrary to claims by some who oppose the RS government, RS police have never trained with Russian personnel, nor do they have plans to do so. RS police do, on the other hand, frequently train with U.S. armed forces and European police. In addition, contrary to baseless allegations, RS authorities have no affiliation with any paramilitary group. There are no such formations operating on RS territory, and RS leaders—elected in a free and democratic system—would never become affiliated with such a group.

The RS is committed to resolving political disputes solely through peaceful and constitutional means. As President Dodik recently said, RS "authorities will not make a single move that could destabilize the situation or spread violence, because peace and stability is a holy thing in Srpska."¹ In contrast, BiH's Bosniak leaders often threaten the use of violence and even war in response to political differences. To cite a recent example, Bakir Izetbegovic, the Bosniak member of the BiH Presidency and leader of the SDA party, in February said that Croats "cannot get a third entity in Bosnia without a war."² In 2016, when the RS planned a referendum about the date of its RS Day holiday, Izetbegovic warned that the RS holding the referendum about RS Day would "most probably lead to the collapse of peace in this part of Europe."³ On January 13, 2018, Bosniak politician Reuf Bajrovic's Civic Alliance party called on the SDA to prepare for war, including by strengthening the police of the Federation and cantons in which the Croat HDZ party has no control (i.e., the Bosniak cantons).⁴ Such bellicose statements should be condemned.

The RS's commitment to the peaceful resolution of political disputes and its response to false allegations of militarization are outlined in Sections I and II of the attached report to the Security Council.

Thank you for your interest in the peace and stability of BiH. I would be happy to discuss any of these issues, or other issues related to BiH, with you or your staff.

Very Truly Yours,



Edward B. Rowe

¹ Dodik: *Srpska Protects All Regardless of Ethnicity*, SRNA, 1 Oct. 2017.

² Izetbegovic: *Bosnian Croat Entity 'Impossible Without War'*, BALKAN INSIGHT, 5 Feb. 2018.

³ Izetbegovic: *Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

⁴ GS: *Građani, nemojte mirno spavati*, Građanski savez (Civic Alliance) website, 13 Jan. 2018.

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Attachment

Republika Srpska's 19th Report to the UN Security Council

April 2018

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Republika Srpska's 19th Report to the UN Security Council

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Republika Srpska's 19th Report to the UN Security Council

Introduction and Executive Summary

I. The Dayton Accords must be faithfully implemented.

Republika Srpska (RS) remains fully committed to the Dayton Accords and insists on their full implementation. This includes respect for the BiH Constitution, which is Annex 4 of the Dayton Accords, and the structures and protections it created. The RS also remains committed to resolving political disputes solely through peaceful and constitutional means. It asks the international community to condemn threats of violence by Bosniak leaders.

II. Allegations of RS "militarization," under Russian influence or otherwise, have no factual basis and are intended as a pretext for heightened foreign intervention and to weaken the RS and its government.

As BiH's 2018 elections approach, some political opponents of the RS Government have spun a wholly false narrative that the RS is militarizing. The RS's recent procurement of rifles, which was necessary to modernize antiquated police weaponry, was fully transparent and conducted with the permission of all relevant BiH agencies. Notwithstanding claims of the RS's political rivals, RS police have not trained with Russian personnel but do frequently train with U.S. armed forces and European police. The RS enjoys friendly relations with Russia, as well as with Western countries. There is no basis, however, for claims that the RS is a proxy for Russia, fabricated in an attempt to persuade western policy makers who oppose Russia to punish the RS and its leaders. The RS does not and will not act as a proxy for any foreign country. Moreover, contrary to baseless allegations, RS authorities have no affiliation with any paramilitary group; indeed there are no paramilitary formations operating on RS territory. The RS, unlike some Bosniak leaders, rules out the use of violence in political disputes.

III. BiH's elections must be conducted free from foreign interference.

In this year's elections, BiH citizens must be able to choose their own leaders without interference from any foreign state. The United States, according to U.S. Government reports, has long sought to affect elections in BiH through its funding of BiH media, and it appears to be intensifying such efforts. The United States should fully disclose its spending on BiH media and stop using the funds to influence elections.

IV. The SDA party is obstructing the implementation of judicial decisions critical to elections.

The SDA and other Bosniak parties have resisted implementing important decisions of the BiH Constitutional Court and European Court of Human Rights concerning elections. The BiH Constitutional Court's 2017 nullification of a portion of the BiH Election Law means that without amendments to the law, there can be no formation of the Federation House of Peoples, BiH House of Peoples, Federation Presidency, or Federation Government. The SDA is blocking the necessary amendments because the SDA wants to retain the ability for Bosniaks to choose not only Bosniak but Croat representatives. These amendments are necessary to avoid a

constitutional crisis. Contrary to some suggestions, it would be unlawful and unwise for the High Representative to try to resolve the issue by decree. The SDA has also blocked implementing the Constitutional Court's 2010 decision on Mostar elections, thereby preventing local elections from being held since 2008. Moreover, the SDA has resisted implementing the European Court of Human Rights' 2009 Sejdić-Finci decision. Despite the importance of implementing these decisions, the United States and others in the international community have been notably silent in the face of the Bosniak parties' refusal to implement them.

V. The growing jihadist threat to BiH

As the Islamic State has lost its territorial base, the danger of terrorism in BiH has risen. BiH citizens who joined the Islamic State are returning to a BiH that remains a safe haven for jihadists. The SDA invited mujahidin to Bosnia and Herzegovina during the war and has continued its close ties to radical Islamists. BiH policies and the failure of BiH's SDA-dominated security apparatus have also helped make the country a jihadist haven. The growing jihadist threat in BiH is not only a concern to the citizens of the RS, but also to EU member states.

VI. The RS supports BiH's EU accession process and is continuing to implement reforms.

The RS strongly supports BiH's EU integration efforts. The Coordination Mechanism for EU integration has proven effective despite opposition to establishing it by Bosniak political leaders. BiH's different levels of government effectively used the Coordination Mechanism to prepare BiH's answers to the European Commission's Questionnaire consistent with constitutional competencies. The RS has been working diligently to implement the Reform Agenda for EU integration and enact other reforms to promote economic growth. One reform that is essential for BiH to become an EU member is the replacement of the foreign judges on the BiH Constitutional Court with BiH citizens. This reform has the support of all Serb and Croat leaders, but Bosniak leaders have blocked it because they see the Constitutional Court's foreign members as allies.

VII. The international community should respect the Dayton Accords and BiH sovereignty.

The RS asks the international community to respect the Dayton Accords and BiH sovereignty. BiH's friends in the international community should support reforms to restore the Dayton structure, refrain from intervening in BiH politics, and close the Office of the High Representative, which is incompatible with BiH sovereignty and EU membership. Moreover, the UN Security Council should end the unjustified application of Chapter VII of the UN Charter to BiH.

The RS will continue its commitment to the Dayton Accords, EU integration, and reforms to improve the wellbeing of its citizens.

I. The Dayton Accords must be faithfully implemented.

A. The RS has no plans for secession but insists upon full implementation of the Dayton Accords and the Dayton political structure.

1. During this reporting period, there have been increased efforts by political opponents of the RS and its government to create a sense of crisis by blatantly misrepresenting the political situation in BiH. The purpose of this endeavor is to create false facts meant to incite support for a return to heavy-handed international intervention into the affairs of BiH and to affect the upcoming elections. Such actions, if successful, would undermine the BiH Constitution and fundamental principles of international law. At the same time, serious threats to the Constitution that violate the Dayton structure continue due to the refusal of Bosniak political leaders and their allies to adhere to the rule of law and the obligations of the Dayton Accords.

2. Despite these challenges, the RS government remains fully committed to the Dayton Accords. It respects the legal structure, rights, and obligations set forth in these agreements—including those set out in the BiH Constitution—and it insists that other signatories to the Dayton Accords also do so. This means respecting RS autonomy and the rights of Constituent Peoples as guaranteed under the BiH Constitution, as well as refraining from interfering in the domestic affairs of BiH. Contrary to the allegations of some of the RS's critics, the RS has no plans for secession from BiH. The RS's critics often mischaracterize RS officials' statements that condemn unlawful changes to—and attempts to change—the Dayton structure, along with the resulting dysfunction of BiH. The RS government continues to support BiH as it is defined in the BiH Constitution and will continue to seek, through political and legal means, the full implementation of the Dayton Accords.

3. Those involved in bringing about the Dayton Accords intended and produced an agreement more significant and comprehensive than merely a means for ending military hostilities. The Accords provided a long-term structure for a sustainable political system in BiH. Unfortunately, the political structure carefully established under Annex 4 of the Accords, which sets forth BiH's Constitution, has been under attack in an unlawful effort to change the mandated structure in dangerous ways. BiH's long-term stability depends upon changing course in order to restore what was so wisely constructed.

B. Threats of violence and armed aggression by Bosniak political leaders in response to political disputes undermine the Dayton Accords and must be condemned.

4. Dangerously, BiH's Bosniak leaders frequently threaten the use of violence and even war in response to political differences. For example, in a speech on 16 April 2018, Bakir Izetbegovic, the Bosniak member of the BiH Presidency and leader of the Islamist SDA Party, said, "Bosniaks must never be weak again" and boasted about the heavy weapons the Bosniaks are producing.¹ Izetbegovic said:

¹ *Urgent Meeting Not Held for Lack Of Quorum*, SRNA, 20 Apr. 2018.

We will produce a moving howitzer and we are already working on it. Also, we will create a mobile transporter, we have made a rifle, we will make the good tactical 12.7, multipurpose throwers of all possible calibre and all possible ammunition for it, and drones. So, we will be like that little man who is not big, but he is angry and well-armed, and everyone will have to think carefully whether they should get into conflict with him. They will never be able to knock on our doors again, without us having nothing to answer it with.²

5. Since the Bosniak MPs failed to respond to a summons for emergency session of the BiH House of Representatives, called by the caucus of RS MPs, to discuss the armament of the Federation and warmongering statements of Bosniak officials, RS President Milorad Dodik has proposed, for the purpose of strengthening mutual trust in BiH, that a joint commission of RS and Federation representatives be set up to understand the facts regarding the production of weapons and munitions in the Federation which production is outside of the oversight of BiH institutions.³

6. President Dodik has stated that this is a very important topic in need of joint deliberation given the fact that it concerns "the fact that someone is producing, without authorization, mortars and rockets using the resources secured for Bosniaks, because we in the Republic of Srpska were forced to close all our factories producing weapons and munitions, whereas there are six such factories in the FBiH."⁴

7. Izetbegovic's most recent threatening remarks continue a long pattern. On 5 February 2018, for example, Izetbegovic said that Croats "cannot get a third entity in Bosnia without a war."⁵ In 2016, when the RS planned a referendum about the date of its RS Day holiday, Izetbegovic warned that the vote about the holiday would "most probably lead to the collapse of peace in this part of Europe."⁶

8. On 24 March 2018, Federation Prime Minister Fadil Novalić, a member of the SDA, said at an SDA meeting:

You have witnessed that defense industry does not serve only export purposes, it increases the security of our country at the time when Serbia and Croatia have been arming themselves. During this term of office, we have almost finalised the production of self-propelled howitzers 155 mm, the production of a rifle, we have

² *Izetbegović threatens with heavy weapons*, INDEPENDENT BALKAN NEWS AGENCY, 18 Apr. 2018.

³ ДОДИК: ФОРМИРАЊЕ КОМИСИЈЕ ЗА ОРУЖЈЕ ОЈАЧАЛО БИ МЕЋУСОБНО ПОВЈЕРЕЊЕ, БНРТ, 22 Apr. 2018.

⁴ *Dodik: Formirati komisiju koja će utvrditi činjenice o proizvodnji oružja*, OSLOBODENJE, 21 Apr. 2018.

⁵ *Izetbegovic: Bosnian Croat Entity 'Impossible Without War'*, BALKAN INSIGHT, 5 Feb. 2018.

⁶ *Izetbegovic: Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

new RPGs. Our shells can fly 42 instead of 20 kilometers. We are aiming at 50 kilometers. We are constructing a gunpowder factory. I think that combat personnel carriers will leave our factories by the end of the year. We have dramatically strengthened our defense industry, not only for the purpose of export.⁷

9. The leader of another Bosniak party, Sefer Halilovic, threatened war against the RS if it held its holiday referendum and boasted that the RS could hold out for only 10 to 15 days.⁸ No leaders of the SDA or any other Bosniak party distanced themselves from these threats. On 13 January 2018, Bosniak politician Reuf Bajrović's Civic Alliance party called on the SDA to prepare for war, including by strengthening the police of the Federation and cantons in which the Croat HDZ party has no control (i.e., the Bosniak cantons).⁹ Such bellicose statements threaten the Dayton Accords and should be condemned by the international community.

10. Notwithstanding such provocative statements from Bosniak political leaders, the RS wishes to reemphasize its full commitment to peace and to reiterate statements of its political leaders rejecting violence as an option for resolving political disputes. As President Dodik recently said, RS "authorities will not make a single move that could destabilize the situation or spread violence, because peace and stability is a holy thing in Srpska."¹⁰ On another occasion, President Dodik emphasized that the RS's "options are all political, without any war ones."¹¹ Despite RS leaders' clear and consistent statements calling for the peaceful resolution of disputes, Bosniak political leaders and their supporters often falsely accuse the RS of the opposite. They hope to provoke U.S. and EU intervention and punitive measures against the RS and its elected leaders to further weaken the decentralized structure set out in the Dayton Accords. Nonetheless, the RS will continue to seek resolution of BiH's internal disputes solely through political dialogue and other constitutional means.

II. Allegations of RS "militarization," under Russian influence or otherwise, have no factual basis and are intended as a pretext for heightened foreign intervention and to weaken the RS and its government.

11. Certain recent media reports have propagated a series of distortions and outright falsehoods that depict the RS as being in the process of militarization. The main source of these allegations is BiH's minister of security, who is a member of the Serb Democratic Party (SDS), the main opposition party in the RS and coalition partner with the Bosniak SDA party at the BiH level. Unfortunately, during this election year, those who oppose the RS Government's efforts to

⁷ *Atmosferom straha do izbora*, N1 TV, 27 Mar. 2018.

⁸ *Bosnia's Republika Srpska to hold controversial referendum despite ban*, BNA Intellinews, 23 Sept. 2016.

⁹ *GS: Gradani, nemojte mirno spavati*, Gradanski savez (Civic Alliance) website, 13 Jan. 2018. The statement by Mr. Bajrović's party is ironic, given Mr. Bajrović's recent false claim and criticism of President Dodik for threatening war.

¹⁰ *Dodik: Srpska Protects All Regardless of Ethnicity*, SRNA, 1 Oct. 2017.

¹¹ *Dodik: Even Putin can't change our decision on referendum*, B92, 21 Sept. 2016.

protect the RS's rights under the Dayton Accords have chosen to use the media and other means to falsely attack its elected officials. The RS Government expects this only to continue and considers it important that the international community see these actions for what they really are. The RS thus wishes to set the record straight about the spurious allegations against it.

A. The RS's procurement of rifles for police officers was transparent, lawful, and, necessary.

12. The importance of a properly equipped RS police force was underlined in 2015 when a terrorist attacked the RS police station in Zvornik. Shouting, "Allahu Akbar," he opened fire on RS police, killing Officer Dragan Djuric and wounding two others. When one police officer tried to shoot the attacker, his 30-year-old gun jammed. As explained in Section V below, BiH faces a serious terrorist threat, especially as the many BiH citizens who fought in Iraq and Syria return to their home country.

13. The RS Ministry of Interior (MoI), which oversees all RS police, recently procured 2,500 rifles for police from the Serbian manufacturer Zastava for nearly 2 million BAM (about 1 million euros). The procurement has been conducted legally and with total transparency. Before procuring the weapons, the MoI requested and received consent from the BiH Ministry of Foreign Affairs, BiH Ministry of Defense, BiH Ministry of Security, and the Intelligence-Security Agency of BiH.¹²

14. The procurement is necessary for the RS MoI's mission of protecting RS residents. The RS MoI's current weapons are antiquated and inadequate, especially given the current terrorist threat to BiH. The average weapon used by RS police is more than 20 years old. There is nothing unusual about a procurement of rifles for a European police force. Nor is there anything extraordinary about the level of the RS MoI's expenditure. To put the RS MoI's 2 million BAM purchase in perspective, the Ministry of Interior of the Sarajevo Canton (just one of the 10 cantons of the Federation of Bosnia and Herzegovina—a fraction of the population of the RS) this year will buy firearms and equipment costing 2 million BAM.¹³ The Ministry of Interior of another canton of the Federation, Herzegovina-Neretva, plans this year to purchase hundreds of thousands of BAM in arms, including automatic weapons and sniper rifles.¹⁴

B. RS police train with U.S. armed forces and European police, not Russian personnel.

1. RS Police have never undergone Russian training.

15. The RS police have never conducted special forces training or any other type of training with Russian police. Nor does the RS have plans to conduct such training. At the same time, it should be noted that there would be nothing illegal or inappropriate for the RS to have Russian

¹² OSA dala pozitivno mišljenje na uvoz oružja za MUP RS, DNEVNI AVAZ, 15 Feb. 2018.

¹³ *RS police purchase of firearms - real threat or media exaggeration?*, Independent Balkan News Agency, 14 Feb. 2018.

¹⁴ *MUP HNK nabavlja snajpere, automatske puške i pištolje*, N1 TV, 2 Mar. 2018.

police assist in its training. Russia is a member of the Peace Implementation Council, and its police forces are highly skilled.

16. In 2015, the RS MoI signed a Memorandum of Understanding with the police administration of the city of Moscow. The agreement was legally based on the 2004 Agreement of Cooperation of the BiH Ministry of Security and Russian Ministry of Interior. The MOU expressed the interest of the parties to engage in cooperation and training typical of two police authorities from different countries. However, no binding agreement has been signed by the parties to implement the cooperation and training set forth in the MOU. Consequently, there has been no training by Russian police, and there are no concrete plans for such training in the future.

2. RS police do train regularly with U.S. armed forces and European police.

17. The RS MoI trains frequently with U.S. armed forces. Members of the RS MoI Special Anti-terrorist Unit (SAU) undergo training with U.S. Navy Seals and U.S. Army Green Berets on a frequent basis. Moreover, the United States' Special Operations Forces Liaison Element (SOFLE) team has been assigned by the U.S. Embassy to communicate daily with to the RS MoI SAU. SAU members are regularly vetted, and the cooperation is mutually considered excellent.

18. It is also common for the RS's SAU compound to host U.S.-led exercises with SAU members, special forces of BiH's State Investigation and Protection Agency (SIPA), and forces of the Federation of BiH Ministry of Interior. In addition to its close cooperation with U.S. agencies, the RS MoI also conducts training with police from European states.

3. The RS's new training center

19. The RS MoI will soon open a new training center, funded by the RS Government, in Zalužani, a place near the RS's largest city, Banja Luka. The training center will be a resource not just for RS MoI personnel but also for partner police agencies within Bosnia and Herzegovina and in the region. Contrary to claims appearing in some press reports, the training center has no connection whatsoever to Russia. The Zalužani training center has been visited on several occasions by representatives of the U.S. Embassy and U.S. armed forces. No Russian delegation has ever visited the center.

C. RS authorities have no affiliation with any paramilitary organization.

20. Some media reports have falsely alleged that RS authorities are connected in some way with an organization called Srpska Cast (translated as "Serbian Pride"), which some claim to be a paramilitary group. Srpska Cast is an association registered in Nis, Serbia. There is no such association registered in the RS, though the group evidently has a few local admirers. The RS has no information to indicate that Srpska Cast is a paramilitary organization or that it plans to become one. RS authorities have no affiliation at all with Srpska Cast. Nor would RS leaders—elected in a free and democratic system—become affiliated with any paramilitary group. There are no paramilitary formations operating on RS territory.

D. Attempts to paint the RS as the next battleground for a proxy war are baseless.

21. Some in the international community (primarily from the U.S.) who support the anti-Dayton centralization of BiH, and seek a new round of forceful intervention to accomplish it, have sought to deceptively cast BiH as the next political battleground of a proxy war between the U.S. and EU members against Russia. They believe that if they can deceptively persuade key decision makers in these countries that RS relations with Russia pose a threat to their own national security interests, these leaders will take strong measures against the RS and its officials. This narrative, however, lacks substance and should be seen for what it is. The RS is not and will not be a proxy for any other nation. The RS enjoys friendly relations with Russia, as it does with many countries in the "West," and intends to continue those relations. If there is any justifiable concern for undue influence in BiH by foreign powers that pose a threat to the U.S. and EU, it is the close relations that Bosniaks in the Federation have with Iran and Saudi Arabia and its radical Wahhabi influence.

E. RS leaders rule out the use of violence in political disputes.

22. As previously stated, BiH's Bosniak leaders frequently employ bellicose rhetoric and the threat of war. In contrast, RS leaders are committed to peace and rule out violence as an option for resolving political disputes. The threat of armed hostilities as a means to resolve disputes should be condemned by the international community. The false narrative of RS militarization is intended to provoke U.S. and EU intervention and punitive measures against the RS and its elected officials to further weaken the RS.

23. The RS expects that this will continue and even increase during the election year in a desperate attempt to affect the outcome of elections or even prevent certain candidates from participating in elections. This, of course, would greatly undermine democracy and stability in BiH. The RS will of course vigorously oppose such efforts and continue to seek resolution of BiH's internal disputes solely through political dialogue and other legal and constitutional means.

III. BiH's elections must be conducted free from foreign interference.

24. Foreign interference in a state's electoral politics threatens the free and fair elections on which representative democracy depends. Around the world, concern about foreign interference in elections is rising, and governments are taking action to curb it. Sweden, for example, recently decided to create a new agency mandated to safeguard the country's upcoming elections from meddling from foreign governments.¹⁵ After the 2016 U.S. Election, the U.S. Congress enacted legislation to create a Global Engagement Center (GEC) to counter foreign propaganda. Allegations by U.S. authorities of Russian attempts to meddle in U.S. elections have drawn considerable attention. However, as the *New York Times* recently reported, the United States itself has often intervened in foreign elections, including, for example, the 2000 election in

¹⁵ *Sweden warns of 'certain foreign powers' meddling in the 2018 election*, THELOCAL.SE, 22 Feb. 2018.

Serbia.¹⁶

25. Foreign meddling in BiH's elections threatens to undermine BiH's democracy. In this year's elections, BiH's voters must be able to choose their own leaders without interference from any foreign country. That interference comes in both direct and indirect forms, including from foreign embassies. The RS has reasons to be concerned regarding both but will not set forth those reasons in this report. However, the RS does consider it important to raise one particular long-standing practice that is intended to affect BiH elections.

A. U.S. Influence on BiH Media and the Elections

26. The U.S. government has devoted significant resources to fund media in BiH since the end of the war in 1995. Although the oft-stated purpose of this funding is to bolster independent media, quality journalism, and civil society more generally, its impact on local politics is controversial. The U.S. government has provided over \$100,000,000 in media funding to BiH since the end of the war, possibly the largest per capita U.S. expenditure in media assistance. This funding is largely channeled through the U.S. Agency for International Development (USAID) and the U.S. Department of State (DoS) through the U.S. embassy in Sarajevo.

27. The OHR also has played a role in overseeing the funding and administering of the media organizations and institutions within BiH. The U.S., through these programs, provides millions of dollars in funding every year to a limited number of media organizations it selects with specific mandates it defines. By USAID's own admission, the U.S. expects this funding to affect local politics, including elections.

28. While calls for acute scrutiny of foreign influence in elections have been growing globally, in the run-up to the fall 2018 elections in BiH, an assessment of U.S. financial support reveals a sharp increase beginning last year and continuing in 2018. U.S. funding to BiH media raises serious concerns about additional foreign political influence into BiH's free and fair elections in a critical election year.

B. Reports on U.S. funding of BiH media shows OHR involvement and intent to influence elections.

29. At the end of the war in 1995, the U.S. invested heavily in the BiH economy, infrastructure, government structures, media and civil society, *inter alia*. In its 2005 10-year assessment, "[d]emocratic Elections, NGOs, and an Independent Media" constituted one of the six areas of assistance for the U.S.¹⁷ According to USAID's assessment of media support in BiH between 1996 and 2002, "Bosnia was the first country in which USAID and other bilateral and multilateral agencies and organizations made a large investment (\$80-100 million) to build and

¹⁶ Scott Shane, *Russia Isn't the Only One Meddling in Elections. We Do It, Too.*, *NEW YORK TIMES*, 17 Feb. 2018.

¹⁷ US Department of State, Bureau of European and Eurasian Affairs, "U.S. Assistance to Bosnia and Herzegovina - Fiscal Years 1995-2005", Fact Sheet (2005), <https://2001-2009.state.gov/p/eur/rls/fs/57223.htm>.

strengthen independent media in the aftermath of civil war.”¹⁸ It reported that “[b]y 1999, USAID and the Department of State had spent \$30 million on the effort, possibly the largest ever per capita U.S. investment in media assistance (USAID/Bosnia 1999).”¹⁹

30. The U.S. supported media organizations, national broadcast networks such as the largely DoS-funded Open Broadcast Network (OBN), and even the national broadcasting regulator (the Independent Media Commission (IMC), which became the Communications Regulatory Agency (CRA)).²⁰ This support was substantial. For example, according to USAID, the CRA required \$19 million from its main sponsors, the U.S. and the E.U., over less than 5 years of existence.

31. A 2011 UN Educational, Scientific and Cultural Organization (UNESCO) report, entitled, *Professional Journalism and Self-Regulation – New Media, Old Dilemmas in South East Europe and Turkey*, highlights the politicization of international media aid in BiH. For example, the Press Council of BiH, a self-regulation body for the journalism community, was largely funded and imposed by foreign donors:

When Bosnia and Herzegovina was established as a specific entity, it was effectively administered as an international protectorate. As a part of this administration, a number of international practices and institutions were imported into – it would even be true to say, imposed on – the local environment, which did not necessarily take into consideration features of the domestic culture and society. The Press Council of Bosnia and Herzegovina is one example. It was established in 2000 under the auspices and guidance of the international community, in an effort to contribute to the peaceful reconciliation of the country. Nominally this was the first press council in SEE, but again it should be underlined that the initiative and the drive towards its creation came from outside the local community.²¹

32. However, the top-down nature of these efforts naturally alienated the populations in BiH. For example, USAID readily admits that “OBN found it difficult to repair its image—accurate or not—as a network that was directed exclusively by foreigners and foreign ministries.”²² Media-funding operations were supported by the OHR, which oversaw much of the funding and administration of media bodies. But USAID noted that “[t]he OHR took on multiple and contradictory roles: as a political actor and ultimate international authority in Bosnia, founder of

¹⁸ USAID, “Assessment of USAID Media Assistance in Bosnia and Herzegovina, 1996–2002”, at iv (Sep. 2003) (USAID 2003 assessment), http://pdf.usaid.gov/pdf_docs/pnacr756.pdf.

¹⁹ *Id.* at v (emphasis added).

²⁰ *Id.* at 8.

²¹ Ognian Zlatev, *Media accountability systems (MAS) and their applications in South East Europe and Turkey*, in “Professional Journalism and Self-Regulation – New Media, Old Dilemmas in South East Europe and Turkey”, UNESCO, at 26 (2011) (emphasis added), <http://unesdoc.unesco.org/images/0019/001908/190810e.pdf>.

²² USAID 2003 assessment, at 5.

a regulatory agency, fundraiser for a specific broadcasting project, and advocate for media legal reforms.”²³ The OHR’s and donor governments’ approach to the BiH media was informed by electoral concerns, which ultimately undermined its effectiveness according to USAID:

Donor governments and the high representative often viewed media initiatives as a potential tool to quickly reshape the troubled political climate. As a result, the OHR’s strategy in media assistance—as in other policy areas—was often influenced by successive election cycles. The OHR’s expedient approach to federation television illustrates those short-term pressures.²⁴

33. From the outset, U.S. media funding was equally tied to local politics, as conceded in USAID’s own report:

Although not always stated officially, USAID expected that, with other development efforts, assisting alternative media and would help transform the political landscape and break the dominance of nationalist parties and attitudes.²⁵

34. The 2003 report suggests that these objectives were at least partially met, asserting, “By putting a high priority on media development in Bosnia, U.S. efforts made significant headway in a relatively short time.”²⁶ The report makes evident that a clear expectation of U.S. funding was to influence elections in BiH:

Although the purpose of U.S. media assistance varied and was not always coherently defined, there were clearly expectations that media assistance could help transform Bosnia’s political climate and enable the election of more civic-minded, moderate political parties.²⁷

35. Also, in USAID’s 2006 final report on the *Assessment of USAID/Bosnia and Herzegovina Media Interventions*, the authors emphasized the importance of focusing on elections in prospective media-funding strategies:

Post-Election Follow-up – As described earlier, USAID has made an important outlay of funds to support elections-related programming throughout BiH. Maximizing the impact of this investment—and the impact on the electorate—should be a priority for continued USAID funding. Utilizing the current coordination and monitoring role of the MCS, the Media Centar leadership

²³ *Id.* at 11.

²⁴ *Id.* (emphasis added).

²⁵ *Id.* at vi.

²⁶ *Id.* at viii.

²⁷ *Id.* at 19 (emphasis added).

should be tasked with formulating a series of initiatives with leading media outlets to follow up on the effect of issue-oriented campaign reporting on post-election activities of newly elected parties and candidates.²⁸

36. A 2012 USAID strategy paper underlined the fact that “[t]he USG is the largest donor in political processes in BiH,”²⁹ and that “USAID/BiH and other sections of the U.S. Embassy are major donors in civil society.”³⁰

37. More recently, a 2016 USAID assessment of media in BiH illustrated the political divisiveness of U.S. funding of BiH media among the population:

Without being asked, four key informants said explicitly that the US is seen at times as politically selective in its approach to BiH media, supporting the anti-nationalist political agenda, but also favoring opposition-oriented media rather than non-partisan media organizations.³¹

C. Increase in Current U.S. funding of BiH Media in Election Year

38. Between 2010 and 2017, no new major BiH media-specific funding program appears to have been initiated by the U.S. In 2017-2018 however, at least three major funding programs largely benefitting BiH media were initiated by USAID and DoS, totaling more than \$12 million.³² In the U.S. Department of State Congressional Budget Justification for fiscal year 2018 (including USAID), Congress allocated \$18 million for the Economic Support and Development Fund to BiH.³³ In particular, the 2018 allocation is meant to “reduce vulnerabilities to Russian pressure, particularly in the energy and media sectors,”³⁴ as well as “support independent media, elections, and democratic political processes.”³⁵

D. The U.S. should fully disclose the allocation and use of its funds and discontinue usage to influence elections.

²⁸ USAID, “Assessment of USAID/Bosnia and Herzegovina Media Interventions – Final Report”, at 31 (Aug. 14, 2006) (emphasis added), http://pdf.usaid.gov/pdf_docs/Pnadh275.pdf.

²⁹ *Id.* at 28.

³⁰ *Id.*

³¹ *Id.* (emphasis added).

³² These include Balkan Media Assistance Program (BMAP); USAID Media Program in BiH; and Democracy Commission Small Grants Program.

³³ Department of State, “Congressional Budget Justification - Department of State, Foreign Operations, and Related Programs Fiscal Year 2018”, at 281 (2017), <https://www.state.gov/documents/organization/271013.pdf>.

³⁴ *Id.*

³⁵ *Id.*

39. Many of the recipients of funding have strong affiliation or provide support to political parties and leaders in BiH. Anyone familiar with the situation in BiH will clearly see how providing significant funding to media recipients and NGOs in BiH is inherently troublesome because of the political influence the funding provides.

40. In light of the current political situation in BiH, any type of foreign funding should be awarded in a perfectly transparent manner. Accountability is particularly important given the vast amount of funding that the U.S. has provided, the role of the OHR and U.S. embassy in managing the use of the funds, the stated intent that the funds influence elections, and the clear history of unlawful foreign intervention in BiH. This is in the interest of BiH citizens who deserve to be fully informed on the financing of their media. It also should be in the interest of citizens whose taxes pay for operations intended to interfere in the affairs of a European country's elections. Indeed, the current opacity of these processes ultimately undermines one of these funds' claimed core objectives, which is to restore the trust in media and institutions. The U.S. should end its practice of using funding to BiH media to influence elections within BiH.

IV. The SDA party is obstructing the implementation of judicial decisions critical to elections.

41. Another risk to fair elections consistent with the BiH Constitution and the rights of each of the Constituent Peoples is the Bosniaks' refusal to implement decisions of the BiH Constitutional Court and the European Court of Human Rights related to elections. The Bosniaks have resisted implementing such decisions—in some cases for many years—because they want to retain their ability for Bosniaks to choose Croat representatives. Perhaps the most egregious example of this political abuse was the election of Zeljko Komsic as the Croat People's representative in the tripartite BiH Presidency from 2006 to 2014. Komsic was elected primarily by Bosniak voters in the Federation, defeating the candidate who received the most votes from the much smaller Croat population in the Federation. Komsic's election as the "Croat" member of the presidency gave the Bosniaks two representatives on the Presidency and the Croats none.

42. As a general matter, the RS has a much better record than the Federation or the BiH level with respect to implementing Constitutional Court decisions. On 11 April 2018, the president of the Constitutional Court, a Bosniak, said there are nine decisions of the court that have not been implemented, and just one of those—a decision involving the RS law on enforcement procedure—is to be implemented by the RS.³⁶ As a report on the court president's comments observed, "This means that the BiH Constitutional Court holds that the RS complied with the previous decision of the Court by having enacted a new law on 9 January as the Day of the RS."³⁷ The other eight decisions that have not been implemented at the Federation and BiH levels.

A. The BiH Constitutional Court's decision on the BiH Election Law

43. Last year, the BiH Constitutional Court nullified the BiH Election Law's provisions on the election of delegates to the Federation House of Peoples. The Court's decision requires the

³⁶ *Devet odluka nije provedeno*, BN Televizija, 11 April 2018.

³⁷ *Id.*

BiH Parliamentary Assembly to amend the law. So far, members of the Assembly—particularly those from the SDA and other Bosniak parties—have refused to make the Election Law consistent with the BiH Constitution. As a result, there have been calls by a few in the media and international community for the High Representative simply to impose a change to the law. As a matter of law and sound policy, however, the necessary amendments must result from a compromise within BiH, not an illegal decree by the High Representative.

44. The provisions of the Election Law recently nullified by the Constitutional Court have, for years, helped the Bosniak parties to dominate the Federation House of Peoples, contrary to constitutional safeguards for the Croat minority. Bosniak political leaders took advantage of the Election Law's provisions that enable "Croat" and "Serb" representatives to be elected by the larger Bosniak population instead of being elected by their own Constituent Peoples. The leader of one of the Croat parties, Božo Ljubić, challenged those provisions in the BiH Constitutional Court, and the court held them unconstitutional in December 2016.³⁸ The court determined that the provisions violated the equality of Constituent Peoples by failing to provide them adequate political representation.

45. Because the BiH Parliamentary Assembly failed to make the necessary amendments to the BiH Election Law's provisions on election of the Federation House of Peoples, the Constitutional Court in July 2017 repealed the offending provisions entirely. Thus, if the BiH Parliamentary Assembly does not enact legislation to implement the Constitutional Court's decision soon, the 2018 election of the Federation House of Peoples cannot be carried out. Election of the Federation House of Peoples is crucial, especially because without it, it will be constitutionally impossible to elect the BiH House of Peoples, the Federation Presidency, or the Federation Government.

1. The SDA has blocked implementation of the decision on the Election Law.

46. Despite the fact that implementation of the Constitutional Court's decision is essential for the functioning of BiH and the Federation, the SDA and other Bosniak parties have resisted enacting the necessary amendments. They have refused to consider any legislation that does not preserve Bosniak domination of the Federation House of Peoples. The SDA and other Bosniak parties must abandon their insistence on preserving their domination and compromise with the Croat parties.

2. Reforms to implement the decision on the Election Law must be a product of domestic agreement.

47. A few politicians and commentators, rejecting the need to find a compromise, are hoping the High Representative will disregard constitutional processes and impose the necessary legislation by decree. This would be unlawful and unwise. As EU Special Representative to BiH Lars-Gunnar Wigemark recently emphasized, the reform of the Election Law must be based on a compromise of domestic parties. Ambassador Wigemark said, "We cannot impose solutions. I think it would be a step back if [the Office of the High Representative] did it. This is a sovereign

³⁸ Case No. U-23/14, Decision on Admissibility and Merits, BiH Constitutional Court, 1 Dec. 2016.

country.”³⁹ High Representative Valentin Inzko, however, has refused to rule out imposing changes to the Election Law by decree.⁴⁰

48. The international community should recall the fiasco that resulted the last time High Representative Inzko intervened in electoral matters. In March 2011, the largest Bosniak party formed a Federation Government in brazen violation of the Federation Constitution. The BiH Central Election Commission promptly declared the formation of the Federation Government unlawful and annulled it. Inzko, however, responded by handing down a decree overruling the CEC’s decision. As described by the International Crisis Group (ICG), the High Representative’s “ill-judged decision to suspend rulings of the state Central Election Commission allowed an illegally elected executive to take office and appoint a government excluding the major Croat parties.”⁴¹ Inzko’s decree, as the ICG’s President wrote, “undermined state bodies and the rule of law.”⁴² Journalist Srecko Latal recently observed that Inzko’s “decision not only damaged relations between Bosniak and Bosnian Croat politicians but also undermined the international community’s confidence.” The Federation Government that was formed in 2011, existing solely because of a foreign diplomat’s unlawful decree, was seen as illegitimate for its entire term.

49. BiH’s friends in the international community should make clear that the authority and responsibility to amend the Election Law belong to the BiH Parliamentary Assembly, not a foreign diplomat. It is the responsibility of the Bosniaks to act in good faith and agree to amend the law.

B. The SDA has blocked implementation of the Constitutional Court’s decision on Mostar, preventing elections in the city.

50. In 2010, the BiH Constitutional Court held that the law with respect to elections in the city of Mostar, which diluted the voting power of the Croats, violated anti-discrimination and voting rights provisions of the BiH Constitution and the International Covenant on Civil and Political Rights. Unfortunately, the SDA, the main Bosniak party in Mostar, has refused to compromise with the HDZ, the main Croat party, to find a solution. As a result, citizens of Mostar have been prevented from voting in local elections since 2008.

C. The SDA has blocked implementation of the European Court of Human Rights’ *Sejdić-Finci* decision.

51. The European Court of Human Rights’ 2009 *Sejdić-Finci* decision rejected provisions of the BiH Constitution that make individuals who are not members of BiH’s three Constituent Peoples ineligible to run for BiH’s three-member Presidency or its House of Peoples. The RS has long advocated a simple solution for members of the BiH Presidency and House of Peoples

³⁹ *Vigemark: EU neće nametati rješenja BiH*, ATV, 12 Feb. 2018.

⁴⁰ *Interview with HR Valentin Inzko*, Nezavisne Novine, 18 Dec. 2017.

⁴¹ International Crisis Group, *Bosnia’s Gordian Knot: Constitutional Reform*, Crisis Group Europe Briefing N°68, 12 July 2012, p. 14.

⁴² Letter from Louise Arbour, President and CEO of International Crisis Group, to PIC Steering Board Ambassadors, May 2, 2011.

representing the RS: to simply eliminate all ethnic qualifications. For office holders representing the FBiH, the RS has for years made clear that it would accept whatever solution the FBiH's Croat and Bosniak parties agreed to. Unfortunately, the SDA and other Bosniak parties have rejected any proposal designed to prevent the election of two members of the Presidency representing Bosniaks and none representing Croats. Because of the SDA's stubbornness on this issue, BiH has now failed to implement the Sejdić-Finci decision for more than eight years.

D. The International Community has failed to condemn the Bosniak parties for resisting implementation of these critical court decisions

52. Notwithstanding the need to implement the decisions of the Constitutional Court and European Court of Human Rights—particularly the Election Law decision, implementation of which is necessary to avoid an unprecedented constitutional crisis—the United States and others in the international community have been silent in the face of the Bosniak parties' resistance to implementation. This silence stands in stark contrast to the strident attacks on the RS when it was accused of failing to implement a court decision on the comparatively trivial matter of a public holiday.

V. The growing jihadist threat to BiH

53. The danger of Islamist terrorism in BiH is rising amid the collapse of the Islamic State's territorial base in Iraq and Syria. BiH exported more fighters to Iraq and Syria, per capita, than any other European country.⁴³ As the Islamic State has lost territory in the Middle East, hundreds of jihadist fighters have returned to BiH and other countries in the Western Balkans.⁴⁴

54. Fighters from BiH are returning to a country that remains a haven for Islamic extremists. The SDA party, as detailed in a recent RS paper submitted to the UN Security Council,⁴⁵ over the years has helped turn BiH into a sanctuary for jihadists. In a June 2017 article, the journal *New Eastern Europe* observed, "Despite the Bosnian government claiming to control the religious situation, there are increasing reports of what is known as 'Sharia villages,' where most families live in polygamy under Islamic law, and symbols of ISIS are freely displayed in public places in breach of the established constitutional order."⁴⁶ Germany's *Der Spiegel* recently wrote, "German investigators believe there are around a dozen places in Bosnia where Salafists - followers of a hardline Sunni interpretation of Islam -- have assembled radicals undisturbed by the authorities."⁴⁷ In testimony to the UK House of Lords in September 2017, Gen. Michael Rose, former Commander of the UN Protection Force in BiH warned of "a rising element of radicalization" in BiH, "particularly amongst the Muslim communities" and of "jihadists who are

⁴³ *Foreign Fighters in Iraq & Syria—Where Do They Come From?*, RADIO FREE EUROPE/RADIO LIBERTY, 29 Feb. 2016; John Schindler, *Operation CUT: Bosnia versus the Islamic State*, 22 Dec. 2015.

⁴⁴ Filip Rudic, *250 Islamist Fighters Return to Balkans: Report*, BIRN, 24 Oct. 2017.

⁴⁵ *How Bosnia and Herzegovina Has Become a Terrorist Sanctuary*, Attachment to Republika Srpska's 16th Report to the UN Security Council, Oct. 2016.

⁴⁶ Tatyana Dronzina and Sulejman Muca, *De-radicalising the Western Balkans*, NEW EASTERN EUROPE, 22 June 2017.

⁴⁷ Walter Mayr, *Sharia Villages: Bosnia's Islamic State Problem*, DER SPIEGEL, 5 Apr. 2016.

coming through and being exported.”⁴⁸

55. Concerns about BiH's use as a jihadist sanctuary are rising among European leaders. Czech President Milos Zeman has said ISIS could form its European base in BiH, where the group's "black flags are already flying in several towns.”⁴⁹ Similarly, Croatian President Kolinda Grabar-Kitarovic warned of "thousands of fighters returning to Bosnia from Syria and Iraq.”⁵⁰ In September 2017, the Croatian newspaper Globus reported that Croatia's secret service had told Grabar-Kitarovic that Islamic radical groups have increasingly been establishing themselves in BiH near the Croatian border and that there are between 5,000 and 10,000 Islamic radicals living in BiH.⁵¹

56. In a recent interview, Ms. Marijana Petir, an HDZ member of the EU Parliament from Croatia expressed concern with respect to the growing jihadist threat in BiH. She stated: "EU and NATO representatives have expressed their concerns over the situation in BiH at a session discussing security in BiH and Kosovo. Their assessment of the situation is based on analyses, studies and reports." One of the concerns Ms. Petir cited was the reported increase of Wahhabi settlements in BiH funded by Saudi Arabia. She explained:

The fact is that Saudi Arabia is financing, with hundreds of millions of euros, different activities that are not only of a religious but also educational character. All this serves the purpose of expanding conservative Islam in the region. The reports demonstrate that Saudi Arabia had and still has a strong influence in the region, which started during the war. So, their aim is to disseminate their interpretation of Islam, which is political Islam. It is different from the Islam that has always been practiced in BiH. In 1995, in the Dayton Accords, it was agreed that foreign fighters should leave BiH, but it has never happened. A large number of them have remained in rural areas in BiH.⁵²

57. The growing jihadist threat in BiH is not only a concern to the citizens of the RS, but also to European states and their citizens.

58. BiH has become a haven for Islamic radicals because its largest Bosniak political party, the SDA, is Islamist. SDA founder Alija Izetbegovic' *Islamic Declaration*, published in 1990, states, "There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions.”⁵³ Consistent with this ideology, the SDA invited mujahidin to

⁴⁸ The testimony is available at www.parliamentlive.tv/Event/Index/a4551237-3e0f-4c02-afbe-8c0cefa94948.

⁴⁹ Daria Sito-Sucic, *Islamic State flags not flying in Bosnia – PM*, Reuters, 12 Sept. 2017.

⁵⁰ *Id.*

⁵¹ Igor Spaic, *Bosnia War Victims Slam Croatia President's Terror Claims*, BIRN, 7 Sept. 2017.

⁵² *Petir za N1: Sve što sam rekla se temelji na izvješćima EU*, N1 TV, 30 Mar. 2018.

⁵³ ALIJA IZETBEGOVIC, *ISLAMIC DECLARATION*, p. 30.

Bosnia and Herzegovina during the war and has continued its close ties to radical Islamists. A recent demonstration of the SDA's Islamist orientation is party president Bakir Izetbegovic's president's proud statement in October 2017 that his father, Alija, "bequeathed" BiH to Recep Tayyip Erdogan, Turkey's Islamist president.⁵⁴

59. BiH policies also help make the country a jihadist haven. The BiH justice system has handed down amazingly lenient sentences—usually involving no prison time—to returned ISIS fighters. The BiH Prosecutor's Office has failed to seek justice for wartime mujahidin atrocities against Serbs. In addition, BiH's SDA-dominated security apparatus is failing to curb the jihadist presence in BiH. As Nenad Pejic of Radio Free Europe/Radio Liberty observed, "There are countless examples of local authorities in Bosnia failing to act properly against Islamic extremism."⁵⁵

60. An additional threat to security is the continued spread of Wahhabi ideology among BiH's Bosniak population. In February 2018, *Bosnia Times* editor Nedžad Latic, a journalist known for criticizing the SDA, was attacked in Sarajevo by a group of men he described as Wahhabis.⁵⁶

61. Members of the international community should hold Bosniak officials accountable for allowing the threat of jihadists to grow and support action to address it.

VI. The RS supports BiH's EU accession process and is continuing to implement reforms.

A. BiH's Coordination Mechanism is working.

62. The establishment and implementation of the Coordination Mechanism for EU integration was difficult, but it is now operating successfully. In July 2015, all levels of government had reached agreement on a Coordination Mechanism. In early 2016, however, the BiH Council of Ministers unilaterally tried to replace the agreed Coordination Mechanism with one that violated the BiH constitutional structure. Later in 2016, SDA members blocked vital IMF financing for BiH in an attempt to coerce the RS into agreeing to amendments to the agreement on the Coordination Mechanism. Once the Coordination Mechanism was finally adopted, Bosniak officials resisted properly implementing it. Bosniak officials claimed that the Coordination Mechanism would not work and that BiH would need to centralize, ignoring the constitutional competencies different levels of government.

63. In spite of BiH's well known political divisions and the Coordination Mechanism's unpromising beginnings, it is now being used effectively to harmonize the positions of BiH's different levels of government. In December 2017, after a meeting of the European Integration Collegium, the Coordination Mechanism's highest body, Federation Prime Minister Fadil

⁵⁴ Izetbegovic says his father "bequeathed" Bosnia to Erdogan, BETA, 20 Oct. 2017.

⁵⁵ Nenad Pejic, *Wahhabist Militancy in Bosnia Profits from Local and International Inaction*, JAMESTOWN TERRORISM MONITOR 9, Issue 42, 17 Nov. 2011.

⁵⁶ Mladen Lakic, *Bosnian Journalist Says "Wahhabis" Assaulted Him*, BIRN, 21 Feb. 2018.

Novalić said, "It turns out that the Coordination Mechanism is functioning, which is the greatest achievement of today's meeting."⁵⁷

64. A key test of the Coordination Mechanism has been its use in arriving at BiH's answers to the European Commission (EC) Questionnaire. These answers were submitted to the EC on 28 February 2018, marking an important step for BiH in its path to EU membership. In February 2018, just before BiH submitted its answers to the EC Questionnaire, BiH Council of Ministers Chairman Denis Zvizdic said, "What matters is that we have a really organized and well-established Mechanism of Coordination that will help us to respond to additional questions quickly and efficiently."⁵⁸ As BiH moves down the road of European integration, the RS will continue to participate in the Coordination Mechanism in a cooperative spirit.

B. The RS is leading the way for BiH's EU integration.

65. The RS has worked vigorously to implement the Reform Agenda for EU integration. By the end of 2017, the RS Government had fully implemented 58 out of 78 measures from the Reform Agenda, and the remaining 20 measures are being realized.⁵⁹ The European Commission's 2018 report on BiH observed, "The Republika Srpska entity National Assembly continued to adopt legislation aimed at implementing the Reform Agenda with a focus on health and social protection sector. The disagreements between Federation ruling coalition parties adversely affected the adoption of Reform Agenda measures at the level of the Federation entity parliament."⁶⁰ The RS is continuing reforms to spur economic growth. Among the RS's top priorities in 2018 are reforms to reduce burdens on private businesses, including abolishing parafiscal charges and reducing labor costs.⁶¹

C. BiH cannot become an EU member as long as its Constitutional Court includes foreign judges; their mandate must end.

66. Reforming the BiH Constitutional Court is essential for BiH to become a fully sovereign state and an EU member. In private meetings, EU officials have made clear that BiH cannot become an EU member as long as it has foreign judges sitting on its Constitutional Court. As explained below, the presence of foreign judges on BiH's highest court is inconsistent with BiH sovereignty and, as then-EU Enlargement Commissioner Olli Rehn said in a speech to the BiH Parliamentary Assembly in 2009, "there is no way a quasi-protectorate can join the EU."⁶²

⁵⁷ Mladen Dragoljovic, *Only seven more questions to be answered*, INDEPENDENT BALKAN NEWS AGENCY, 20 Dec. 2017.

⁵⁸ Zvizdic: *The sooner we negotiate, the faster our EU Path will be*, SARAJEVO TIMES, 23 Feb. 2018.

⁵⁹ *The RS Government implemented 74 percent of the Reform Agenda Measures*, SARAJEVO TIMES, 2 Feb. 2018.

⁶⁰ Commission Staff Working Document, *Bosnia and Herzegovina 2018 Report*, 17 Apr. 2018, p. 4..

⁶¹ *Minister of Finance Zoran Tegeltija: Unburdening economy is priority*, THE SRPSKA TIMES, 3 Jan. 2018.

⁶² Olli Rehn, EU Commissioner for Enlargement, *Towards a European Era for Bosnia and Herzegovina: The Way Ahead*, Address to Parliament of Bosnia and Herzegovina, 24 July 2009.

67. The foreign judges' continued presence is inconsistent with Chapter 23—Judiciary and fundamental rights—of the *Acquis Communautaire*, which is the body of EU laws a candidate country has to comply with in order to become a member state. The European Commission specifies that compliance with Chapter 23 of the *Acquis* requires the “establishment of an independent and efficient judiciary [which] requires a firm commitment to eliminating external influences over the judiciary.”⁶³ The presence of foreign judges on the BiH's Constitutional Court is therefore inconsistent with the BiH accession to the EU.

68. EU Council recommendation CM/Rec(2010)12 states that “[j]udges, who are part of the society they serve, cannot effectively administer justice without public confidence. They should inform themselves of society's expectations of the judicial system and of complaints about its functioning.”⁶⁴ Foreign judges are hardly part of the BiH society, because, in addition to being foreign nationals, they live abroad, work in a foreign language, and sit on a limited number of cases.

1. A Constitutional Court with foreign members is inconsistent with sovereignty and democracy.

69. The presence of foreign judges on the BiH Constitutional Court is incompatible with BiH's sovereignty.

70. As Professor Robert Hayden has observed, the role of foreign judges on the Constitutional Court “of course, compromises the sovereignty of Bosnia and Herzegovina, since it gives decision-making powers to people who may not, by constitutional mandate, be citizens of the country.”⁶⁵

71. Writing about the BiH Constitutional Court, the University of Antwerp's Stefan Graziadei observes:

Even more at odds with national sovereignty is the idea that international judges may sit in national apex courts: “Because of the doctrine of state sovereignty, it sounds almost inconceivable that a foreign citizen should serve on the bench of a national supreme court or a separate constitutional court of another country.” This is particularly true because such courts operate at the boundary between politics and law: they have the power to

⁶³ European Commission, European Neighborhood Policy And Enlargement Negotiations, *Chapters of the acquis*, COM (2017).

⁶⁴ Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, art. 20 (Nov. 17, 2010).

⁶⁵ ROBERT M. HAYDEN, BLUEPRINTS FOR A HOUSE DIVIDED: THE CONSTITUTIONAL LOGIC OF THE YUGOSLAV CONFLICTS (1999) 131.

review legislation, which is based on the will of the people, for conformity with the national constitution.⁶⁶

72. Even one recently retired foreign Constitutional Court judge, Constance Grewe, admits that the presence of foreign judges “can be seen as an intrusion into the national affairs” or “as an attempt at supervision.”⁶⁷ That is exactly what it is.

73. The presence of foreign judges on the BiH Constitutional Court is also incompatible with BiH democracy. As an international expert panel on Cyprus observed, “Leaving the final decision in case of stalemate to foreign citizens in such critical organs as the Supreme Court and others is in stark contradiction to the principle of democracy.”⁶⁸

2. The politicized Constitutional Court reliably upholds unconstitutional centralization.

74. The BiH Constitutional Court as currently constituted lacks independence from the High Representative, making it impossible to successfully challenge OHR’s unconstitutional centralization of BiH.

75. The example of the HR’s creation of the Court of BiH is instructive. The BiH Constitution, as the International Crisis Group has observed, “allotted judicial matters to the Entities, apart from a state Constitutional Court.”⁶⁹ Disregarding this, the High Representative decreed a law to create the Court of BiH in 2000. Despite the law’s obvious unconstitutionality, the Constitutional Court upheld the law in a 5-4 decision because the three foreign judges voted as a bloc, along with the two Bosniak judges, to protect the HR’s creation. One of those foreign judges later admitted that there was a “tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation”⁷⁰

76. The Constitutional Court’s obeisance to the High Representative continues. During a press conference earlier this month, when asked why the court had not yet made a decision with respect to its review of parts of the Federation Constitution, judges of the BiH Constitutional Court gave a telling response—they explained that the court was awaiting the High Representative’s opinion on the matter before issuing its decision. One judge called this “a

⁶⁶ Graziadei at 4 (quoting Joseph Marko, *Foreign Judges: A European Perspective*, in *Hong Kong’s Court of Final Appeal: The Development of the Law in China’s Hong Kong*, ed. by Simon Young and Yash Ghai (New York: CUP, 2014), pp. 637-65 (p. 637)). (footnotes omitted).

⁶⁷ Constance Grewe and Michael Riegner, *Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared*, MAX PLANCK YEARBOOK OF UNITED NATIONS LAW, Vol. 15, p. 41.

⁶⁸ International Expert Panel Convened By The Committee For A European Solution In Cyprus, *A principled basis for a just and lasting Cyprus settlement in the light of International and European Law*, 2005 (quoted in Graziadei at 4).

⁶⁹ 2014 ICG Report at 27 (footnotes omitted).

⁷⁰ JOSEPH MARKO, FIVE YEARS OF CONSTITUTIONAL JURISPRUDENCE IN BOSNIA AND HERZEGOVINA, *European Diversity and Autonomy Papers* (July 2004) at 17 and 18 (emphasis added).

relatively common practice.”⁷¹ Mirsad Ćeman, President of the Constitutional Court, said that “in this case, the High Representative was a legislator, even a constitution-maker, and since he is, and it is undisputed that this is so, then he is provided with an opportunity to give his opinion.”

77. The High Representative clearly has no legal authority under the Dayton Accords or from any legal instrument to act as a legislator or “constitution-maker” nor to influence the deliberations and decisions of what must rightly be an independent Constitutional Court. Such practice does not exist in any country of the world. It is unacceptable for the highest judicial authority mandated to uphold and interpret the BiH Constitution impartially to ask for guidance and direction from the High Representative. These statements represent a confession that the BiH Constitutional Court is unlawfully governed by foreigners, led by the High Representative.

3. All Serb and Croat parties support ending the role of foreign judges on the Constitutional Court but have been prevented from doing so because Bosniak leaders do not want to give up this political tool.

78. The BiH Constitution authorizes the Parliamentary Assembly to pass a new law replacing the foreign judges five years after their initial appointment, which occurred in 1996.⁷² All of the Serb and Croat political parties in BiH are united in support of replacing the foreign judges on the Constitutional Court with BiH citizens.⁷³ As the president of the Croat National Council, which represents all of the Croat parties, recently said, “Twenty years after the war, Bosnians are ready to take full control of this court.” On 20 December 2016, leaders of the SNSD and HDZ, the largest Serb and Croat parties in BiH, announced that their parties are jointly preparing a new Law on the Constitutional Court.⁷⁴ Unfortunately, the SDA is refusing to reform the Constitutional Court by passing a new law because it does not want to break up the alliance of former SDA leaders and foreign members that controls it.

VII. The international community should respect the Dayton Accords and BiH sovereignty.

79. BiH’s friends in the international community, especially witnesses to the Dayton Accords, should support the Accords’ faithful implementation. This includes opposing efforts to use BiH institutions as political instruments to unlawfully undermine the Dayton Constitution. It also includes supporting reforms necessary to restore the structure established under the Dayton Accords.

A. The Office of the High Representative must close.

80. In order to qualify for EU membership, BiH must become a self-governing country whose sovereignty is fully respected. This is impossible as long as the High Representative

⁷¹ *Vrh državnog Ustavnog suda o provedbi presuda i političkom uticaju*, TV 1, 11 April 2018.

⁷² BiH Constitution, Art. VI(1)(d).

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

⁷⁴ Danijel Kovacevic, *Bosnian Serbs Threaten Showdown over Foreign Judges*, BIRN, 20 Dec. 2016.

remains in BiH and claims authority to decree laws, constitutional amendments, and punishments completely outside the Dayton constitutional system. As journalist Srećko Latal recently observed, "Many Western officials . . . turned against the OHR, declaring the very existence of such an organization - which is neither a part of local government structures nor overlooked by any concrete international body - contradicts Bosnia's intention to join the EU."⁷⁵ It is also impossible as long as the High Representative furtively supports the use of BiH institutions to unlawfully advance an agenda to centralize the structure of BiH contrary to the Dayton Accords. If BiH is to become a fully sovereign state and an EU member, the High Representative's presence in BiH must come to an end.

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

81. The Security Council has authority to take certain measures under Chapter VII of the UN Charter "to maintain or restore international peace and security" only where there is "the existence of any threat to the peace, breach of the peace, or act of aggression."⁷⁶ BiH, despite its political divisions, has been peaceful and secure for many years; there is no security threat that could possibly justify the Security Council acting under Chapter VII of the UN Charter. The Security Council should thus end the application of Chapter VII measures. Continuing to act under Chapter VII casts an unwarranted stigma on BiH and hampers BiH's progress toward EU membership.

⁷⁵ Srećko Latal, *Bosnians Look to Forgotten 'Governor' to Avert Crisis*, BALKAN INSIGHT, 15 March 2018.

⁷⁶ See Chapter VII of the UN Charter.

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May 30, 2018

The Honorable Thomas A. Garrett, Jr.
415 Cannon House Office Building
Washington, DC 20515

Dear Rep. Garrett:

My law firm serves as legal counsel on matters of international law for Republika Srpska (RS), one of the two Entities that comprise Bosnia and Herzegovina (BiH). The RS remains grateful to the United States for helping to make the Dayton Accords possible, ushering in the peace BiH has enjoyed for more than 22 years. The RS is committed to the Dayton Accords, including the BiH Constitution, and thinks their full and faithful implementation is the key to BiH's future. The RS also continues to appreciate the U.S. role in peacekeeping in the years following the war, including your own military service in BiH.

I read with interest your March 23 letter to Assistant Secretary of State Wess Mitchell about BiH's continued impasse with respect to its Election Law. The RS agrees with you that it is crucial for BiH to replace the parts of the Election Law struck down by the BiH Constitutional Court so that the results of this autumn's elections can be implemented without disruption. Without such amendments, it will be impossible to form the BiH House of Peoples, or the Presidency, government, and House of Peoples of BiH's other Entity, the Federation of Bosnia and Herzegovina (FBiH). Unfortunately, BiH's largest Bosniak party, the SDA, is blocking the necessary amendments because it wants to retain the ability for Bosniaks to choose representatives not just of the Bosniak people but also the Croat people. This has happened in the past, such as when Zeljko Komsic was elected, primarily by Bosniak voters, as the Croat People's representative in the tripartite BiH Presidency from 2006 to 2014. This violates one of the main tenets of the Dayton Accords, namely, equality among the Constituent Peoples.

Because of your interest in the current situation in BiH, I thought it would be helpful for you and your staff to have the latest report of the government of the RS to the UN Security Council, dated April 2018. This is the 19th of such reports, which are submitted every six months prior to the UN Security Council's meetings on BiH. For information on the Election Law issue, please see Section IV of the report.

With BiH's 2018 elections approaching, there has been much misinformation circulating with respect to peace and security in the country. One such piece of misinformation is the claim

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that the RS is militarizing through the support of Russia. There is no truth to the allegation that the RS is militarizing. The RS police's recent procurement of rifles from a Serbian manufacturer, which was necessary to modernize police weaponry, was conducted with total transparency and the permission of all relevant BiH agencies. The weapons expenditures of the RS police are comparable to those of individual canton police forces in the FBiH.

Contrary to claims by some who oppose the RS government, RS police have never trained with Russian personnel, nor do they have plans to do so. RS police do, on the other hand, frequently train with U.S. armed forces and European police. In addition, contrary to baseless allegations, RS authorities have no affiliation with any paramilitary group. There are no such formations operating on RS territory, and RS leaders—elected in a free and democratic system—would never become affiliated with such a group.

The RS is committed to resolving political disputes solely through peaceful and constitutional means. As President Dodik recently said, RS "authorities will not make a single move that could destabilize the situation or spread violence, because peace and stability is a holy thing in Srpska."¹ In contrast, BiH's Bosniak leaders often threaten the use of violence and even war in response to political differences. To cite a recent example, Bakir Izetbegovic, the Bosniak member of the BiH Presidency and leader of the SDA party, in February said that Croats "cannot get a third entity in Bosnia without a war."² In 2016, when the RS planned a referendum about the date of its RS Day holiday, Izetbegovic warned that the RS holding the referendum about RS Day would "most probably lead to the collapse of peace in this part of Europe."³ On January 13, 2018, Bosniak politician Reuf Bajrovic's Civic Alliance party called on the SDA to prepare for war, including by strengthening the police of the Federation and cantons in which the Croat HDZ party has no control (i.e., the Bosniak cantons).⁴ Such bellicose statements should be condemned.

The RS's commitment to the peaceful resolution of political disputes and its response to false allegations of militarization are outlined in Sections I and II of the attached report to the Security Council.

Thank you for your interest in the peace and stability of BiH. I would be happy to discuss any of these issues, or other issues related to BiH, with you or your staff.

Very Truly Yours,



Edward B. Rowe

¹ Dodik: *Srpska Protects All Regardless of Ethnicity*, SRNA, 1 Oct. 2017.

² Izetbegovic: *Bosnian Croat Entity 'Impossible Without War'*, BALKAN INSIGHT, 5 Feb. 2018.

³ Izetbegovic: *Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

⁴ GS: *Gradani, nemojte mirno spavati*, Gradanski savez (Civic Alliance) website, 13 Jan. 2018.

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Attachment

Republika Srpska's 19th Report to the UN Security Council

April 2018

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Republika Srpska's 19th Report to the UN Security Council

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Republika Srpska's 19th Report to the UN Security Council

Introduction and Executive Summary

I. The Dayton Accords must be faithfully implemented.

Republika Srpska (RS) remains fully committed to the Dayton Accords and insists on their full implementation. This includes respect for the BiH Constitution, which is Annex 4 of the Dayton Accords, and the structures and protections it created. The RS also remains committed to resolving political disputes solely through peaceful and constitutional means. It asks the international community to condemn threats of violence by Bosniak leaders.

II. Allegations of RS "militarization," under Russian influence or otherwise, have no factual basis and are intended as a pretext for heightened foreign intervention and to weaken the RS and its government.

As BiH's 2018 elections approach, some political opponents of the RS Government have spun a wholly false narrative that the RS is militarizing. The RS's recent procurement of rifles, which was necessary to modernize antiquated police weaponry, was fully transparent and conducted with the permission of all relevant BiH agencies. Notwithstanding claims of the RS's political rivals, RS police have not trained with Russian personnel but do frequently train with U.S. armed forces and European police. The RS enjoys friendly relations with Russia, as well as with Western countries. There is no basis, however, for claims that the RS is a proxy for Russia, fabricated in an attempt to persuade western policy makers who oppose Russia to punish the RS and its leaders. The RS does not and will not act as a proxy for any foreign country. Moreover, contrary to baseless allegations, RS authorities have no affiliation with any paramilitary group; indeed there are no paramilitary formations operating on RS territory. The RS, unlike some Bosniak leaders, rules out the use of violence in political disputes.

III. BiH's elections must be conducted free from foreign interference.

In this year's elections, BiH citizens must be able to choose their own leaders without interference from any foreign state. The United States, according to U.S. Government reports, has long sought to affect elections in BiH through its funding of BiH media, and it appears to be intensifying such efforts. The United States should fully disclose its spending on BiH media and stop using the funds to influence elections.

IV. The SDA party is obstructing the implementation of judicial decisions critical to elections.

The SDA and other Bosniak parties have resisted implementing important decisions of the BiH Constitutional Court and European Court of Human Rights concerning elections. The BiH Constitutional Court's 2017 nullification of a portion of the BiH Election Law means that without amendments to the law, there can be no formation of the Federation House of Peoples, BiH House of Peoples, Federation Presidency, or Federation Government. The SDA is blocking the necessary amendments because the SDA wants to retain the ability for Bosniaks to choose not only Bosniak but Croat representatives. These amendments are necessary to avoid a

constitutional crisis. Contrary to some suggestions, it would be unlawful and unwise for the High Representative to try to resolve the issue by decree. The SDA has also blocked implementing the Constitutional Court's 2010 decision on Mostar elections, thereby preventing local elections from being held since 2008. Moreover, the SDA has resisted implementing the European Court of Human Rights' 2009 Sejdić-Finci decision. Despite the importance of implementing these decisions, the United States and others in the international community have been notably silent in the face of the Bosniak parties' refusal to implement them.

V. The growing jihadist threat to BiH

As the Islamic State has lost its territorial base, the danger of terrorism in BiH has risen. BiH citizens who joined the Islamic State are returning to a BiH that remains a safe haven for jihadists. The SDA invited mujahidin to Bosnia and Herzegovina during the war and has continued its close ties to radical Islamists. BiH policies and the failure of BiH's SDA-dominated security apparatus have also helped make the country a jihadist haven. The growing jihadist threat in BiH is not only a concern to the citizens of the RS, but also to EU member states.

VI. The RS supports BiH's EU accession process and is continuing to implement reforms.

The RS strongly supports BiH's EU integration efforts. The Coordination Mechanism for EU integration has proven effective despite opposition to establishing it by Bosniak political leaders. BiH's different levels of government effectively used the Coordination Mechanism to prepare BiH's answers to the European Commission's Questionnaire consistent with constitutional competencies. The RS has been working diligently to implement the Reform Agenda for EU integration and enact other reforms to promote economic growth. One reform that is essential for BiH to become an EU member is the replacement of the foreign judges on the BiH Constitutional Court with BiH citizens. This reform has the support of all Serb and Croat leaders, but Bosniak leaders have blocked it because they see the Constitutional Court's foreign members as allies.

VII. The international community should respect the Dayton Accords and BiH sovereignty.

The RS asks the international community to respect the Dayton Accords and BiH sovereignty. BiH's friends in the international community should support reforms to restore the Dayton structure, refrain from intervening in BiH politics, and close the Office of the High Representative, which is incompatible with BiH sovereignty and EU membership. Moreover, the UN Security Council should end the unjustified application of Chapter VII of the UN Charter to BiH.

The RS will continue its commitment to the Dayton Accords, EU integration, and reforms to improve the wellbeing of its citizens.

I. The Dayton Accords must be faithfully implemented.

A. The RS has no plans for secession but insists upon full implementation of the Dayton Accords and the Dayton political structure.

1. During this reporting period, there have been increased efforts by political opponents of the RS and its government to create a sense of crisis by blatantly misrepresenting the political situation in BiH. The purpose of this endeavor is to create false facts meant to incite support for a return to heavy-handed international intervention into the affairs of BiH and to affect the upcoming elections. Such actions, if successful, would undermine the BiH Constitution and fundamental principles of international law. At the same time, serious threats to the Constitution that violate the Dayton structure continue due to the refusal of Bosniak political leaders and their allies to adhere to the rule of law and the obligations of the Dayton Accords.

2. Despite these challenges, the RS government remains fully committed to the Dayton Accords. It respects the legal structure, rights, and obligations set forth in these agreements—including those set out in the BiH Constitution—and it insists that other signatories to the Dayton Accords also do so. This means respecting RS autonomy and the rights of Constituent Peoples as guaranteed under the BiH Constitution, as well as refraining from interfering in the domestic affairs of BiH. Contrary to the allegations of some of the RS's critics, the RS has no plans for secession from BiH. The RS's critics often mischaracterize RS officials' statements that condemn unlawful changes to—and attempts to change—the Dayton structure, along with the resulting dysfunction of BiH. The RS government continues to support BiH as it is defined in the BiH Constitution and will continue to seek, through political and legal means, the full implementation of the Dayton Accords.

3. Those involved in bringing about the Dayton Accords intended and produced an agreement more significant and comprehensive than merely a means for ending military hostilities. The Accords provided a long-term structure for a sustainable political system in BiH. Unfortunately, the political structure carefully established under Annex 4 of the Accords, which sets forth BiH's Constitution, has been under attack in an unlawful effort to change the mandated structure in dangerous ways. BiH's long-term stability depends upon changing course in order to restore what was so wisely constructed.

B. Threats of violence and armed aggression by Bosniak political leaders in response to political disputes undermine the Dayton Accords and must be condemned.

4. Dangerously, BiH's Bosniak leaders frequently threaten the use of violence and even war in response to political differences. For example, in a speech on 16 April 2018, Bakir Izetbegovic, the Bosniak member of the BiH Presidency and leader of the Islamist SDA Party, said, "Bosniaks must never be weak again" and boasted about the heavy weapons the Bosniaks are producing.¹ Izetbegovic said:

¹ *Urgent Meeting Not Held for Lack Of Quorum*, SRNA, 20 Apr. 2018.

We will produce a moving howitzer and we are already working on it. Also, we will create a mobile transporter, we have made a rifle, we will make the good tactical 12.7, multipurpose throwers of all possible calibre and all possible ammunition for it, and drones. So, we will be like that little man who is not big, but he is angry and well-armed, and everyone will have to think carefully whether they should get into conflict with him. They will never be able to knock on our doors again, without us having nothing to answer it with.²

5. Since the Bosniak MPs failed to respond to a summons for emergency session of the BiH House of Representatives, called by the caucus of RS MPs, to discuss the armament of the Federation and warmongering statements of Bosniak officials, RS President Milorad Dodik has proposed, for the purpose of strengthening mutual trust in BiH, that a joint commission of RS and Federation representatives be set up to understand the facts regarding the production of weapons and munitions in the Federation which production is outside of the oversight of BiH institutions.³

6. President Dodik has stated that this is a very important topic in need of joint deliberation given the fact that it concerns "the fact that someone is producing, without authorization, mortars and rockets using the resources secured for Bosniaks, because we in the Republic of Srpska were forced to close all our factories producing weapons and munitions, whereas there are six such factories in the FBiH."⁴

7. Izetbegovic's most recent threatening remarks continue a long pattern. On 5 February 2018, for example, Izetbegovic said that Croats "cannot get a third entity in Bosnia without a war."⁵ In 2016, when the RS planned a referendum about the date of its RS Day holiday, Izetbegovic warned that the vote about the holiday would "most probably lead to the collapse of peace in this part of Europe."⁶

8. On 24 March 2018, Federation Prime Minister Fadil Novalić, a member of the SDA, said at an SDA meeting:

You have witnessed that defense industry does not serve only export purposes, it increases the security of our country at the time when Serbia and Croatia have been arming themselves. During this term of office, we have almost finalised the production of self-propelled howitzers 155 mm, the production of a rifle, we have

² *Izetbegović threatens with heavy weapons*, INDEPENDENT BALKAN NEWS AGENCY, 18 Apr. 2018.

³ ДОДИК: ФОРМИРАЊЕ КОМИСИЈЕ ЗА ОРУЖЈЕ ОЈАЧАЛО БИ МЕЋУСОБНО ПОВЈЕРЕЊЕ, BHRT, 22 Apr. 2018.

⁴ *Dodik: Formirati komisiju koja će utvrditi činjenice o proizvodnji oružja*, OSLOBODENJE, 21 Apr. 2018.

⁵ *Izetbegovic: Bosnian Croat Entity 'Impossible Without War'*, BALKAN INSIGHT, 5 Feb. 2018.

⁶ *Izetbegovic: Peace in Bosnia seriously threatened, Serb entity referendum must be prevented*, HINA, 15 Aug. 2016.

new RPGs. Our shells can fly 42 instead of 20 kilometers. We are aiming at 50 kilometers. We are constructing a gunpowder factory. I think that combat personnel carriers will leave our factories by the end of the year. We have dramatically strengthened our defense industry, not only for the purpose of export.⁷

9. The leader of another Bosniak party, Sefer Halilovic, threatened war against the RS if it held its holiday referendum and boasted that the RS could hold out for only 10 to 15 days.⁸ No leaders of the SDA or any other Bosniak party distanced themselves from these threats. On 13 January 2018, Bosniak politician Reuf Bajrović's Civic Alliance party called on the SDA to prepare for war, including by strengthening the police of the Federation and cantons in which the Croat HDZ party has no control (i.e., the Bosniak cantons).⁹ Such bellicose statements threaten the Dayton Accords and should be condemned by the international community.

10. Notwithstanding such provocative statements from Bosniak political leaders, the RS wishes to reemphasize its full commitment to peace and to reiterate statements of its political leaders rejecting violence as an option for resolving political disputes. As President Dodik recently said, RS "authorities will not make a single move that could destabilize the situation or spread violence, because peace and stability is a holy thing in Srpska."¹⁰ On another occasion, President Dodik emphasized that the RS's "options are all political, without any war ones."¹¹ Despite RS leaders' clear and consistent statements calling for the peaceful resolution of disputes, Bosniak political leaders and their supporters often falsely accuse the RS of the opposite. They hope to provoke U.S. and EU intervention and punitive measures against the RS and its elected leaders to further weaken the decentralized structure set out in the Dayton Accords. Nonetheless, the RS will continue to seek resolution of BiH's internal disputes solely through political dialogue and other constitutional means.

II. Allegations of RS "militarization," under Russian influence or otherwise, have no factual basis and are intended as a pretext for heightened foreign intervention and to weaken the RS and its government.

11. Certain recent media reports have propagated a series of distortions and outright falsehoods that depict the RS as being in the process of militarization. The main source of these allegations is BiH's minister of security, who is a member of the Serb Democratic Party (SDS), the main opposition party in the RS and coalition partner with the Bosniak SDA party at the BiH level. Unfortunately, during this election year, those who oppose the RS Government's efforts to

⁷ *Atmosferom straha do izbora*, N1 TV, 27 Mar. 2018.

⁸ *Bosnia's Republika Srpska to hold controversial referendum despite ban*, BNA Intellinews, 23 Sept. 2016.

⁹ *GS: Gradani, nemojte mirno spavati*, Građanski savez (Civic Alliance) website, 13 Jan. 2018. The statement by Mr. Bajrović's party is ironic, given Mr. Bajrović's recent false claim and criticism of President Dodik for threatening war.

¹⁰ *Dodik: Srpska Protects All Regardless of Ethnicity*, SRNA, 1 Oct. 2017.

¹¹ *Dodik: Even Putin can't change our decision on referendum*, B92, 21 Sept. 2016.

protect the RS's rights under the Dayton Accords have chosen to use the media and other means to falsely attack its elected officials. The RS Government expects this only to continue and considers it important that the international community see these actions for what they really are. The RS thus wishes to set the record straight about the spurious allegations against it.

A. The RS's procurement of rifles for police officers was transparent, lawful, and, necessary.

12. The importance of a properly equipped RS police force was underlined in 2015 when a terrorist attacked the RS police station in Zvornik. Shouting, "Allahu Akbar," he opened fire on RS police, killing Officer Dragan Djuric and wounding two others. When one police officer tried to shoot the attacker, his 30-year-old gun jammed. As explained in Section V below, BiH faces a serious terrorist threat, especially as the many BiH citizens who fought in Iraq and Syria return to their home country.

13. The RS Ministry of Interior (MoI), which oversees all RS police, recently procured 2,500 rifles for police from the Serbian manufacturer Zastava for nearly 2 million BAM (about 1 million euros). The procurement has been conducted legally and with total transparency. Before procuring the weapons, the MoI requested and received consent from the BiH Ministry of Foreign Affairs, BiH Ministry of Defense, BiH Ministry of Security, and the Intelligence-Security Agency of BiH.¹²

14. The procurement is necessary for the RS MoI's mission of protecting RS residents. The RS MoI's current weapons are antiquated and inadequate, especially given the current terrorist threat to BiH. The average weapon used by RS police is more than 20 years old. There is nothing unusual about a procurement of rifles for a European police force. Nor is there anything extraordinary about the level of the RS MoI's expenditure. To put the RS MoI's 2 million BAM purchase in perspective, the Ministry of Interior of the Sarajevo Canton (just one of the 10 cantons of the Federation of Bosnia and Herzegovina—a fraction of the population of the RS) this year will buy firearms and equipment costing 2 million BAM.¹³ The Ministry of Interior of another canton of the Federation, Herzegovina-Neretva, plans this year to purchase hundreds of thousands of BAM in arms, including automatic weapons and sniper rifles.¹⁴

B. RS police train with U.S. armed forces and European police, not Russian personnel.

1. RS Police have never undergone Russian training.

15. The RS police have never conducted special forces training or any other type of training with Russian police. Nor does the RS have plans to conduct such training. At the same time, it should be noted that there would be nothing illegal or inappropriate for the RS to have Russian

¹² OSA dala pozitivno mišljenje na uvoz oružja za MUP RS, DNEVNI AVAZ, 15 Feb. 2018.

¹³ *RS police purchase of firearms - real threat or media exaggeration?*, Independent Balkan News Agency, 14 Feb. 2018.

¹⁴ *MUP HNK nabavlja snajpere, automatske puške i pištolje*, N1 TV, 2 Mar. 2018.

police assist in its training. Russia is a member of the Peace Implementation Council, and its police forces are highly skilled.

16. In 2015, the RS MoI signed a Memorandum of Understanding with the police administration of the city of Moscow. The agreement was legally based on the 2004 Agreement of Cooperation of the BiH Ministry of Security and Russian Ministry of Interior. The MOU expressed the interest of the parties to engage in cooperation and training typical of two police authorities from different countries. However, no binding agreement has been signed by the parties to implement the cooperation and training set forth in the MOU. Consequently, there has been no training by Russian police, and there are no concrete plans for such training in the future.

2. RS police do train regularly with U.S. armed forces and European police.

17. The RS MoI trains frequently with U.S. armed forces. Members of the RS MoI Special Anti-terrorist Unit (SAU) undergo training with U.S. Navy Seals and U.S. Army Green Berets on a frequent basis. Moreover, the United States' Special Operations Forces Liaison Element (SOFLE) team has been assigned by the U.S. Embassy to communicate daily with the RS MoI SAU. SAU members are regularly vetted, and the cooperation is mutually considered excellent.

18. It is also common for the RS's SAU compound to host U.S.-led exercises with SAU members, special forces of BiH's State Investigation and Protection Agency (SIPA), and forces of the Federation of BiH Ministry of Interior. In addition to its close cooperation with U.S. agencies, the RS MoI also conducts training with police from European states.

3. The RS's new training center

19. The RS MoI will soon open a new training center, funded by the RS Government, in Zalužani, a place near the RS's largest city, Banja Luka. The training center will be a resource not just for RS MoI personnel but also for partner police agencies within Bosnia and Herzegovina and in the region. Contrary to claims appearing in some press reports, the training center has no connection whatsoever to Russia. The Zalužani training center has been visited on several occasions by representatives of the U.S. Embassy and U.S. armed forces. No Russian delegation has ever visited the center.

C. RS authorities have no affiliation with any paramilitary organization.

20. Some media reports have falsely alleged that RS authorities are connected in some way with an organization called Srpska Cast (translated as "Serbian Pride"), which some claim to be a paramilitary group. Srpska Cast is an association registered in Nis, Serbia. There is no such association registered in the RS, though the group evidently has a few local admirers. The RS has no information to indicate that Srpska Cast is a paramilitary organization or that it plans to become one. RS authorities have no affiliation at all with Srpska Cast. Nor would RS leaders—elected in a free and democratic system—become affiliated with any paramilitary group. There are no paramilitary formations operating on RS territory.

D. Attempts to paint the RS as the next battleground for a proxy war are baseless.

21. Some in the international community (primarily from the U.S.) who support the anti-Dayton centralization of BiH, and seek a new round of forceful intervention to accomplish it, have sought to deceptively cast BiH as the next political battleground of a proxy war between the U.S. and EU members against Russia. They believe that if they can deceptively persuade key decision makers in these countries that RS relations with Russia pose a threat to their own national security interests, these leaders will take strong measures against the RS and its officials. This narrative, however, lacks substance and should be seen for what it is. The RS is not and will not be a proxy for any other nation. The RS enjoys friendly relations with Russia, as it does with many countries in the "West," and intends to continue those relations. If there is any justifiable concern for undue influence in BiH by foreign powers that pose a threat to the U.S. and EU, it is the close relations that Bosniaks in the Federation have with Iran and Saudi Arabia and its radical Wahhabi influence.

E. RS leaders rule out the use of violence in political disputes.

22. As previously stated, BiH's Bosniak leaders frequently employ bellicose rhetoric and the threat of war. In contrast, RS leaders are committed to peace and rule out violence as an option for resolving political disputes. The threat of armed hostilities as a means to resolve disputes should be condemned by the international community. The false narrative of RS militarization is intended to provoke U.S. and EU intervention and punitive measures against the RS and its elected officials to further weaken the RS.

23. The RS expects that this will continue and even increase during the election year in a desperate attempt to affect the outcome of elections or even prevent certain candidates from participating in elections. This, of course, would greatly undermine democracy and stability in BiH. The RS will of course vigorously oppose such efforts and continue to seek resolution of BiH's internal disputes solely through political dialogue and other legal and constitutional means.

III. BiH's elections must be conducted free from foreign interference.

24. Foreign interference in a state's electoral politics threatens the free and fair elections on which representative democracy depends. Around the world, concern about foreign interference in elections is rising, and governments are taking action to curb it. Sweden, for example, recently decided to create a new agency mandated to safeguard the country's upcoming elections from meddling from foreign governments.¹⁵ After the 2016 U.S. Election, the U.S. Congress enacted legislation to create a Global Engagement Center (GEC) to counter foreign propaganda. Allegations by U.S. authorities of Russian attempts to meddle in U.S. elections have drawn considerable attention. However, as the *New York Times* recently reported, the United States itself has often intervened in foreign elections, including, for example, the 2000 election in

¹⁵ Sweden warns of 'certain foreign powers' meddling in the 2018 election, THELOCAL.SE, 22 Feb. 2018.

Serbia.¹⁶

25. Foreign meddling in BiH's elections threatens to undermine BiH's democracy. In this year's elections, BiH's voters must be able to choose their own leaders without interference from any foreign country. That interference comes in both direct and indirect forms, including from foreign embassies. The RS has reasons to be concerned regarding both but will not set forth those reasons in this report. However, the RS does consider it important to raise one particular long-standing practice that is intended to affect BiH elections.

A. U.S. Influence on BiH Media and the Elections

26. The U.S. government has devoted significant resources to fund media in BiH since the end of the war in 1995. Although the oft-stated purpose of this funding is to bolster independent media, quality journalism, and civil society more generally, its impact on local politics is controversial. The U.S. government has provided over \$100,000,000 in media funding to BiH since the end of the war, possibly the largest per capita U.S. expenditure in media assistance. This funding is largely channeled through the U.S. Agency for International Development (USAID) and the U.S. Department of State (DoS) through the U.S. embassy in Sarajevo.

27. The OHR also has played a role in overseeing the funding and administering of the media organizations and institutions within BiH. The U.S., through these programs, provides millions of dollars in funding every year to a limited number of media organizations it selects with specific mandates it defines. By USAID's own admission, the U.S. expects this funding to affect local politics, including elections.

28. While calls for acute scrutiny of foreign influence in elections have been growing globally, in the run-up to the fall 2018 elections in BiH, an assessment of U.S. financial support reveals a sharp increase beginning last year and continuing in 2018. U.S. funding to BiH media raises serious concerns about additional foreign political influence into BiH's free and fair elections in a critical election year.

B. Reports on U.S. funding of BiH media shows OHR involvement and intent to influence elections.

29. At the end of the war in 1995, the U.S. invested heavily in the BiH economy, infrastructure, government structures, media and civil society, *inter alia*. In its 2005 10-year assessment, "[d]emocratic Elections, NGOs, and an Independent Media" constituted one of the six areas of assistance for the U.S.¹⁷ According to USAID's assessment of media support in BiH between 1996 and 2002, "Bosnia was the first country in which USAID and other bilateral and multilateral agencies and organizations made a large investment (\$80–100 million) to build and

¹⁶ Scott Shane, *Russia Isn't the Only One Meddling in Elections. We Do It, Too.*, *NEW YORK TIMES*, 17 Feb. 2018.

¹⁷ US Department of State, Bureau of European and Eurasian Affairs, "U.S. Assistance to Bosnia and Herzegovina - Fiscal Years 1995-2005", Fact Sheet (2005), <https://2001-2009.state.gov/p/eur/rls/fs/57223.htm>.

strengthen independent media in the aftermath of civil war.”¹⁸ It reported that “[b]y 1999, USAID and the Department of State had spent \$30 million on the effort, possibly the largest ever per capita U.S. investment in media assistance (USAID/Bosnia 1999).”¹⁹

30. The U.S. supported media organizations, national broadcast networks such as the largely DoS-funded Open Broadcast Network (OBN), and even the national broadcasting regulator (the Independent Media Commission (IMC), which became the Communications Regulatory Agency (CRA)).²⁰ This support was substantial. For example, according to USAID, the CRA required \$19 million from its main sponsors, the U.S. and the E.U., over less than 5 years of existence.

31. A 2011 UN Educational, Scientific and Cultural Organization (UNESCO) report, entitled, *Professional Journalism and Self-Regulation – New Media, Old Dilemmas in South East Europe and Turkey*, highlights the politicization of international media aid in BiH. For example, the Press Council of BiH, a self-regulation body for the journalism community, was largely funded and imposed by foreign donors:

When Bosnia and Herzegovina was established as a specific entity, it was effectively administered as an international protectorate. As a part of this administration, a number of international practices and institutions were imported into – it would even be true to say, imposed on – the local environment, which did not necessarily take into consideration features of the domestic culture and society. The Press Council of Bosnia and Herzegovina is one example. It was established in 2000 under the auspices and guidance of the international community, in an effort to contribute to the peaceful reconciliation of the country. Nominally this was the first press council in SEE, but again it should be underlined that the initiative and the drive towards its creation came from outside the local community.²¹

32. However, the top-down nature of these efforts naturally alienated the populations in BiH. For example, USAID readily admits that “OBN found it difficult to repair its image—accurate or not—as a network that was directed exclusively by foreigners and foreign ministries.”²² Media-funding operations were supported by the OHR, which oversaw much of the funding and administration of media bodies. But USAID noted that “[t]he OHR took on multiple and contradictory roles: as a political actor and ultimate international authority in Bosnia, founder of

¹⁸ USAID, “Assessment of USAID Media Assistance in Bosnia and Herzegovina, 1996–2002”, at iv (Sep. 2003) (USAID 2003 assessment), http://pdf.usaid.gov/pdf_docs/pnacr756.pdf.

¹⁹ *Id.* at v (emphasis added).

²⁰ *Id.* at 8.

²¹ Ognian Zlatev, *Media accountability systems (MAS) and their applications in South East Europe and Turkey*, in “Professional Journalism and Self-Regulation – New Media, Old Dilemmas in South East Europe and Turkey”, UNESCO, at 26 (2011) (emphasis added), <http://unesdoc.unesco.org/images/0019/001908/190810e.pdf>.

²² USAID 2003 assessment, at 5.

a regulatory agency, fundraiser for a specific broadcasting project, and advocate for media legal reforms.”²³ The OHR’s and donor governments’ approach to the BiH media was informed by electoral concerns, which ultimately undermined its effectiveness according to USAID:

Donor governments and the high representative often viewed media initiatives as a potential tool to quickly reshape the troubled political climate. As a result, the OHR’s strategy in media assistance—as in other policy areas—was often influenced by successive election cycles. The OHR’s expedient approach to federation television illustrates those short-term pressures.²⁴

33. From the outset, U.S. media funding was equally tied to local politics, as conceded in USAID’s own report:

Although not always stated officially, USAID expected that, with other development efforts, assisting alternative media and would help transform the political landscape and break the dominance of nationalist parties and attitudes.²⁵

34. The 2003 report suggests that these objectives were at least partially met, asserting, “By putting a high priority on media development in Bosnia, U.S. efforts made significant headway in a relatively short time.”²⁶ The report makes evident that a clear expectation of U.S. funding was to influence elections in BiH:

Although the purpose of U.S. media assistance varied and was not always coherently defined, there were clearly expectations that media assistance could help transform Bosnia’s political climate and enable the election of more civic-minded, moderate political parties.²⁷

35. Also, in USAID’s 2006 final report on the *Assessment of USAID/Bosnia and Herzegovina Media Interventions*, the authors emphasized the importance of focusing on elections in prospective media-funding strategies:

Post-Election Follow-up – As described earlier, USAID has made an important outlay of funds to support elections-related programming throughout BiH. Maximizing the impact of this investment—and the impact on the electorate—should be a priority for continued USAID funding. Utilizing the current coordination and monitoring role of the MCS, the Media Centar leadership

²³ *Id.* at 11.

²⁴ *Id.* (emphasis added).

²⁵ *Id.* at vi.

²⁶ *Id.* at viii.

²⁷ *Id.* at 19 (emphasis added).

should be tasked with formulating a series of initiatives with leading media outlets to follow up on the effect of issue-oriented campaign reporting on post-election activities of newly elected parties and candidates.²⁸

36. A 2012 USAID strategy paper underlined the fact that “[t]he USG is the largest donor in political processes in BiH,”²⁹ and that “USAID/BiH and other sections of the U.S. Embassy are major donors in civil society.”³⁰

37. More recently, a 2016 USAID assessment of media in BiH illustrated the political divisiveness of U.S. funding of BiH media among the population:

Without being asked, four key informants said explicitly that the US is seen at times as politically selective in its approach to BiH media, supporting the anti-nationalist political agenda, but also favoring opposition-oriented media rather than non-partisan media organizations.³¹

C. Increase in Current U.S. funding of BiH Media in Election Year

38. Between 2010 and 2017, no new major BiH media-specific funding program appears to have been initiated by the U.S. In 2017-2018 however, at least three major funding programs largely benefitting BiH media were initiated by USAID and DoS, totaling more than \$12 million.³² In the U.S. Department of State Congressional Budget Justification for fiscal year 2018 (including USAID), Congress allocated \$18 million for the Economic Support and Development Fund to BiH.³³ In particular, the 2018 allocation is meant to “reduce vulnerabilities to Russian pressure, particularly in the energy and media sectors,”³⁴ as well as “support independent media, elections, and democratic political processes.”³⁵

D. The U.S. should fully disclose the allocation and use of its funds and discontinue usage to influence elections.

²⁸ USAID, “Assessment of USAID/Bosnia and Herzegovina Media Interventions – Final Report”, at 31 (Aug. 14, 2006) (emphasis added), http://pdf.usaid.gov/pdf_docs/Pnadh275.pdf.

²⁹ *Id.* at 28.

³⁰ *Id.*

³¹ *Id.* (emphasis added).

³² These include Balkan Media Assistance Program (BMAP); USAID Media Program in BiH; and Democracy Commission Small Grants Program.

³³ Department of State, “Congressional Budget Justification - Department of State, Foreign Operations, and Related Programs Fiscal Year 2018”, at 281 (2017), <https://www.state.gov/documents/organization/271013.pdf>.

³⁴ *Id.*

³⁵ *Id.*

39. Many of the recipients of funding have strong affiliation or provide support to political parties and leaders in BiH. Anyone familiar with the situation in BiH will clearly see how providing significant funding to media recipients and NGOs in BiH is inherently troublesome because of the political influence the funding provides.

40. In light of the current political situation in BiH, any type of foreign funding should be awarded in a perfectly transparent manner. Accountability is particularly important given the vast amount of funding that the U.S. has provided, the role of the OHR and U.S. embassy in managing the use of the funds, the stated intent that the funds influence elections, and the clear history of unlawful foreign intervention in BiH. This is in the interest of BiH citizens who deserve to be fully informed on the financing of their media. It also should be in the interest of citizens whose taxes pay for operations intended to interfere in the affairs of a European country's elections. Indeed, the current opacity of these processes ultimately undermines one of these funds' claimed core objectives, which is to restore the trust in media and institutions. The U.S. should end its practice of using funding to BiH media to influence elections within BiH.

IV. The SDA party is obstructing the implementation of judicial decisions critical to elections.

41. Another risk to fair elections consistent with the BiH Constitution and the rights of each of the Constituent Peoples is the Bosniaks' refusal to implement decisions of the BiH Constitutional Court and the European Court of Human Rights related to elections. The Bosniaks have resisted implementing such decisions—in some cases for many years—because they want to retain their ability for Bosniaks to choose Croat representatives. Perhaps the most egregious example of this political abuse was the election of Zeljko Komsic as the Croat People's representative in the tripartite BiH Presidency from 2006 to 2014. Komsic was elected primarily by Bosniak voters in the Federation, defeating the candidate who received the most votes from the much smaller Croat population in the Federation. Komsic's election as the "Croat" member of the presidency gave the Bosniaks two representatives on the Presidency and the Croats none.

42. As a general matter, the RS has a much better record than the Federation or the BiH level with respect to implementing Constitutional Court decisions. On 11 April 2018, the president of the Constitutional Court, a Bosniak, said there are nine decisions of the court that have not been implemented, and just one of those—a decision involving the RS law on enforcement procedure—is to be implemented by the RS.³⁶ As a report on the court president's comments observed, "This means that the BiH Constitutional Court holds that the RS complied with the previous decision of the Court by having enacted a new law on 9 January as the Day of the RS."³⁷ The other eight decisions that have not been implemented at the Federation and BiH levels.

A. The BiH Constitutional Court's decision on the BiH Election Law

43. Last year, the BiH Constitutional Court nullified the BiH Election Law's provisions on the election of delegates to the Federation House of Peoples. The Court's decision requires the

³⁶ *Devet odluka nije provedeno*, BN Televizija, 11 April 2018.

³⁷ *Id.*

BiH Parliamentary Assembly to amend the law. So far, members of the Assembly—particularly those from the SDA and other Bosniak parties—have refused to make the Election Law consistent with the BiH Constitution. As a result, there have been calls by a few in the media and international community for the High Representative simply to impose a change to the law. As a matter of law and sound policy, however, the necessary amendments must result from a compromise within BiH, not an illegal decree by the High Representative.

44. The provisions of the Election Law recently nullified by the Constitutional Court have, for years, helped the Bosniak parties to dominate the Federation House of Peoples, contrary to constitutional safeguards for the Croat minority. Bosniak political leaders took advantage of the Election Law's provisions that enable "Croat" and "Serb" representatives to be elected by the larger Bosniak population instead of being elected by their own Constituent Peoples. The leader of one of the Croat parties, Božo Ljubić, challenged those provisions in the BiH Constitutional Court, and the court held them unconstitutional in December 2016.³⁸ The court determined that the provisions violated the equality of Constituent Peoples by failing to provide them adequate political representation.

45. Because the BiH Parliamentary Assembly failed to make the necessary amendments to the BiH Election Law's provisions on election of the Federation House of Peoples, the Constitutional Court in July 2017 repealed the offending provisions entirely. Thus, if the BiH Parliamentary Assembly does not enact legislation to implement the Constitutional Court's decision soon, the 2018 election of the Federation House of Peoples cannot be carried out. Election of the Federation House of Peoples is crucial, especially because without it, it will be constitutionally impossible to elect the BiH House of Peoples, the Federation Presidency, or the Federation Government.

1. The SDA has blocked implementation of the decision on the Election Law.

46. Despite the fact that implementation of the Constitutional Court's decision is essential for the functioning of BiH and the Federation, the SDA and other Bosniak parties have resisted enacting the necessary amendments. They have refused to consider any legislation that does not preserve Bosniak domination of the Federation House of Peoples. The SDA and other Bosniak parties must abandon their insistence on preserving their domination and compromise with the Croat parties.

2. Reforms to implement the decision on the Election Law must be a product of domestic agreement.

47. A few politicians and commentators, rejecting the need to find a compromise, are hoping the High Representative will disregard constitutional processes and impose the necessary legislation by decree. This would be unlawful and unwise. As EU Special Representative to BiH Lars-Gunnar Wigemark recently emphasized, the reform of the Election Law must be based on a compromise of domestic parties. Ambassador Wigemark said, "We cannot impose solutions. I think it would be a step back if [the Office of the High Representative] did it. This is a sovereign

³⁸ Case No. U-23/14, Decision on Admissibility and Merits, BiH Constitutional Court, 1 Dec. 2016.

country.”³⁹ High Representative Valentin Inzko, however, has refused to rule out imposing changes to the Election Law by decree.⁴⁰

48. The international community should recall the fiasco that resulted the last time High Representative Inzko intervened in electoral matters. In March 2011, the largest Bosniak party formed a Federation Government in brazen violation of the Federation Constitution. The BiH Central Election Commission promptly declared the formation of the Federation Government unlawful and annulled it. Inzko, however, responded by handing down a decree overruling the CEC’s decision. As described by the International Crisis Group (ICG), the High Representative’s “ill-judged decision to suspend rulings of the state Central Election Commission allowed an illegally elected executive to take office and appoint a government excluding the major Croat parties.”⁴¹ Inzko’s decree, as the ICG’s President wrote, “undermined state bodies and the rule of law.”⁴² Journalist Srećko Latal recently observed that Inzko’s “decision not only damaged relations between Bosniak and Bosnian Croat politicians but also undermined the international community’s confidence.” The Federation Government that was formed in 2011, existing solely because of a foreign diplomat’s unlawful decree, was seen as illegitimate for its entire term.

49. BiH’s friends in the international community should make clear that the authority and responsibility to amend the Election Law belong to the BiH Parliamentary Assembly, not a foreign diplomat. It is the responsibility of the Bosniaks to act in good faith and agree to amend the law.

B. The SDA has blocked implementation of the Constitutional Court’s decision on Mostar, preventing elections in the city.

50. In 2010, the BiH Constitutional Court held that the law with respect to elections in the city of Mostar, which diluted the voting power of the Croats, violated anti-discrimination and voting rights provisions of the BiH Constitution and the International Covenant on Civil and Political Rights. Unfortunately, the SDA, the main Bosniak party in Mostar, has refused to compromise with the HDZ, the main Croat party, to find a solution. As a result, citizens of Mostar have been prevented from voting in local elections since 2008.

C. The SDA has blocked implementation of the European Court of Human Rights’ *Sejdić-Finci* decision.

51. The European Court of Human Rights’ 2009 *Sejdić-Finci* decision rejected provisions of the BiH Constitution that make individuals who are not members of BiH’s three Constituent Peoples ineligible to run for BiH’s three-member Presidency or its House of Peoples. The RS has long advocated a simple solution for members of the BiH Presidency and House of Peoples

³⁹ *Vigemark: EU neće nametati rješenja BiH*, ATV, 12 Feb. 2018.

⁴⁰ *Interview with HR Valentin Inzko*, *Nezavisne Novine*, 18 Dec. 2017.

⁴¹ International Crisis Group, *Bosnia’s Gordian Knot: Constitutional Reform*, Crisis Group Europe Briefing N°68, 12 July 2012, p. 14.

⁴² Letter from Louise Arbour, President and CEO of International Crisis Group, to PIC Steering Board Ambassadors, May 2, 2011.

representing the RS: to simply eliminate all ethnic qualifications. For office holders representing the FBiH, the RS has for years made clear that it would accept whatever solution the FBiH's Croat and Bosniak parties agreed to. Unfortunately, the SDA and other Bosniak parties have rejected any proposal designed to prevent the election of two members of the Presidency representing Bosniaks and none representing Croats. Because of the SDA's stubbornness on this issue, BiH has now failed to implement the Sejdić-Finci decision for more than eight years.

D. The International Community has failed to condemn the Bosniak parties for resisting implementation of these critical court decisions

52. Notwithstanding the need to implement the decisions of the Constitutional Court and European Court of Human Rights—particularly the Election Law decision, implementation of which is necessary to avoid an unprecedented constitutional crisis—the United States and others in the international community have been silent in the face of the Bosniak parties' resistance to implementation. This silence stands in stark contrast to the strident attacks on the RS when it was accused of failing to implement a court decision on the comparatively trivial matter of a public holiday.

V. The growing jihadist threat to BiH

53. The danger of Islamist terrorism in BiH is rising amid the collapse of the Islamic State's territorial base in Iraq and Syria. BiH exported more fighters to Iraq and Syria, per capita, than any other European country.⁴³ As the Islamic State has lost territory in the Middle East, hundreds of jihadist fighters have returned to BiH and other countries in the Western Balkans.⁴⁴

54. Fighters from BiH are returning to a country that remains a haven for Islamic extremists. The SDA party, as detailed in a recent RS paper submitted to the UN Security Council,⁴⁵ over the years has helped turn BiH into a sanctuary for jihadists. In a June 2017 article, the journal *New Eastern Europe* observed, "Despite the Bosnian government claiming to control the religious situation, there are increasing reports of what is known as 'Sharia villages,' where most families live in polygamy under Islamic law, and symbols of ISIS are freely displayed in public places in breach of the established constitutional order."⁴⁶ Germany's *Der Spiegel* recently wrote, "German investigators believe there are around a dozen places in Bosnia where Salafists - - followers of a hardline Sunni interpretation of Islam -- have assembled radicals undisturbed by the authorities."⁴⁷ In testimony to the UK House of Lords in September 2017, Gen. Michael Rose, former Commander of the UN Protection Force in BiH warned of "a rising element of radicalization" in BiH, "particularly amongst the Muslim communities" and of "jihadists who are

⁴³ *Foreign Fighters in Iraq & Syria—Where Do They Come From?*, RADIO FREE EUROPE/RADIO LIBERTY, 29 Feb. 2016; John Schindler, *Operation CUT: Bosnia versus the Islamic State*, 22 Dec. 2015.

⁴⁴ Filip Rudic, *250 Islamist Fighters Return to Balkans: Report*, BIRN, 24 Oct. 2017.

⁴⁵ *How Bosnia and Herzegovina Has Become a Terrorist Sanctuary*, Attachment to Republika Srpska's 16th Report to the UN Security Council, Oct. 2016.

⁴⁶ Tatyana Dronzina and Sulejman Muca, *De-radicalising the Western Balkans*, NEW EASTERN EUROPE, 22 June 2017.

⁴⁷ Walter Mayr, *Sharia Villages: Bosnia's Islamic State Problem*, DER SPIEGEL, 5 Apr. 2016.

coming through and being exported.”⁴⁸

55. Concerns about BiH's use as a jihadist sanctuary are rising among European leaders. Czech President Milos Zeman has said ISIS could form its European base in BiH, where the group's "black flags are already flying in several towns.”⁴⁹ Similarly, Croatian President Kolinda Grabar-Kitarovic warned of "thousands of fighters returning to Bosnia from Syria and Iraq.”⁵⁰ In September 2017, the Croatian newspaper Globus reported that Croatia's secret service had told Grabar-Kitarovic that Islamic radical groups have increasingly been establishing themselves in BiH near the Croatian border and that there are between 5,000 and 10,000 Islamic radicals living in BiH.⁵¹

56. In a recent interview, Ms. Marijana Petir, an HDZ member of the EU Parliament from Croatia expressed concern with respect to the growing jihadist threat in BiH. She stated: "EU and NATO representatives have expressed their concerns over the situation in BiH at a session discussing security in BiH and Kosovo. Their assessment of the situation is based on analyses, studies and reports." One of the concerns Ms. Petir cited was the reported increase of Wahhabi settlements in BiH funded by Saudi Arabia. She explained:

The fact is that Saudi Arabia is financing, with hundreds of millions of euros, different activities that are not only of a religious but also educational character. All this serves the purpose of expanding conservative Islam in the region. The reports demonstrate that Saudi Arabia had and still has a strong influence in the region, which started during the war. So, their aim is to disseminate their interpretation of Islam, which is political Islam. It is different from the Islam that has always been practiced in BiH. In 1995, in the Dayton Accords, it was agreed that foreign fighters should leave BiH, but it has never happened. A large number of them have remained in rural areas in BiH.⁵²

57. The growing jihadist threat in BiH is not only a concern to the citizens of the RS, but also to European states and their citizens.

58. BiH has become a haven for Islamic radicals because its largest Bosniak political party, the SDA, is Islamist. SDA founder Alija Izetbegovic's *Islamic Declaration*, published in 1990, states, "There can be neither peace nor coexistence between the Islamic religion and non-Islamic social and political institutions.”⁵³ Consistent with this ideology, the SDA invited mujahidin to

⁴⁸ The testimony is available at www.parliamentlive.tv/Event/Index/a4551237-3e0f-4c02-afbe-8c0cefa94948.

⁴⁹ Daria Sito-Sucic, *Islamic State flags not flying in Bosnia – PM*, Reuters, 12 Sept. 2017.

⁵⁰ *Id.*

⁵¹ Igor Spaic, *Bosnia War Victims Slam Croatia President's Terror Claims*, BIRN, 7 Sept. 2017.

⁵² *Petir za N1: Sve što sam rekla se temelji na izvješćima EU*, N1 TV, 30 Mar. 2018.

⁵³ ALIJA IZETBEGOVIC, *ISLAMIC DECLARATION*, p. 30.

Bosnia and Herzegovina during the war and has continued its close ties to radical Islamists. A recent demonstration of the SDA's Islamist orientation is party president Bakir Izetbegovic's president's proud statement in October 2017 that his father, Alija, "bequeathed" BiH to Recep Tayyip Erdogan, Turkey's Islamist president.⁵⁴

59. BiH policies also help make the country a jihadist haven. The BiH justice system has handed down amazingly lenient sentences—usually involving no prison time—to returned ISIS fighters. The BiH Prosecutor's Office has failed to seek justice for wartime mujahidin atrocities against Serbs. In addition, BiH's SDA-dominated security apparatus is failing to curb the jihadist presence in BiH. As Nenad Pejic of Radio Free Europe/Radio Liberty observed, "There are countless examples of local authorities in Bosnia failing to act properly against Islamic extremism."⁵⁵

60. An additional threat to security is the continued spread of Wahhabi ideology among BiH's Bosniak population. In February 2018, *Bosnia Times* editor Nedžad Latic, a journalist known for criticizing the SDA, was attacked in Sarajevo by a group of men he described as Wahhabis.⁵⁶

61. Members of the international community should hold Bosniak officials accountable for allowing the threat of jihadists to grow and support action to address it.

VI. The RS supports BiH's EU accession process and is continuing to implement reforms.

A. BiH's Coordination Mechanism is working.

62. The establishment and implementation of the Coordination Mechanism for EU integration was difficult, but it is now operating successfully. In July 2015, all levels of government had reached agreement on a Coordination Mechanism. In early 2016, however, the BiH Council of Ministers unilaterally tried to replace the agreed Coordination Mechanism with one that violated the BiH constitutional structure. Later in 2016, SDA members blocked vital IMF financing for BiH in an attempt to coerce the RS into agreeing to amendments to the agreement on the Coordination Mechanism. Once the Coordination Mechanism was finally adopted, Bosniak officials resisted properly implementing it. Bosniak officials claimed that the Coordination Mechanism would not work and that BiH would need to centralize, ignoring the constitutional competencies different levels of government.

63. In spite of BiH's well known political divisions and the Coordination Mechanism's unpromising beginnings, it is now being used effectively to harmonize the positions of BiH's different levels of government. In December 2017, after a meeting of the European Integration Collegium, the Coordination Mechanism's highest body, Federation Prime Minister Fadil

⁵⁴ Izetbegovic says his father "bequeathed" Bosnia to Erdogan, BETA, 20 Oct. 2017.

⁵⁵ Nenad Pejic, *Wahhabist Militancy in Bosnia Profits from Local and International Inaction*, JAMESTOWN TERRORISM MONITOR 9, Issue 42, 17 Nov. 2011.

⁵⁶ Mladen Lakic, *Bosnian Journalist Says "Wahhabis" Assaulted Him*, BIRN, 21 Feb. 2018.

Novalić said, "It turns out that the Coordination Mechanism is functioning, which is the greatest achievement of today's meeting."⁵⁷

64. A key test of the Coordination Mechanism has been its use in arriving at BiH's answers to the European Commission (EC) Questionnaire. These answers were submitted to the EC on 28 February 2018, marking an important step for BiH in its path to EU membership. In February 2018, just before BiH submitted its answers to the EC Questionnaire, BiH Council of Ministers Chairman Denis Zvizdic said, "What matters is that we have a really organized and well-established Mechanism of Coordination that will help us to respond to additional questions quickly and efficiently."⁵⁸ As BiH moves down the road of European integration, the RS will continue to participate in the Coordination Mechanism in a cooperative spirit.

B. The RS is leading the way for BiH's EU integration.

65. The RS has worked vigorously to implement the Reform Agenda for EU integration. By the end of 2017, the RS Government had fully implemented 58 out of 78 measures from the Reform Agenda, and the remaining 20 measures are being realized.⁵⁹ The European Commission's 2018 report on BiH observed, "The Republika Srpska entity National Assembly continued to adopt legislation aimed at implementing the Reform Agenda with a focus on health and social protection sector. The disagreements between Federation ruling coalition parties adversely affected the adoption of Reform Agenda measures at the level of the Federation entity parliament."⁶⁰ The RS is continuing reforms to spur economic growth. Among the RS's top priorities in 2018 are reforms to reduce burdens on private businesses, including abolishing parafiscal charges and reducing labor costs.⁶¹

C. BiH cannot become an EU member as long as its Constitutional Court includes foreign judges; their mandate must end.

66. Reforming the BiH Constitutional Court is essential for BiH to become a fully sovereign state and an EU member. In private meetings, EU officials have made clear that BiH cannot become an EU member as long as it has foreign judges sitting on its Constitutional Court. As explained below, the presence of foreign judges on BiH's highest court is inconsistent with BiH sovereignty and, as then-EU Enlargement Commissioner Olli Rehn said in a speech to the BiH Parliamentary Assembly in 2009, "there is no way a quasi-protectorate can join the EU."⁶²

⁵⁷ Mladen Dragoljovic, *Only seven more questions to be answered*, INDEPENDENT BALKAN NEWS AGENCY, 20 Dec. 2017.

⁵⁸ Zvizdic: *The sooner we negotiate, the faster our EU Path will be*, SARAJEVO TIMES, 23 Feb. 2018.

⁵⁹ *The RS Government implemented 74 percent of the Reform Agenda Measures*, SARAJEVO TIMES, 2 Feb. 2018.

⁶⁰ Commission Staff Working Document, *Bosnia and Herzegovina 2018 Report*, 17 Apr. 2018, p. 4..

⁶¹ *Minister of Finance Zoran Tegeltija: Unburdening economy is priority*, THE SRPSKA TIMES, 3 Jan. 2018.

⁶² Olli Rehn, EU Commissioner for Enlargement, *Towards a European Era for Bosnia and Herzegovina: The Way Ahead*, Address to Parliament of Bosnia and Herzegovina, 24 July 2009.

67. The foreign judges' continued presence is inconsistent with Chapter 23—Judiciary and fundamental rights—of the *Acquis Communautaire*, which is the body of EU laws a candidate country has to comply with in order to become a member state. The European Commission specifies that compliance with Chapter 23 of the *Acquis* requires the “establishment of an independent and efficient judiciary [which] requires a firm commitment to eliminating external influences over the judiciary.”⁶³ The presence of foreign judges on the BiH's Constitutional Court is therefore inconsistent with the BiH accession to the EU.

68. EU Council recommendation CM/Rec(2010)12 states that “[j]udges, who are part of the society they serve, cannot effectively administer justice without public confidence. They should inform themselves of society's expectations of the judicial system and of complaints about its functioning.”⁶⁴ Foreign judges are hardly part of the BiH society, because, in addition to being foreign nationals, they live abroad, work in a foreign language, and sit on a limited number of cases.

1. A Constitutional Court with foreign members is inconsistent with sovereignty and democracy.

69. The presence of foreign judges on the BiH Constitutional Court is incompatible with BiH's sovereignty.

70. As Professor Robert Hayden has observed, the role of foreign judges on the Constitutional Court “of course, compromises the sovereignty of Bosnia and Herzegovina, since it gives decision-making powers to people who may not, by constitutional mandate, be citizens of the country.”⁶⁵

71. Writing about the BiH Constitutional Court, the University of Antwerp's Stefan Graziadei observes:

Even more at odds with national sovereignty is the idea that international judges may sit in national apex courts: “Because of the doctrine of state sovereignty, it sounds almost inconceivable that a foreign citizen should serve on the bench of a national supreme court or a separate constitutional court of another country.” This is particularly true because such courts operate at the boundary between politics and law: they have the power to

⁶³ European Commission, European Neighborhood Policy And Enlargement Negotiations, *Chapters of the acquis*, COM (2017).

⁶⁴ Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, art. 20 (Nov. 17, 2010).

⁶⁵ ROBERT M. HAYDEN, BLUEPRINTS FOR A HOUSE DIVIDED: THE CONSTITUTIONAL LOGIC OF THE YUGOSLAV CONFLICTS (1999) 131.

review legislation, which is based on the will of the people, for conformity with the national constitution.⁶⁶

72. Even one recently retired foreign Constitutional Court judge, Constance Grewe, admits that the presence of foreign judges “can be seen as an intrusion into the national affairs” or “as an attempt at supervision.”⁶⁷ That is exactly what it is.

73. The presence of foreign judges on the BiH Constitutional Court is also incompatible with BiH democracy. As an international expert panel on Cyprus observed, “Leaving the final decision in case of stalemate to foreign citizens in such critical organs as the Supreme Court and others is in stark contradiction to the principle of democracy.”⁶⁸

2. The politicized Constitutional Court reliably upholds unconstitutional centralization.

74. The BiH Constitutional Court as currently constituted lacks independence from the High Representative, making it impossible to successfully challenge OHR’s unconstitutional centralization of BiH.

75. The example of the HR’s creation of the Court of BiH is instructive. The BiH Constitution, as the International Crisis Group has observed, “allotted judicial matters to the Entities, apart from a state Constitutional Court.”⁶⁹ Disregarding this, the High Representative decreed a law to create the Court of BiH in 2000. Despite the law’s obvious unconstitutionality, the Constitutional Court upheld the law in a 5-4 decision because the three foreign judges voted as a bloc, along with the two Bosniak judges, to protect the HR’s creation. One of those foreign judges later admitted that there was a “tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation”⁷⁰

76. The Constitutional Court’s obeisance to the High Representative continues. During a press conference earlier this month, when asked why the court had not yet made a decision with respect to its review of parts of the Federation Constitution, judges of the BiH Constitutional Court gave a telling response—they explained that the court was awaiting the High Representative’s opinion on the matter before issuing its decision. One judge called this “a

⁶⁶ Graziadei at 4 (quoting Joseph Marko, *Foreign Judges: A European Perspective*, in *Hong Kong’s Court of Final Appeal: The Development of the Law in China’s Hong Kong*, ed. by Simon Young and Yash Ghai (New York: CUP, 2014), pp. 637-65 (p. 637)). (footnotes omitted).

⁶⁷ Constance Grewe and Michael Riegner, *Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared*, MAX PLANCK YEARBOOK OF UNITED NATIONS LAW, Vol. 15, p. 41.

⁶⁸ International Expert Panel Convened By The Committee For A European Solution In Cyprus, *A principled basis for a just and lasting Cyprus settlement in the light of International and European Law*, 2005 (quoted in Graziadei at 4).

⁶⁹ 2014 ICG Report at 27 (footnotes omitted).

⁷⁰ JOSEPH MARKO, FIVE YEARS OF CONSTITUTIONAL JURISPRUDENCE IN BOSNIA AND HERZEGOVINA, *European Diversity and Autonomy Papers* (July 2004) at 17 and 18 (emphasis added).

relatively common practice.”⁷¹ Mirsad Ćeman, President of the Constitutional Court, said that “in this case, the High Representative was a legislator, even a constitution-maker, and since he is, and it is undisputed that this is so, then he is provided with an opportunity to give his opinion.”

77. The High Representative clearly has no legal authority under the Dayton Accords or from any legal instrument to act as a legislator or “constitution-maker” nor to influence the deliberations and decisions of what must rightly be an independent Constitutional Court. Such practice does not exist in any country of the world. It is unacceptable for the highest judicial authority mandated to uphold and interpret the BiH Constitution impartially to ask for guidance and direction from the High Representative. These statements represent a confession that the BiH Constitutional Court is unlawfully governed by foreigners, led by the High Representative.

3. All Serb and Croat parties support ending the role of foreign judges on the Constitutional Court but have been prevented from doing so because Bosniak leaders do not want to give up this political tool.

78. The BiH Constitution authorizes the Parliamentary Assembly to pass a new law replacing the foreign judges five years after their initial appointment, which occurred in 1996.⁷² All of the Serb and Croat political parties in BiH are united in support of replacing the foreign judges on the Constitutional Court with BiH citizens.⁷³ As the president of the Croat National Council, which represents all of the Croat parties, recently said, “Twenty years after the war, Bosnians are ready to take full control of this court.” On 20 December 2016, leaders of the SNSD and HDZ, the largest Serb and Croat parties in BiH, announced that their parties are jointly preparing a new Law on the Constitutional Court.⁷⁴ Unfortunately, the SDA is refusing to reform the Constitutional Court by passing a new law because it does not want to break up the alliance of former SDA leaders and foreign members that controls it.

VII. The international community should respect the Dayton Accords and BiH sovereignty.

79. BiH’s friends in the international community, especially witnesses to the Dayton Accords, should support the Accords’ faithful implementation. This includes opposing efforts to use BiH institutions as political instruments to unlawfully undermine the Dayton Constitution. It also includes supporting reforms necessary to restore the structure established under the Dayton Accords.

A. The Office of the High Representative must close.

80. In order to qualify for EU membership, BiH must become a self-governing country whose sovereignty is fully respected. This is impossible as long as the High Representative

⁷¹ *Vrh državnog Ustavnog suda o provedbi presuda i političkom uticaju*, TV 1, 11 April 2018.

⁷² BiH Constitution, Art. VI(1)(d).

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

⁷⁴ Danijel Kovacevic, *Bosnian Serbs Threaten Showdown over Foreign Judges*, BIRN, 20 Dec. 2016.

remains in BiH and claims authority to decree laws, constitutional amendments, and punishments completely outside the Dayton constitutional system. As journalist Srecko Latal recently observed, "Many Western officials . . . turned against the OHR, declaring the very existence of such an organization - which is neither a part of local government structures nor overlooked by any concrete international body - contradicts Bosnia's intention to join the EU."⁷⁵ It is also impossible as long as the High Representative furtively supports the use of BiH institutions to unlawfully advance an agenda to centralize the structure of BiH contrary to the Dayton Accords. If BiH is to become a fully sovereign state and an EU member, the High Representative's presence in BiH must come to an end.

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

81. The Security Council has authority to take certain measures under Chapter VII of the UN Charter "to maintain or restore international peace and security" only where there is "the existence of any threat to the peace, breach of the peace, or act of aggression."⁷⁶ BiH, despite its political divisions, has been peaceful and secure for many years; there is no security threat that could possibly justify the Security Council acting under Chapter VII of the UN Charter. The Security Council should thus end the application of Chapter VII measures. Continuing to act under Chapter VII casts an unwarranted stigma on BiH and hampers BiH's progress toward EU membership.

⁷⁵ Srecko Latal, *Bosnians Look to Forgotten 'Governor' to Avert Crisis*, BALKAN INSIGHT, 15 March 2018.

⁷⁶ See Chapter VII of the UN Charter.