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THE ROAD TO INDEPENDENCE: HISTORICAL BACKGROUND, LEGALITY, AND LEGITIMACY OF THE PROPOSED SECESSION OF THE BOSNIAN SERBS FROM BOSNIA AND HERZEGOVINA

Paul Pepi

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**THE ROAD TO INDEPENDENCE:
HISTORICAL BACKGROUND, LEGALITY,
AND LEGITIMACY OF THE PROPOSED
SECESSION OF THE BOSNIAN SERBS
FROM BOSNIA AND HERZEGOVINA**

*By Paul Pepi**

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I. INTRODUCTION

Throughout the twenty-five years since the end of the Bosnian War, there have been continual threats of secession from Bosnia and Herzegovina (hereafter annotated as BiH) made by the political leaders of the Republic of Srpska.¹ If the secession occurs, two scenarios could play out. The first is the establishment of a new Serbian majority state in the geographical boundary of what is now the country of BiH. The second is the territory of the Republic of Srpska would become annexed by Serbia proper. Since Serbia has not supported secession attempts by the Republic of Srpska, the first scenario is much more likely to occur.² However, there has been little to no international support of a Republic of Srpska secession, outside of Russia.³ History of Serbian aggression during the Bosnian War and the concern of regional violence following a Republic of Srpska secession are the two primary causes that the movement has not been supported by the European Union or the United States.⁴

The first call for secession was in 1996, a year after the Bosnian War ended. Biljana Plavšić, the second president of the Republic of Srpska, called for the country's secession and unification with what was left of Yugoslavia — at the time known as the Federal Republic of

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¹ Denitsa Koseva, *Serbia slaps down Republic of Srpska's secessionist aspirations*, BNE INTELLINEWS (2020), <https://www.intellinews.com/serbia-slaps-down-republic-of-srpska-s-secessionist-aspirations-190494>.

² *Id.*

³ See generally David Salvo & Stephanie De Leon, *Russia's Efforts to Destablize Bosnia and Herzegovina*, GERMAN MARSHALL FUND OF THE U. S. (Apr. 1, 2018), www.jstor.org/stable/resrep18769.

⁴ Danijel Kovacevic, *Bosnian Serb Leader Repeats Demand for Secession Referendum*, BALKANINSIGHT (Feb. 15, 2020), <https://balkaninsight.com/2020/02/15/bosnian-serb-leader-repeats-demand-for-secession-referendum/>.

Yugoslavia, which had a large Serbian majority.⁵ Among the many reasons for her calls of secession was the claim that Bosniaks – because of their religion and ethnicity – were genetically inferior to the Bosnian Serbs.⁶ Later she would be charged by the ICTY for two counts of genocide, five counts of crimes against humanity, and one count of murder.⁷ After Plavšić's declaration, Serbian secession talks paused until the recognition of Kosovo in 2008.⁸ Kosovo's successful independence angered many Bosnian Serb civilians and their political leaders because the U.N. Security Council Resolution 1244 clearly defines Kosovo as a province of Serbia, a declaration which the United Nations, and the Serbian constitution supported.⁹ ¹⁰ This resolution still stands, and has not been overturned to this day. Citizens of the Republic of Srpska believed that since Kosovo, historically part of Serbia, could declare independence on demographic grounds, the Republic of Srpska should be allowed its own referendum on independence.¹¹ However, the international community held back the calls for an independence referendum.¹² Specifically, the Peace Implementation Council (PIC), the international body charged with implementing the Dayton Agreement for BiH, made it clear that none

⁵ ROBERT BIDELEUX & IAN JEFFRIES, *THE BALKANS: A POST-COMMUNIST HISTORY* 361 (2007).

⁶ MAYA SHATZMILLER, *ISLAM AND BOSNIA: CONFLICT RESOLUTION AND FOREIGN POLICY IN MULTI-ETHNIC STATES* 58 (May 5, 2002).

⁷ *Prosecutor v. Biljana Plavšić*, Case No. IT-00-39&40/1-S, Sentencing Judgment (Int'l Crim. Trib. for the Former Yugoslavia (Feb. 27, 2003), <https://www.icty.org/x/cases/plavsic/tjug/en/pla-tj030227e.pdf>).

⁸ Sylvia Poggioli, *Serbs Protest Kosovo's Declaration of Independence*, NPR (Feb. 18, 2008), <https://www.npr.org/templates/story/story.php?storyId=19148456>.

⁹ *Republic of Srpska Slames Kosovo Recognition 'Pressure'*, BALKANINSIGHT (Jan. 4, 2013), <https://balkaninsight.com/2013/01/04/dodik-opposes-bosnia-s-recognition-of-kosovo/>.

¹⁰ United Nations Security Council, *Resolution 1244*. UNITED NATIONS SECURITY COUNCIL (June 10, 1999), <https://peacemaker.un.org/kosovo-resolution1244>.

¹¹ *Priznanje Kosova i referendum u RS*, B92 (Feb. 22, 2008) https://www.b92.net/info/vesti/index.php?yyyy=2008&mm=02&dd=22&nav_id=285932.

¹² *Bosnia Serb PM Dismisses US Aid Cuts*, BALKANINSIGHT (Mar. 5, 2008) <https://balkaninsight.com/2008/03/05/bosnia-serb-pm-dismisses-us-aid-cuts/>.

of the entities hold any right to self-determination under the Dayton peace accords.¹³

A 2010 poll from Gallup Balkan Monitor showed that nearly 90% of Serbian citizens supported an independence referendum.¹⁴ The same poll showed that a majority of the Serbians believed that the Kosovo independence would ultimately aid the Serbian secession movement.¹⁵ The next year, officials of the Republic of Srpska proposed a referendum on leaving the institutions of BiH. However, the European Union (E.U.) prevented it from being carried out, because they believed it could destabilize the region by inciting war in BiH.¹⁶ In 2012, the president of the Republic of Srpska, Milorad Dodik, predicted that the Republic of Srpska would eventually be an independent country capable of functioning as an independent state.¹⁷ Surprisingly, this statement was supported by many Western officials, including Steven Meyer, the former CIA Balkans chief, who believes that a new Serbian state is inevitable.¹⁸ In 2015, the largest Serb party in BiH the Alliance of Independent Social Democrats (SNSD), used an independence referendum as a threat to receive more autonomy and to reform the Constitutional Court, but the E.U. and the United States stopped the referendum when the Republic of Srpska's demands were not met.¹⁹ Finally, in February 2020, Dodik, still president of the

¹³ *Id.*

¹⁴ Danas, *Za nezavisnu RS 88 odsto gradana*, DANAS (Nov. 19, 2010), <https://www.danas.rs/drustvo/za-nezavisnu-rs-88-odsto-gradjana/>.

¹⁵ *Id.*

¹⁶ *Bosnia: What Does Republic of Srpska Want?*, INT'L CRISIS GROUP (Oct 6, 2011), <https://www.crisisgroup.org/europe-central-asia/balkans/bosnia-and-herzegovina/bosnia-what-does-republic-of-srpska-want>.

¹⁷ Bojana Barlovac, *Dodik: Republic of Srpska Will Be Independent*, BALKANINSIGHT (Oct. 5, 2012), <https://balkaninsight.com/2012/10/05/dodik-republic-of-srpska-will-be-independent/>.

¹⁸ Steven Meyer, *The Dayton Accords: Anchor to the Past or Bridge to the Future?*, 2 POLITEIA 51, 65–66 (2012), https://www.researchgate.net/publication/315651709_The_Dayton_Accords_Anchor_to_the_past_or_bridge_to_the_future.

¹⁹ Maja Zuvella, *Biggest Serb Party in Bosnia Threatens 2018 Secession*, REUTERS (Apr. 25, 2015), <https://www.reuters.com/article/us-bosnia-serbs-secession-idUSKBN0NG0NB20150425>. See also, *Balkans' Rising Instability To Exacerbate European Security Concerns*, FITCH SOLUTIONS (Feb. 1, 2017),

Republic of Srpska, threatened secession over a Constitutional Court decision regarding ownership of agricultural land in the Republic of Srpska.²⁰

While the merits and seriousness of the secession attempts are debated, the historical pattern and frequency of the Republic of Srpska's secession attempts hint that such calls will not end in the near future. Voters in BiH have and will continue to elect nationalists who contribute to political gridlock which keeps ethnic tensions burning as they have been for decades.²¹ Although Serbia does not directly support the Republic of Srpska's desire for independence, mainly due to Serbia's desire to join the E.U., Republic of Srpska politicians still see calls for independence as a political weapon to be used to their advantage.²² Even so, analysts at Fitch Solutions believe that the weakening of the E.U. post-Brexit make an independent Republic of Srpska much more likely in the near future.²³ Scholars and political officials educated on the issue tend to agree. Jürgen Buxbaum, a sociologist who has lived in BiH, plainly claims that the Bosnian Serbs will undoubtedly vote for independence if given the chance. He maintains that it is not a question if the referendum will be held, but instead a question of when.²⁴ Several studies have also pointed to the fact that, from the citizens' perspectives, the governmental legitimacy of the Republic of Srpska is on par with the legitimacy of the

<https://www.fitchsolutions.com/country-risk-sovereigns/economics/balkans-rising-instability-exacerbate-european-security-concerns-01-02-2017>.

²⁰ Danijel Kovacevic, *Dodik Unveils Fresh Threat of Bosnian Serb Secession*, BALKANINSIGHT (Feb. 13, 2020), <https://balkaninsight.com/2020/02/13/dodik-unveils-fresh-threat-of-bosnian-serb-secession/>.

²¹ Andrew Higgins, *In Bosnia, Entrenched Ethnic Divisions Are a Warning to the World*, N. Y. TIMES (Nov. 19, 2018), <https://www.nytimes.com/2018/11/19/world/europe/mostar-bosnia-ethnic-divisions-nationalism.html>.

²² Herard Toal, "Republic of Srpska Will Have a Referendum": *the Rhetorical politics of Milorad Dodik*, 41 J. OF NATIONALISM & ETHNICITY 166–204 (2013), available at, <https://www.tandfonline.com/doi/full/10.1080/00905992.2012.747500?scroll=true&needAccess=true>.

²³ *Balkans' Rising Instability to Exacerbate European Security Concerns*, *supra* note 19.

²⁴ Jürgen Buxbaum, *An End to the Lies and Self-Deception: Scenarios for the future of Bosnia and Herzegovina*, 17 SEER: J. FOR LAB. AND SOC. AFF. IN E. EUR. 167, 167 (2014), available at, <http://www.jstor.org/stable/43294043>.

Federation of BiH, even though these entities actively impede each other politically.²⁵ Russia has already established its support for an independent Republic of Srpska. If China follows suit, two out of the five United Nations Security Council members will back this decision.²⁶

This comment will argue that the secessionist movement of the Republic of Srpska stems from a long history of ethnic tensions, among other factors, and that its resolution is highly improbable in the foreseeable future. Further, this comment will present a clear path for secession for the Republic of Srpska. Section I provides the relevant history of BiH and lays the framework for current political and legal analysis. Subsection A provides historical proof through primary documents analysis that the Bosnian War was fought because of deep-seated ethnic hatred. Subsection B argues that the Dayton Peace Accords, adopted as the new constitution of BiH maintained and exacerbated post-war ethnic tensions. Subsection C considers the other reasons behind ethnic tensions, current economic and political stagnation, and how the Bosnian War is still being fought at the political level. The main audience of this comment is intended to be for those who know little of the Republic of Srpska secessionist movement, and – perhaps equally as important – why it is happening. The scarcity of Western academic attention to BiH and the Republic of Srpska secessionist movement has driven the decision to provide a lengthy historical background analysis. Next, Section II contemplates the legality of the Republic of Srpska secessionist movement by analyzing international legal documents regarding secession, and international court rulings given to BiH. Subsection A argues that

²⁵ The first study is by Eiki Berg and Mihkel Solvak who argue that their research indicates that both entities' legitimacy is on par with each other, even though the "two entities remain worlds apart on a range of issues." See Eiki Berg and Mihkel Solvak, *Muted Differences: Entrenching Legitimacy of the Bosnian Statehood?*, 46 COOP. & CONFLICT, 460, 460 (2011), available at, www.jstor.org/stable/45084674. Another notable study comes from Eiki Berg the following year, where he reaches the same conclusion – this time measuring cohesion, security, performance, and democracy to judge the Republic of Srpska's and the Federation of Bosnia and Herzegovina's legitimacy. See Eiki Berg, *Parent States Versus Secessionist Entities: Measuring Political Legitimacy in Cyprus, Moldova and Bosnia & Hervegovina*, 64 EUROPE-ASIA STUD. 1271, 1292 (2012), available at, www.jstor.org/stable/23258287.

²⁶ David Salvo & Stephanie de Leon, *supra* note 3.

secession is political, not legal in nature, which gives the Republic of Srpska independence movement strength if the political factors support it. Subsection B highlights the many human rights failures given by international courts and other international bodies. Subsection C reviews the reasons that BiH has failed to implement constitutional reform in the face of continual international pressure. Section III provides a pathway to secession that is most likely to succeed without inflaming ethnic tensions or provoking major players in the region. Finally, the conclusion provides areas where this research could be bolstered.

II. HISTORICAL BACKGROUND

A. The Bosnian War Driven by Inter-Ethnic Hatred

When the collapse of Yugoslavia was obvious following Slovenia's and Croatia's secessions in the early 1990s, Slobodan Milošević, the leader of what was left of Yugoslavia, acted to guarantee a strong Serbian state post-Yugoslavia.²⁷ Usually referred to as Greater Serbia, the idea of the state followed the pathological logic of Serbian ethnonationalism as it redefines traditional statehood.²⁸ Specifically, Greater Serbia means that the sovereign state of Serbia exists wherever there is a Serbian majority, even if it is outside of Serbia proper.²⁹ Milošević himself echoed this idea in a 1991 speech; "Everyone knows that we in Serbia . . . have committed ourselves to the stand that Serbs must live in one state."³⁰ Milošević went on to say that the national boundaries within the former Yugoslavia have "never been state borders," and they were "drawn in the past arbitrarily . . . disregarding the ethnic composition of the population, the consequences of the genocide suffered by the Serbian people, or the norms of international

²⁷ Ian Black, *Milosevic tried to build Greater Serbia, trial told*, THE GUARDIAN (Oct. 1, 2002), <https://www.theguardian.com/world/2002/oct/02/warcrimes.milosevictrial>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Slobodan Milošević, President of the Republic of Serbia, at the Serbian Assembly, *Slobodan Milošević on the Future of Yugoslavia*, (May 30, 1991), available at, <http://www.slobodan-milosevic.org/news/milosevic053091.htm>.

law.”³¹ If Serbia existed wherever a Serbian majority happened to live, then huge swaths of land in Bosnia and Herzegovina could be annexed, especially if Serbians eradicated or drove out ethnicities from the land they believed to be rightly theirs.³² This idea was followed by the Army of the Republic of Srpska, at the behest of Milošević. He would later die while in international custody facing crimes against humanity at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague.³³ Following his arrest, he was accused of using rhetoric that incited instances of ethnic cleansing that took place during the Yugoslavian Civil War and the Bosnian War.³⁴ Also, he was blamed for transforming the once ethnically diverse army of Yugoslavia to become nearly 90% Serbian and using his military apparatus to support Serbian fighters in Bosnia for a significant portion of the Bosnian War.³⁵

Milošević’s unveiled ethnocentrism personifies the main reasons the Bosnian War was waged: ethnic hatred and perceived ethnic superiority.³⁶ This ethnic hatred throughout the Bosnian War resulted in widespread ethnic cleansing. In July 1995, Serbian fighters

³¹ The genocide he is referring to is by the fascist Ustaše regime under the Nazi-controlled Independent State of Croatia. Between 1941 and 1945, as many as half a million Serbians, Jews, and Roma (estimates vary widely) were systematically executed in what is now a little-known genocide of the Second World War. See Mary Kate Luft, *10 Facts About the Ustase Genocide*, BORGENT PROJECT (Nov. 9, 2017), <https://borgenproject.org/facts-about-the-ustase-genocide/>; see also, Slobodan Milošević, *supra* note 30.

³² See Stephen Engelberg, *Carving out a Greater Serbia*, N.Y. TIMES (Sep. 1, 1991), <https://www.nytimes.com/1991/09/01/magazine/carving-out-a-greater-serbia.html?auth=login-email&login=email>.

³³ See Peter Beaumont, *Slobodan Milosevic Dies Alone with History Still Demanding Justice*, GUARDIAN (Mar. 11, 2006), <https://www.theguardian.com/world/2006/mar/12/warcrimes.milosevictrial>.

³⁴ ICTY, *Milošević, Slobodan (IT-02-54)*, INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (2004), https://www.icty.org/en/case/slobodan_milosevic#ind.

³⁵ See *History of Ethnic Tensions*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/genocide-prevention/countries/bosnia-herzegovina/case-study/background/history-ethnic-tensions> (last visited Nov. 15, 2021).

³⁶ See Sam Bramlett, *What Was The Cause of the Bosnian War?*, BORGENT PROJECT (Jan. 6, 2018) https://borgenproject.org/cause-of-the-bosnian-war/#:~:text=Milosevic%20was%20a%20leader%20who,cause%20of%20the%20Bosnian%20War_

systematically executed over 8,000 Bosniak men and boys in Srebrenica, a small town near the border of Serbia.³⁷ Although Srebrenica received most of the international attention, there were dozens of recorded incidents of ethnic cleansing on all sides of the conflict. In Bijeli Potok, up to 750 Bosniaks and Croats were exterminated by Bosnian Serbs on the spot where Croatian fascists had murdered Serbians during World War II.³⁸ In the Doboju municipality, the ICTY concluded that the Serbian attack on the local Bosniak and Croat population was, “both widespread and systematic . . . with the intent to discriminate against Muslims and Croats on the basis on their ethnicity.”³⁹ While the municipality had 43,000 Bosniaks recorded in the 1993 census, only 1,000 remained at the signing of the Dayton Accords, with over 2,000 missing or killed.⁴⁰ In the town of Foča, Serbian forces created ‘rape camps’ where they raped women and young girls by the thousands as an “instrument of terror.”⁴¹ Of the 40,000 Bosniaks living in Foča in 1992, only *ten* remained by the end of the war.⁴²

The Croats, because of their own hatred towards the Bosniaks and the Serbians, waged atrocities of their own. The largest massacre of Bosniaks perpetrated by the Croats was the Ahmići Massacre, during which Croatian Defense Council (HVO) troops lit houses on fire and killed civilians.⁴³ Out of the 120 who died, thirty-two were

³⁷ See R. Jeffrey Smith, *Srebrenica Massacre*, BRITANNICA, <https://www.britannica.com/event/Srebrenica-massacre> (last visited Nov. 15, 2021).

³⁸ See Nick Thorpe, *Muslims Tortured? I Wasn't There*, GUARDIAN (Nov. 17, 2000), <https://www.theguardian.com/world/2000/nov/18/balkans>.

³⁹ Prosecutor v. Mićo Stanišić & Stojan Župljanin, Case No. IT-08-91-T, Judgement, 373 (Mar. 27, 2013), https://www.icty.org/x/cases/zupljanin_stanisicm/tjug/en/130327-1.pdf.

⁴⁰ See EDWARD LAWSON & MARY BERTUCCI, ENCYCLOPEDIA OF HUMAN RIGHTS 151 (TAYLOR & FRANCIS 1996).

⁴¹ See *Facts About FOČA*, INT’L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, https://www.icty.org/x/file/Outreach/view_from_hague/jit_foca_en.pdf (last visit Nov. 15, 2021).

⁴² *Id.*

⁴³ *Kordić and Čerkez Verdict*, INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, (2004), 265, https://www.icty.org/x/cases/kordic_cerkez/acjug/en/cer-aj041217e.pdf.

women and eleven were children under eighteen years of age. The HVO artillery also destroyed mosques and culturally significant Bosniak landmarks.⁴⁴ In the Mostar municipality, Croatian forces set up the Vojna camp which held tens of thousands of Bosniaks for almost a year during the war.⁴⁵ These illegally detained citizens were subject to random killings, various forms of torture, rape, and beatings.⁴⁶ Croatian forces were also largely suspected to have carried out most of the killings during the Bradina Massacre – a mass killing of forty-eight Bosnian Serb civilians.⁴⁷

The Bosniaks, for their part, also committed atrocities. The largest massacre, the Kazani Pit Killings, occurred between April 1992 and October 1993.⁴⁸ At least 150 ethnic Serbians were taken to the Kazani Pit, beaten, and killed by Bosniaks who would usually slit their throats and decapitate them before dumping their bodies in the pit.⁴⁹ Another massacre perpetrated by the Bosniaks was in 1992, where the Army of the Republic of Bosnia and Herzegovina killed thirty to fifty ethnic Serb civilians in what is referred to as the Čemerno massacre.⁵⁰ Bosniak forces also massacred Croat civilians – the most shocking example of which is known as the Grabovica massacre, where at least thirty-three Croats were murdered by Bosniaks near Jablanica.⁵¹

⁴⁴ *Id.*

⁴⁵ See *View From The Hague*, INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, (Apr. 7, 2004) https://www.icty.org/x/file/Outreach/view_from_hague/balkan_040407_en.pdf.

⁴⁶ *See id.*

⁴⁷ See Lamija Grebo, *Bosnia Charges Ex-Fighter with Crimes Against Konjic Serbs*, BALKANINSIGHT (Jun. 5, 2018), <https://balkaninsight.com/2018/06/05/bosnia-charges-ex-fighter-with-crimes-against-konjic-serbs-06-05-2018/>.

⁴⁸ See Zdravko Ljubas, *Fate Unknown: The Long Search for Sarajevo's Missing Serbs*, BALKANINSIGHT (Aug. 1, 2019), <https://balkaninsight.com/2019/08/01/fate-unknown-the-long-search-for-sarajevos-missing-serbs/>.

⁴⁹ *See id.*

⁵⁰ See Dzana Brkanic, *Bosnian Army Ex-Soldiers Arrested for Killing 30 Serbs*, BALKANINSIGHT (Dec. 19, 2017), <https://balkaninsight.com/2017/12/19/bosnian-army-ex-soldiers-arrested-for-killing-30-serbs-12-19-2017/>.

⁵¹ See *Case Information Sheet Sefer Halilović*, INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA,

When the Croats and Bosniaks eventually allied with each other, their joint military fighting forces were also found to have carried out war crimes against Serbians. The most gruesome example of this was the Sijekovac massacre in March 1992.⁵² As many as fifty-eight Serbians were murdered by Croat and Bosniak forces who knowingly targeted civilian centers with artillery.⁵³ The dead included over twenty children.⁵⁴

The Bosnian War ended in 1995 and the survivors from all ethnicities were essentially forced by the international community to share the same border with those responsible for some form of ethnic cleansing. Directly following the war, the Bosniaks, Croats, and Serbs felt a pure form of ethnic hatred towards each other, perpetuated by the Dayton Accords, the framework that created the BiH government structure and constitution.⁵⁵

B. The Dayton Accords Maintaining Post-War Ethnic Tensions

BiH would not gain independence until 1995, after the United States, under President Bill Clinton, helped streamline the international recognition process for the Federation of Bosnia and Herzegovina (Federation of BiH) and led NATO in bombing key positions of the Republic of Srpska army.⁵⁶ Known as Operation Deliberate Force, this use of aggressive military intervention proved essential in stopping the Bosnian War.⁵⁷ However, the Republic of Srpska still had enough

https://www.icty.org/x/cases/halilovic/cis/en/cis_halilovic.pdf (last visited Nov. 15, 2021).

⁵² N. ATLANTIC TREATY ORG., *Main News Summary Wednesday, 11 August 2004*, PEACE STABILISATION FORCE (Aug. 11, 2004), <https://www.nato.int/sfor/media/2004/ms040811.htm>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See R. Jeffrey Smith, *Ethnic Hatred Permeates Bosnia's Bitter Peace*, WASH. POST (Nov. 10, 2000), <https://www.washingtonpost.com/archive/politics/2000/11/10/ethnic-hatred-permeates-bosnias-bitter-peace/4df048dc-0bc8-4b39-be5b-3fc8566e6696/>.

⁵⁶ See Ryan Hendrickson, *Crossing the Rubicon*, NATO REV. (Sept. 1, 2005), <https://www.nato.int/docu/review/articles/2005/09/01/crossing-the-rubicon/index.html>.

⁵⁷ *See id.*

military and bargaining power to leverage its position in peace talks, which began in Paris and finally concluded with the Dayton Peace Agreement in November 1995.⁵⁸ At this point, the international community, still in disbelief of the unrestricted ethnic violence, would accept nothing less than peace.⁵⁹ The United States, many high-profile E.U. nations, and even Russia pressured the presidents of Serbia, Croatia, and the de-facto leaders of the Bosniaks, Bosnian Croats, and Bosnian Serbs to negotiate peace.⁶⁰ Several weeks of intense discussions culminated in the signing of the Dayton Peace Accords in Ohio, creating the independent state of Bosnia and Herzegovina.⁶¹

The main goal of the Dayton Peace Accords, which the new state of BiH accepted as their constitution, was to promote lasting peace not only in BiH, but the entire Balkan region.⁶² Although peace did follow, critics of the Dayton Accords claim that they maintained ethnic tensions within BiH, and that the accords did little to rectify the struggles of the Bosnian War, which was waged on the grounds of deep-rooted ethnic hatred.⁶³ The once diverse population of BiH was now replaced with “ethnically defined areas” created from internal displacement during the war.⁶⁴

⁵⁸ Bosnia and Herzegovina-Croatia-Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Dec. 14, 1995, 35 I.L.M. 75 [hereinafter GFAP].

⁵⁹ See Ivo Daalder, *Decision to Intervene: How the War in Bosnia Ended*, BROOKINGS INST. (Dec. 1, 1998), <https://www.brookings.edu/articles/decision-to-intervene-how-the-war-in-bosnia-ended/>.

⁶⁰ Christoph Schwegmann, *The Contact Group and its Impact on the European Institutional Structure*, INST. FOR SEC. STUD. 4–8 (Jun 2000), <https://www.iss.europa.eu/sites/default/files/EUISSFiles/occ016.pdf>.

⁶¹ Off. for Democratic Inst. & Human Rights (OSCE/ODIHR), *Dayton Peace Agreement*, (1995), <https://www.osce.org/bih/126173>.

⁶² See Bill Clinton, *Dayton Accords*, BRITANNICA, <https://www.britannica.com/event/Dayton-Accords> (last updated Nov. 14, 2021).

⁶³ See Julian Borger, *Bosnia's Bitter, Flawed Peace Deal, 20 Years On*, GUARDIAN, (Nov. 10, 2015) <https://www.theguardian.com/global/2015/nov/10/bosnia-bitter-flawed-peace-deal-dayton-agreement-20-years-on>.

⁶⁴ See Maja Sahadzic, *The Electoral System of Bosnia and Herzegovina: A Short Review of Political Matter and/or Technical Perplexion*, 2 CONTEMPORARY ISSUES 61, 62 (2009).

Critics argue that the BiH governmental structure, created by the Dayton Accords, is one of the most complicated and disturbing examples of government organization in modern history.⁶⁵ There are five different presidents (three governing federally and two governing the entities), fourteen separate parliaments, hundreds of representatives, and over 130 appointed ministers for a country with less land mass than West Virginia and a population lower than Los Angeles.⁶⁶ The second level of government below the federal government contains three distinct autonomous entities whose territories were drawn largely upon ethnic lines, including the Federation of BiH, comprised mainly of Muslim Bosniaks and Bosnian Croats and the Republic of Srpska, comprised mainly of Serbians.⁶⁷ ⁶⁸ The Dayton Accords specifically granted these two entities extraordinary autonomy which they still maintain: they are allowed distinct foreign relations with other neighboring states, to provide for their own security for their territory, and to maintain local jurisdiction without interference from the other entity.⁶⁹ This independence creates tensions with the federal government, which also has the authority to conduct foreign policy that does not always align with the wishes of the ethnicities. Also, these entities have their own bicameral parliament, prime minister, government, and president, which further

⁶⁵ See Martin Walker, *The Dayton Accords: A Peace Agreement for Bosnia – archive, 1995*, GUARDIAN (Nov., 2, 1995), <https://www.theguardian.com/world/from-the-archive-blog/2020/nov/18/the-dayton-accords-a-peace-agreement-for-bosnia-archive-1995>.

⁶⁶ See *Bosnia and Herzegovina: Government and Society*, BRITANNICA, <https://www.britannica.com/place/Bosnia-and-Herzegovina/Government-and-society> (last visited Nov. 15, 2021).

⁶⁷ See *Bosnia 2013 Census*, EUROPEAN PARLIAMENTARY RESEARCH SERVICE, <https://eprthinktank.eu/2014/01/27/bosnia-2013-census/> (last visited Nov. 15, 2021).

⁶⁸ The third is the Brcko district, a self-governing administrative unit almost 200 square miles in size, which borders the Federation of Bosnia & Herzegovina, the Republic of Srpska, Croatia, and Serbia. Although it shares many of the same responsibilities as the entities, Brcko is not particularly relevant to the direction of this comment and will not be discussed further.

⁶⁹ GFAP, *supra* note 58.

complicate the roles, responsibilities, and overall effectiveness of the political process.⁷⁰

Many of the high-ranking federal positions also have an *ethnic* requirement.⁷¹ For example, the three federal presidential seats are uncompromisingly reserved for one Croat, one Serb, and one Bosniak, dismissing the legal possibility of an ethnic minority presidential win. This is the same for the Council of Ministers and the Parliamentary Assembly.⁷² In fact, the Dayton Accords name Croats, Bosniaks, and Serbs as the *only* constituent peoples of BiH, barring any members of the significant Roma and Jewish populations from high offices of power.⁷³ Further, the Dayton Accords maintain that constituent peoples living in the opposite entity of their ethnicity are not allowed to vote for their own ethnicity in federal elections.⁷⁴ So, if a Bosnian Serb lived in the Federation of BiH autonomous entity, a territory where they are the ethnic minority, they would have no option to vote for a Republic of Srpska presidential candidate – that right is only reserved for citizens living in the Republic of Srpska voting in their majority Serb entity.⁷⁵ Likewise, a Croat or Bosniak living in the Republic of Srpska would have to vote for a Croat or Bosnian candidate to obtain a seat in parliament or the presidency.⁷⁶ The use of ethnicity as the main qualifying factor for high positions in government is practically unheard of in the modern era, and BiH has been under constant pressure to amend its constitution since its inception because it has undoubtedly perpetuated the continuation of ethnic tensions since the end of the Bosnian War.⁷⁷ Even in nations with specific identity-based obligations for their heads of state, such as the nations

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Bosnia's Gordian Knot: Constitutional Reform*, INT'L CRISIS GRP. (July 12, 2012), <https://www.crisisgroup.org/europe-central-asia/balkans/bosnia-and-herzegovina/bosnia-s-gordian-knot-constitutional-reform>.

of Afghanistan, Lebanon, and Morocco, religion – *not* ethnicity – is the requirement.⁷⁸

The presidential and parliamentary veto system also stoke the flames of ethnic tension.⁷⁹ If two presidents agree on an issue, they can conditionally pass it if the parliament supports the decision.⁸⁰ However, if the remaining president disagrees with the decision on the simple grounds that it is ‘destructive’ to their ethnicity, they can veto it.⁸¹ The same veto action is authorized in the two chambers of parliament.⁸² It is clear that the BiH governmental structure is devised to promote near unequivocal backing from all of the constituent leaders for every decision, large or small, and this structure of the governmental procedures has been the main factor in perpetuating governmental gridlock.⁸³

The adoption of the Dayton Accords as BiH’s constitutional framework did not come close to addressing the underlying reasons for ethnic tensions – it arguably exacerbated them.⁸⁴ In the United States, many factors contribute to an individual’s choice of political ideology. History, family influence, personal experience, religion, access to information, region, race, and ethnicity all play a role in an individual’s political views.⁸⁵ In BiH, however, for the vast majority of Bosniaks, Bosnian Serbs, and Bosnian Croats, ethnicity alone drives

⁷⁸ See Angelina Theodorou, *In 30 Countries, Heads of State Must Belong to a Certain Religion*, PEW RSCH. CTR. (July 22, 2014), <https://www.pewresearch.org/fact-tank/2014/07/22/in-30-countries-heads-of-state-must-belong-to-a-certain-religion/>.

⁷⁹ See Birgit Bahtic-Kunrath, *Of Veto Players and Entity-Voting: Institutional Gridlock in the Bosnian Reform Process*, 39 J. NATIONALISM AND ETHNICITY 899, 899 (2011).

⁸⁰ GFAP, *supra* note 58.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Enna Zone Đonlić, *Protection of the Vital National Interest in Bosnia and Herzegovina*, EUROPEAN STUDENT THINK TANK (Dec. 4, 2017), <https://esthinktank.com/2017/12/04/protection-of-the-vital-national-interest-in-bosnia-and-herzegovina/>.

⁸⁴ See Clinton, *supra* note 62.

⁸⁵ See *What Factors Shape Political Attitudes?*, US HIST., <https://www.ushistory.org/gov/4b.asp> (last visited Nov. 15, 2021).

political ideology.⁸⁶ In a functioning democracy, when individuals hold ire towards their government for any reason, they do not direct it on ethnic lines. In the United States, for example, when a government shutdown occurs, Democrats, by and large, blame Republicans, and vice versa.⁸⁷ Because these political parties consist of a variety of different ethnicities, religions, and points of view, the disapproval of political leaders is primarily based on that ideology which manifests in governmental action.⁸⁸ On the other hand, the BiH constitution, as created by the Dayton Accords, gave overwhelming power to the political leaders of the three constituent ethnicities. When a Serbian vetoes a proposed piece of executive action their ideology as well as their ethnicity is blamed – in many ways, these two factors are inextricably linked.⁸⁹ Therefore, ethnic tension seems to be embedded in BiH's governmental structure, inarguably linking political struggles to ethnic blame between *all* constituent peoples.

⁸⁶ See Nils B. Weidmann, *Measuring Ethnic Preferences in Bosnia and Herzegovina with Mobile Advertising*, PLOS ONE (Dec. 22, 2016), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0167779>.

⁸⁷ See Neil Malhotra & Alexander G. Kuo, *Attributing Blame: The Public's Response to Hurricane Katrina*, 70 J. OF POL. 120, 127 (2008) (A study conducted after Hurricane Katrina found that mentioning political parties to citizens alters their responses to blame the opposite party, regardless of race or ethnicity.).

⁸⁸ See *Trends in party affiliation among demographic groups*, PEW RESEARCH, (Mar. 20, 2018), <https://www.pewresearch.org/politics/2018/03/20/1-trends-in-party-affiliation-among-demographic-groups/>.

⁸⁹ More factors can be tied along with ideology and ethnicity. This includes religion (most Bosnian Serbs are Orthodox Christian, most Bosnian Croats are Catholic, and most Bosniaks are Muslims), lifestyle, and language. (Although Serbo-Croatian was the only official language of the Former Yugoslavia, since its dissolution, the various languages of the three ethnicities have been individually recognized: Serbian, Croatian, and Bosnian respectively. However, the lexical differences between the ethnicities are almost non-existent). See Sam Beford, *A Guide to Religions in Bosnia*, CULTURE TRIP (Dec. 5, 2017), <https://theculturetrip.com/europe/bosnia-herzegovina/articles/a-guide-to-religions-in-bosnia/>; see also DANKO ŠIPKA, LEXICAL LAYERS OF IDENTITY: WORDS, MEANING, AND CULTURE IN THE SLAVIC LANGUAGES 166 (Cambridge Univ. Press 2019).

C. Peace Without Victory

The Bosnian War did end, but not because one side was militarily superior to another – the so-called “natural” cessation of hostilities did not play out as it would have in a more traditional war. Instead, it ended because of heavy involvement from the international community. NATO militarily intervened under Operation Deliberate Force, which crippled the army of the Republic of Srpska to end the conflict after the primary U.N. peacekeeping missions failed.⁹⁰ This represented a “peace without victory,” for all sides.⁹¹ The Bosniaks did not achieve a fully unitary state because two entities with a high level of autonomy were established upon ethnic lines. Further, the Croats and the Serbs did not gain independence or secede to Croatia and Serbia, respectively.

A kind of peace was undoubtedly achieved between all ethnicities, but with many reservations. First and foremost, no form of ethnic unity was sought after the war. Instead, the two mostly autonomous entities were drawn, and, more importantly, still remain primarily on ethnic lines. When an official post-war census was finally taken almost two decades after the war, the demographic makeup of the two entities drew concern from the international community.⁹² Overall, the nation of BiH was comprised of 50.11% Bosniaks, 30.78% Bosnian Serbs, and 15.43% Bosnian Croats. However, The Federation of BiH hosted 91.39% of all the Bosnian Croats and 88.23% of all the Bosniaks.⁹³ Similarly, 92.11% of all the Bosnian Serbs resided within the Republic of Srpska.⁹⁴ This data shows that ethnic intermingling remains rare to this day and partaking in it is culturally unacceptable.

BiH also has some of the worst economic problems in Europe. BiH maintains one of the highest youth unemployment rates in the

⁹⁰ See Barbara Crossette, *U.N. Details Its Failure to Stop '95 Bosnia Massacre*, N.Y. TIMES (Nov., 16, 1999), <https://www.nytimes.com/1999/11/16/world/un-details-its-failure-to-stop-95-bosnia-massacre.html>.

⁹¹ Valery Perry, *Constitutional Reform in Bosnia and Herzegovina: Does the Road to Confederation Go Through the EU?*, 22 INT'L PEACEKEEPING 490, 491 (2015).

⁹² See *Bosnia 2013 Census*, *supra* note 67.

⁹³ *Id.*

⁹⁴ *Id.*

world – at the time of writing, it is 40.18%, while the global average is 15.5%.⁹⁵ The estimated population in 2019 is at 3.3 million – this is *down* from 4.5 million in 1988.⁹⁶ Every year from 2000 – 2012, an average of 20,000 emigrants have left BiH and that only counts for emigrants going to other E.U. countries.⁹⁷ Although emigration usually provides some positive aspects for the sending country, so far remittances and the shortening of the labor pool has done little in strengthening the overall BiH economy and has an overall negative impact for BiH's economic future.⁹⁸ Foreign investment, while higher than North Macedonia and Montenegro, falls far shorter than other more prosperous nations in the region such as Croatia and Slovenia.⁹⁹ Although BiH's GDP growth has been relatively stable for the past decade, hovering around 2-3% growth, COVID-19 plummeted

⁹⁵ See *Unemployment, Youth Total (% of total labor force ages 15-24) (modeled ILO estimate) - Bosnia and Herzegovina*, WORLD BANK, <https://data.worldbank.org/indicator/SL.UEM.1524.ZS?end=2020&locations=BA&start=1991&view=chart> (last visited Nov. 15, 2021).

⁹⁶ Most of the population decline happened between 1990 – 1997 and was a direct result of the Bosnian War. The vast majority of Bosnian Croats who left Bosnia went to Croatia, and the vast majority of Bosnian Serbians who left went to Serbia. Bosniaks, for the most part, were internally displaced and receded towards heavily-majority Bosniak cities and municipalities. See *Population, total - Bosnia and Herzegovina*, WORLD BANK, <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=BA&display=graph> (last visited Nov. 15, 2021).

⁹⁷ Kačapor-Džihic and Oruč, *Social Impact of Emigration and Rural-Urban Migration in Central and Eastern Europe*, EUR. COMM'N (2012), <https://ec.europa.eu/social/BlobServlet?docId=8838&langId=en>.

⁹⁸ Amela Trokic, *The Negative Long Term Effects of Remittance Inflow in Bosnia and Herzegovina*, 9 J. ANALYTICAL 58, 73 (2012).

⁹⁹ Many of these fiscal investments do not come from 'safe' debtors. A major investor in Bosnia & Herzegovina come from China, and the EU has noted that these investments lead to continued problems within the country, such as environmental threats and unpayable debts. See Hirkić, *China in the Balkans – Part 1: Bosnia and Herzegovina*, FOMOSO, <https://www.fomoso.org/en/mosopedia/background-knowledge/china-in-the-balkans-part-1-bosnia-and-herzegovina/> (last visited Nov. 15, 2021); see also *Foreign Direct Investment, Net Inflows (BoP, current US\$) - Bosnia and Herzegovina*, WORLD BANK, https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?locations=BA&most_recent_value_desc=true&view=chart (last visited Nov. 15, 2021).

Bosnia's GDP growth to -6.5% in 2020.¹⁰⁰ Also damning are BiH's lack of economic policy, which has provided no support for strategic export industries, and BiH's poor infrastructure system.¹⁰¹ BiH has no broad policy for the economy or infrastructure because the two entities cannot agree on broad policy nor its implementation.¹⁰² When the economy suffers in most countries around the world, the people blame their government first. In BiH, when the economy suffers, the Bosniak and Croat citizens blame the Serbian political leaders, and Serbian citizens blame Bosniak and Croat political leaders.

The Dayton Accords have enabled this political deadlock to the obvious detriment of BiH citizens.¹⁰³ Many critics realized that handing significant executive power, in the form of presidential vetoes, to the various ethnicities could weaponize the political environment and enflame ethnic tensions.¹⁰⁴ Looking at BiH today, the fears of the past were well founded. Presidential and the Parliamentary Assembly's veto power allows politicians to use veto power for the constituent people's own insular ethnic interest, and throughout the 25 years since the war ended, veto power has been used for that sole purpose in most cases.¹⁰⁵ In a large way, the Bosnian War is still being bitterly fought by all ethnicities, not with soldiers in the battlefield, but with politicians perpetually vying for their own specific ethnic interests. The pen might be mightier than the sword, but a pen without a guiding hand leaves

¹⁰⁰ *Bosnia & Herzegovina: Growth Rate of the Real Gross Domestic Product (GDP) from 2015 to 2025*, STATISTA, <https://www.statista.com/statistics/453929/gross-domestic-product-gdp-growth-rate-in-bosnia-herzegovina/> (last visited Nov. 15, 2021).

¹⁰¹ See Alberto Arenaza, *Bosnia and its Constitution. Thoughts on Reform and Governance*, THE MEDIUM (Nov. 10, 2017), <https://medium.com/@albertoarenaza/bosnia-and-its-constitution-thoughts-on-reform-and-governance-aff837ed49a>.

¹⁰² *Id.*

¹⁰³ See Barrie Barber, *Gridlock Keeps Bosnia Paralyzed Today*, DAYTON DAILY NEWS (Nov. 20, 2015), <https://www.daytondailynews.com/news/gridlock-keeps-bosnia-paralyzed-today/2SmD7M4fQi6ivJMYLYdaqL/>.

¹⁰⁴ See Peter Cannon, *The Third Balkan War and Political Disunity: Creating a Confederated Cantonal Constitutional System*, 5 J. TRANSNAT'L L. & POL'Y 373, 411 (1995).

¹⁰⁵ Bahtic-Kunrath, *supra* note 79.

an empty page, and, in this case, a stagnate nation facing the real possibility of secession.

III. ANALYSIS: COURT RULINGS, INTERNATIONAL LAW, INTERNATIONAL NORMS, INTERNATIONAL POLITICS

A. International Community: Secession as a Political Matter

In the international community, recognition of the secessions of peoples has not been consistent, to say the least. A good rule of thumb clearly outlined by international law professor Hurst Hannum, is that secession is most likely supported only if, but not always when, a people is held under extreme and dire persecution from their government and if the seceding party is prepared for self-governance.¹⁰⁶ Any other case where secession is attempted, it is simply a political matter. International law, for example, generally supports secession in various recognized codified legislation and charters. The UN Charter, which 193 nations have accepted as international law, grants international “respect for the principle of equal rights and self-determination of peoples.”¹⁰⁷ However, there are many limits to the UN Charter’s declaration that peoples have a right to self-determination. The broad language of the UN Charter regarding self-determination, in theory, gives the right for self-determination to practically any minority living in any nation. This right would most certainly end in the Balkanization and conflict of peoples of nations all around the world. However, the text of the UN Charter regarding self-determination is refuted by the Charter’s guarantee of the territorial integrity of a state.¹⁰⁸ This type of contradictory language scattered throughout the UN Charter regarding the right of self-determination was most certainly intentional because the founders of this document

¹⁰⁶ See generally Hurst Hannum, *The Right of Self-Determination in the Twenty First Century*, 55 WASH. & LEE L. REV. 773 (1998).

¹⁰⁷ United Nations, *Charter of the United Nations and Statute of the International Court of Justice*, UNITED NATIONS (last updated June 2020), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-1&chapter=1&lang=en. See also, U.N. Charter art. 2.

¹⁰⁸ See Micheli Quadros, *Secession: The Contradicting Provisions of the United Nations Charter - A Direct Threat to the Current World Order*, 14 SANTA CLARA J. INT’L L. 461, 462 (2016).

did not want continual ethnocentric minority secession movements all around the world, a point made by Vernon Van Dyke back in 1969.¹⁰⁹ Van Dyke also states that nearly all nations will promote self-determination if related to colonial subjects, but at the same time would not support non-colonial independence movements if they counter a national security objective and/or are internal.¹¹⁰ There are a plethora of cases of the former, such as President Johnson's military intervention during the Dominican Republic independence movement in 1962 and U.S. initiation of the Vietnam War.¹¹¹ In both of these cases, the United States wanted to prevent the spread of Communism.¹¹² There are also many cases for the latter. One of the most famous modern examples is Israel's denial of Palestinian independence. However, internal secession has historically been accepted in some circumstances. In the context of Yugoslavia, the independence of BiH was grudgingly accepted by what was left of Yugoslavia after the international community, led by the United States, used strategic and devastating military force against the Republic of Srpska. Obviously, for states around the world, the support or opposition of secessionist movements are reliant on certain circumstances – there is *no* legal norm even when certain “rights” or “principles” are guaranteed under international law. This evidently makes international support of secession movements political, not legal, in nature as individual states are inclined to take a stance that meets their prior objectives in the region.¹¹³

Therefore, the political factors surrounding the Republic of Srpska must be examined to determine if they have any real chance to secede. Since the end of the Bosnian War and the establishment of

¹⁰⁹ See Vernon Van Dyke, *Self-Determination and Minority Rights*, 13 INT'L STUD. Q. 223, (Sept. 1969).

¹¹⁰ *Id.*

¹¹¹ See *U.S. troops land in the Dominican Republic in attempt to forestall a “communist dictatorship”* HISTORY.COM (Apr. 28, 1965), <https://www.history.com/this-day-in-history/u-s-troops-land-in-the-dominican-republic>; see also *Reasons for US involvement in Vietnam*, BBC, <https://www.bbc.co.uk/bitesize/guides/zv7bkqt/revision/2> (last visited Nov. 15, 2021).

¹¹² *Id.*

¹¹³ This article uses the terms “secession,” “self-determination,” and “independence” interchangeably, as do many international charters regarding the rights of a people to be sovereign.

BiH, the United States and the European Union have unilaterally opposed the Republic of Srpska's independence. First, U.S. and E.U. support of the secessionist movement would peripherally acknowledge the failures of the Dayton Accords brokered by the two parties. At the time of its signing, the Western countries were given large international credit for creating peace between the ethnicities of BiH.¹¹⁴ To discard this agreement would highlight its failure at promoting a unitary state. Another reason for the U.S. and E.U. non-approval comes from the belief of U.S. and E.U. leaders that such an independence cannot occur without ethnic violence and additional regional tensions.¹¹⁵ Together, these two reasons explain many instances of U.S. and E.U. rejection of the secessionist movement. In 2008, the United States cut funding for the Bosnian-Serb political party pushing for a referendum on independence and the E.U. publicly condemned the party.¹¹⁶ In 2011, the Republic of Srpska's referendum proposal was defused by the E.U., with aid from the United States.¹¹⁷ In the 2015 call for a referendum, the E.U. and United States made clear that if the Republic of Srpska gained independence, it would be economically isolated.¹¹⁸

Is the political landscape in the United States and E.U. changing? Certainly. The United States, under former President Trump, adopted a new "America First strategy" that has been supportive of traditional European alliances. The 2017 National Security Strategy explicitly states that "The United States seeks strong partners, not weak ones," and is actively pursuing foreign policy that is "prioritizing the interests of our citizens and protecting our

¹¹⁴ See Martin Walker, *No war crimes deal, vows US*, THE GUARDIAN (Nov. 2, 1995), <https://www.theguardian.com/world/from-the-archive-blog/2020/nov/18/the-dayton-accords-a-peace-agreement-for-bosnia-archive-1995>.

¹¹⁵ See BIDELEUX *supra*, note 5.

¹¹⁶ Daria Sito-Sucic, *United States Cuts Aid to Bosnian Serb Ruling Party*, REUTERS (Mar. 4, 2008), <https://www.reuters.com/article/us-bosnia-usa/united-states-cuts-aid-to-bosnian-serb-ruling-party-idUSL0471748020080304>.

¹¹⁷ *Bosnia: What Does Republic of Srpska Want?*, *supra* note 16.

¹¹⁸ *Political Risk Analysis – Republic of Srpska: How Likely is Independence*, FITCH SOLUTIONS (Feb. 26, 2016).

sovereign rights as a nation.”¹¹⁹ It is very likely that if the Republic of Srpska did secede, the new Federation of BiH nation would seek to join NATO, as BiH’s only impediment to NATO entry are the Bosnian Serbs, who dislike the idea of joining the organization that bombed them during the Bosnian War.¹²⁰ Barring any sort of conflict or regional instability resulting from the Republic of Srpska’s secession, the United States under this national security strategy would welcome a new member to NATO if, of course, the eligibility requirements would be met.¹²¹ Although President Biden is currently promoting a more global strategy for the United States¹²², the America First strategy could certainly be one that is followed by future Republican leaders, and so the Republic of Srpska may get their support for secession in as little as four years if a populist Republican once again holds the presidency. However, both the United States troop withdrawal from Afghanistan and the US-Australia nuclear submarine deal arguably represented an “America First” strategy, albeit a watered down one.¹²³ Despite the wishes of the international community, regarding Afghanistan, and France, regarding the submarine deal, the United States acted entirely in their own interests and disregarded traditional international diplomatic alliances in the

¹¹⁹ *National Security Strategy of the United States of America*, WHITE HOUSE 39 (Dec. 18, 2017), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

¹²⁰ See Rasid Krupalija, *Bosniak Leader: Bosnian Serbs Will Eventually Agree to Join NATO*, BALKAN INSIGHT (Jan. 28, 2020), <https://balkaninsight.com/2020/01/28/bosniak-leader-bosnian-serbs-will-eventually-agree-to-join-nato/>.

¹²¹ See Daria Sito-Sucic, *U.S. backs NATO membership for Bosnia, dismisses Serb opposition*, REUTERS (Dec. 17, 2018), <https://www.reuters.com/article/us-bosnia-usa-nato/u-s-backs-nato-membership-for-bosnia-dismisses-serb-opposition-idUSKBN1OG238>.

¹²² President Joseph Biden, Remarks by President Biden on America’s Place in the World (Feb. 4, 2021) available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-americas-place-in-the-world/>.

¹²³ See David A. Graham, *Biden’s ‘America First’ Policy on Afghanistan*, THE ATLANTIC (Aug. 16, 2021), <https://www.theatlantic.com/ideas/archive/2021/08/biden-afghanistan-address-chaos-exit/619773/>.

process.¹²⁴ Whether these actions by the U.S. are in any way emblematic of the future under Democrat leadership remains to be seen.

Generally, the E.U.'s stance on Republic of Srpska is more complex and varies from country to country. As some E.U. politicians have admitted, the E.U. rarely has a directed foreign policy since it is an international body with sovereign members which is likely to continue post-Brexit.¹²⁵ Even within Europe's own borders, the E.U. often fails to respond directedly, as was the case with the E.U.'s lack of strong action following the annexation of the Crimean peninsula by Russia.¹²⁶ However, if the recent explosion of voter support for nationalist parties continues, there exists potential for further Balkanization and irrelevancy of the Bloc.¹²⁷ Still, enough countries within the E.U. have thus far opposed Serbian secession, and the E.U. has formally spoken in protest to the Republic of Srpska's calls for secession, as peace within the European border is a priority to most nations in the E.U.¹²⁸ Nonetheless, the E.U.'s stance does not look to change in the near future. It must be noted that the inaction of the E.U. following Russia's annexation of Crimea could indicate that the EU might be unwilling to use any type of force short of economic sanctions in the Balkans.

¹²⁴ See Roger Cohen, *In Submarine Deal With Australia, U.S. Counters China but Enrages France*, N.Y. TIMES, <https://www.nytimes.com/2021/09/16/world/europe/france-australia-uk-us-submarines.html> (last updated Nov. 9, 2021).

¹²⁵ See Pavol Szalai, *There is No Real 'European Foreign Policy', Says Former EU diplomat*, EURACTIV (June 14, 2019), <https://www.euractiv.com/section/european-external-action-service/interview/there-is-no-real-european-foreign-policy-says-former-eu-diplomat/>.

¹²⁶ See Katya Kruk, *The Crimean Factor: How the European Union Reacted to Russia's Annexation of Crimea*, WARSAW INST. REV. (May 7, 2019), <https://warsawinstitute.org/crimean-factor-european-union-reacted-russias-annexation-crimea/>.

¹²⁷ See *Europe and right-wing nationalism: A country-by-country guide*, BBC (Nov. 13, 2019), <https://www.bbc.com/news/world-europe-36130006>; see also, Leonardo Scuirea, *Brexit Beyond Borders: Beginning of the EU Collapse and Return to Nationalism*, 70 J. INT'L AFFS. 109, 109 (2017).

¹²⁸ Kovacevic, *supra* note 4.

However, even if the broader global community supports the secession movement, there are many legal challenges that will make secession a truly laborious process. For example, the Dayton Accords itself does not explicitly give a right for future secession by either party.¹²⁹ Interestingly, while secession is not mentioned once in the Dayton Accords, there is an emphasis on the international illegality of either entities from conducting military action against one other, unless it is agreed upon by all members of the presidency.¹³⁰ In this context, hostile, or perhaps even non-hostile, secession would be illegal in the Dayton Accords.

B. International Court Rulings and Continual Violations of Human Rights of the Bosnian and Herzegovinian Government

However, as mentioned previously, there are major problems with the Dayton Accords. First, the Dayton Accords were drafted with the hope that the parties within BiH would amend it, along with its constitution.¹³¹ The U.N. Committee on the Elimination of Racial Discrimination (CERD) has outlined this fact in its 2006 ruling in BiH. Specifically, it notes that the committee is aware that BiH's constitution and laws were created by the Dayton Accords, which was arguably necessary "on an interim basis."¹³² However, twenty-five years have passed since its implementation, and the Accords still have not been changed in any significant manner.¹³³

The BiH governmental structure created by the Dayton Accords has routinely been found to violate basic human rights towards its citizens. In 2002, the Office for Democratic Institutions and Human Rights ruled that the BiH constitution had enshrined ethnicity-based restraints that impede upon certain citizens' rights to

¹²⁹ GFAP, *supra* note 58.

¹³⁰ *Id.*

¹³¹ U.N. Committee on the Elimination of Racial Discrimination (CERD), *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination : Concluding Observations of the Committee on the Elimination of Racial Discrimination : Bosnia and Herzegovina*, CERD/C/BIH/CO/6 (Apr. 11, 2006), <https://www.refworld.org/docid/4537797be.html>.

¹³² *Id.*

¹³³ *Id.*

vote and participate in higher government positions.¹³⁴ This ruling was directly presented to the BiH government. Therefore, the BiH government knew formally that their constitution was in violation of fundamental and internationally recognized human rights since 2002, although it could be argued that they were aware that their constitution broke international law since the creation of the state in 1995.

The first international court ruling formally stating that BiH violated human rights was in 2005 by the European Commission against Racism and Intolerance (ECRI). ECRI found that although BiH was taking to address minority rights, “severe problems of racism and racial . . . discrimination and segregation persist in the country, often as a result of nationalist policies pursued by ethnically based political parties.”¹³⁵ Specifically, the ECRI found a strong link “between the enjoyment of rights and ethnic affiliation,” which “makes it difficult for those not belonging to locally or nationally dominant ethnic groups to access rights and opportunities in many of these areas,” while noting that the current constitution, created from the Dayton Accords, “allocates certain important rights on an explicit ethnic basis.”¹³⁶ The ECRI recommended the BiH government take action to amend the existing laws to fight racism, ensure its implementation, ensure minority participation in governmental institutions, and move away from the ethnocentric governmental structure revolving around the Croats, Bosniaks and Serbs.¹³⁷ Overall, this ECRI report echoes the same ethnocentric concerns that were found before and during the Bosnian War ten years earlier.

That same year, the European Commission for Democracy through Law (Venice Commission) issued recommendations based on their fact-finding mission on the electoral process of BiH. Within the Federation of BiH, the Venice Commission found that there was wide

¹³⁴ Off. for Democratic Inst. & Human Rights (OSCE/ODIHR), *Bosnia and Herzegovina, General Elections 5 October 2002, Final Report*, at 1 (Oct. 5, 2002), <https://www.osce.org/files/f/documents/c/4/14001.pdf>.

¹³⁵ , *Report on Bosnia and Herzegovina*, EUR. COMM’N AGAINST RACISM & INTOLERANCE 6 (Feb. 15, 2005), <https://rm.coe.int/first-report-on-bosnia-and-herzegovina/16808b55fc>.

¹³⁶ *Id.* at 2, 6.

¹³⁷ *Id.* at 1.

interest in reforming the Dayton constitution, which violates several international laws and norms.¹³⁸ The first major step to constitutional reform, in the eyes of the Venice commission, was abolishing the two entities and establishing fully one state.¹³⁹ This unification, however, was vehemently opposed by the Republic of Srpska.¹⁴⁰ The Venice Commission stated that, “[a]bandoning the [Republic of Srpska entity] would be regarded by all Serbs as equivalent to defeat in the [Bosnian] war and mean that all sacrifices had been in vain.”¹⁴¹ The Venice Commission further asserted that a major impediment to constitutional reform was that ethnic identity, especially regarding the presidential veto power, inherently disregards non-constituents from either entity.¹⁴² In sum, for constitutional reform to occur, the entities must be abolished in favor of one united BiH, and the major impediment specifically is the ethnocentric style of governing by all constituent peoples which is exactly what the Venice Commission recommended in the conclusion.¹⁴³ However, this fact-finding report neglects the possibility of the Republic of Srpska secession. If the Republic of Srpska could find a way to peacefully secede into their own nation on the basis of transforming, or creating anew, their current constitution in the name of human rights, and step away from an ethnocentric governing style, they could fulfill these recommendations – and others – to adhere fully to international laws and norms.

In October 2006, the first general elections in BiH were fully administered without the help of the international community.¹⁴⁴ The

¹³⁸ Eur. Comm’n for Democracy Through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, COUNCIL OF EUR. 11-2 (Mar. 11, 2005), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)004-e).

¹³⁹ *Id.* at 5.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 17-8.

¹⁴³ *Id.* at 25.

¹⁴⁴ Off. for Democratic Inst. & Human Rights (OSCE/ODIHR), *Bosnia and Herzegovina General Elections 1 October 2006 OSCE/ODIHR Election Observation Mission Final Report*, at 1, (Feb. 6, 2007), <https://www.osce.org/files/f/documents/c/7/23945.pdf>. As a note, this claim was made without a proper ruling by the ECHR.

Organization for Security and Co-operation in Europe (OSCE) claimed that the elections ran smoothly, but also highlighted that since the BiH constitution imposed “ethnicity-based limitations to the right to stand for office, the elections were in violation of Protocol No. 12 to the European Convention of Human Rights (ECHR), the commitments made to the Council of Europe, and Article 7.3 of the OSCE 1990 Copenhagen Document.”¹⁴⁵ Although there was no formal ruling by the ECHR of any violation of their protocols, as this was an OSCE ruling, Protocol No. 12 was ratified by BiH in 2003.¹⁴⁶ Protocol No. 12 of the ECHR states that domestic law must be granted to citizens without any discrimination based on, among other things, ethnicity.¹⁴⁷ Two years later, Ilijaz Pilav, a Bosniak living in the Republic of Srpska, was denied the ability to run for president in the Republic of Srpska. He sued, and the case was decided by the BiH Constitutional Court. The court maintained that constitutional provisions denying Pilav from running for the president of the Republic of Srpska did *not* violate ECHR Protocol No. 12 because, in the words of the Court:

The impugned measures, while restrictive, were not discriminatory because they had an objective and reasonable justification: they served a legitimate aim – namely the establishment and preservation of peace in Bosnia and Herzegovina – and were reasonably proportionate to that aim.¹⁴⁸

¹⁴⁵ *Id.*

¹⁴⁶ *Second Class Citizens: Discrimination against Roma, Jews, and Other National Minorities in Bosnia and Herzegovina*, HUMAN RIGHTS WATCH, (Apr. 4, 2012), <https://www.hrw.org/report/2012/04/04/second-class-citizens/discrimination-against-roma-jews-and-other-national#>.

¹⁴⁷ European Convention on Human Rights, *European Convention on Human Rights*, EUROPEAN COURT OF HUMAN RIGHTS, 50 (2013), https://www.echr.coe.int/documents/convention_eng.pdf.

¹⁴⁸ *Pilav v. Bosnia and Herzegovina*, App. No. 41939/07, (Jun. 9, 2016), <http://www.eods.eu/elex/uploads/files/5c46fbc3ef1e7-CASE%20OF%20PILAV%20v.%20BOSNIA%20AND%20HERZEGOVINA.pdf>.

Another argument from the court was that the discrimination applies equally to all the constituent and non-constituent peoples.¹⁴⁹ Even to the members of the Court, it would be obvious that the barring of Pilav from running for presidency in the Republic of Srpska is fundamentally against the ECHR Protocol No. 12. In what would seem like a ploy against any conversation around constitutional reform, however, the Constitutional Court used the threat of conflict and the maintenance of peace as reasons that the inherently discriminatory constitutional provision did not violate ECHR Protocol No. 12.¹⁵⁰

The OSCE, in the same 2007 report, also noted that the election “was marked by sharp nationalist rhetoric and occasional inflammatory statements from key election contestants.”¹⁵¹ However, the overall tone of the OSCE document is hopeful and they mention that “the general impression was that the elections were held in an overall positive environment and there were many examples of polling station commissioners taking considerable trouble to enable voters to exercise their democratic rights.”¹⁵² The report ends with explicit recommendations for constitutional changes: “provisions of the constitution . . . that discriminate against certain citizens on the basis of their ethnicity should be eliminated. All citizens of BiH should have the right to stand for any office or to vote on equal terms.”¹⁵³ As was true before, the BiH government still took no step towards constitutional reform. Earlier in 2006, a vote that would amend the constitution failed in the Parliament of BiH by two votes.¹⁵⁴ The vote also considered rewriting the veto system and the ethnic voting requirement enshrined in the constitution.¹⁵⁵ The Parliamentary Assembly, which was being observed by the Monitoring Committee of

¹⁴⁹ *Id.* at ¶ 33.

¹⁵⁰ *Id.*

¹⁵¹ Off. for Democratic Inst. & Human Rights (OSCE/ODIHR), *Bosnia and Herzegovina General Elections 1 October 2006 OSCE/ODIHR Election Observation Mission Final Report*, *supra* note 134, at 1.

¹⁵² *Id.* at 3.

¹⁵³ *Id.* at 24.

¹⁵⁴ *Report of the Monitoring Committee on Constitutional reform in Bosnia and Herzegovina*, PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA (Jun. 27, 2006), <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11406&lang=EN>.

¹⁵⁵ *Id.*

the Council of Europe, urged leaders to again vote on some form of constitutional change. Although votes did occur in the later years, none were successfully passed.¹⁵⁶

Later in 2006, the UN Committee on Human Rights (OHCHR) recommended that the BiH government should “reopen talks on the constitutional reform in a transparent process and on a wide participatory basis . . . with a view to adopting an electoral system that guarantees equal enjoyment of rights under Article 25 of the Covenant to all citizens irrespective of ethnicity.”¹⁵⁷ Article 25 of the OHCHR guarantees citizens of all member-states the right to an adequate standard of living, specifically regarding food, water, sanitation, medical care, etc.¹⁵⁸ The committee received reports that the Roma in particular were being subjected to violence and discrimination. There was also a “lack of information in the State party’s report on the opportunities for the Roma to receive instruction in and of their language and on their culture.”¹⁵⁹ At the time, the Roma were thought to be the largest non-constituent minority in BiH, and discrimination against them would become a common theme of consideration for international courts in the future.¹⁶⁰ This report in particular showed that ethnic minorities in BiH were not only barred from political power, but were also denied basic financial and substantive human rights from the government. The Dayton Accords constitution had, according to the OHCHR report, enabled this.¹⁶¹

¹⁵⁶ *Id.*

¹⁵⁷ U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee Bosnia and Herzegovina*, (Nov. 3, 2006), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBIH%2fCO%2f1&Lang=en.

¹⁵⁸ *Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 25: Article 25: Right to Adequate Standard of Living*, U. N. HUMAN RIGHTS OFF. OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23970&LangID=E>.

¹⁵⁹ *Concluding observations of the Human Rights Committee Bosnia and Herzegovina*, *supra* note 157 at 5.

¹⁶⁰ *Second Class Citizens*, *supra* note 146.

¹⁶¹ *Concluding observations of the Human Rights Committee Bosnia and Herzegovina*, *supra* note 157 at 5.

By 2008, the Roma were “the poorest, the least educated and employed, and faced the most discrimination in accessing basic services that they need to survive.”¹⁶² According to the Human Rights Watch, in 2008 BiH signed on to the “Decade of Roma Inclusion 2005 - 2015” which was a commitment by European countries to improve the overall status of the Roma population.¹⁶³ However, by 2012, BiH had failed to demonstrate any tangible progress towards the empowerment of its Roma citizens, other than a watered down anti-discrimination law passed in 2009.¹⁶⁴ The law itself had strong provisions that sought to provide “equal rights and opportunities to all persons in [Bosnia and Herzegovina].”¹⁶⁵ However, it did little in combatting the discrimination against the Roma, as virtually no national minorities brought up cases under the law – Human Rights Watch speculates that this lack of cases could be explained by the national minorities’ poor understanding of the law.¹⁶⁶ Also, the law directly contradicts the BiH constitution, and the Constitutional Court would undoubtedly use the Dayton Accords and the peace argument threats to uphold the status of the constitution. More recently, Amnesty International’s annual report of BiH in 2019 stated that “Roma continued to face systemic barriers to education, housing, health services, and employment,” and in 2020, the Human Rights Watch found that only “limited progress” was attained for improving those areas for the Roma since recommendations were made in the 2000s.¹⁶⁷ The lack of constitutional reform ensures that this discrimination against the Roma will continue in the future.

In 2009, the ECHR made its decision on whether the BiH electoral structure violated any ECHR protocols. Sejdic, a Roma, and Finci, a Jew, both contested the BiH Constitutional ruling that did not

¹⁶² *Second Class Citizens*, *supra* note 146.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See *Bosnia and Herzegovina 2019 Annual Report*, AMNESTY INT’L, <https://www.amnesty.org/en/countries/europe-and-central-asia/bosnia-and-herzegovina/report-bosnia-and-herzegovina/> (last visited Nov. 15, 2021); see also *Bosnia and Herzegovina Events of 2019*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/bosnia-and-herzegovina> (last visited Nov. 15, 2021).

allow non-constituent persons to hold positions of high offices in the government, including the presidential seats for each entity.¹⁶⁸ In a ruling of *Sejdic and Finci v. Bosnia and Herzegovina*, the ECHR found that the inability for either non-constituent person to run for president was a direct violation of Article 1 of Protocol No. 12 and Article 2 of Protocol No. 1 of the EHCR Convention.¹⁶⁹ This was upheld because the applicants had “experience comparable to the highest elected officials,” yet were still prevented for running for high offices.¹⁷⁰ Also, Finci, a Jewish citizen, was denied not because his ethnicity, but because of his religion.¹⁷¹ The BiH government responded that its rules were not discriminatory and claimed that the Dayton Constitution did not discriminate against Sejdic nor Finci because they could vote and hold seats in the lower parliament.¹⁷² The BiH government also claimed that even if the measures were discriminatory, “there were objective and legitimate justifications for limitations on their democratic rights,” to maintain the “preservation of peace and achiev[e] representation of all three ‘Constituent Peoples.’”¹⁷³ Nevertheless, the EHCR ruled that the Constitution was discriminatory, and the BiH government were now informed by perhaps the most significant international court yet that their constitution was in direct violation of international laws and norms.¹⁷⁴

In 2011, the BiH failed to negotiate a government.¹⁷⁵ This was the year that Dodik, with wide support from the Republic of Srpska

¹⁶⁸ *Sejdić and Finci v. Bosnia and Herzegovina*, App. No. 27996/06 and 34836/06, (Dec. 22, 2009), <https://hudoc.echr.coe.int/eng#%7B%22mdocnumber%22:%5B%22860268%22%2C%22itimid%22:%5B%22001-96491%22%5D%7D>.

¹⁶⁹ *Id.*

¹⁷⁰ See Lucy Claridge, *Discrimination and political participation in Bosnia and Herzegovina* *Sejdic and Finci v. Bosnia and Herzegovina*, MINORITY RTS. GRP. 3 (Jan., 2010), <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-787-Briefing-Paper-Discrimination-and-political-participation-in-Bosnia-and-Herzegovina.pdf>.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ See Ian Traynor, *Bosnia in Worst Crisis Since War as Serb Leader Calls Referendum*, THE GUARDIAN (Apr. 28, 2011),

parliament, threatened secession.¹⁷⁶ According to The Guardian, 2011 was perhaps the highest moment of tension since the ending of the war and the Human Rights Watch blamed the problems stemming from the codification of the Dayton Accords as the reason for the political gridlock, which has kept ethnic tensions alive.¹⁷⁷ Even the Bosnian Croats threatened secession when their proposal for the establishment of a Croat majority entity was rejected by the Bosniaks and Serbs.¹⁷⁸ According to the latest annual report from the Human Rights Watch, the BiH has not seriously attempted constitutional or legal reform since 2011.¹⁷⁹

These reports and court findings all point to a common theme. The BiH government has been notified of their continual violations of human rights by the constitutional structure created by the Dayton Accords since the creation of the state 1995. However, the BiH government has only taken negligible steps to reform their constitution, which allows legal discrimination for national minorities.

C. Reasons for Failure of Dayton Constitutional Amendment Reform

The failures of the BiH Government to implement amendments to its constitution stems from a variety of complex issues. First, the BiH government has cited that since its Constitution was established under the Dayton Peace Agreement, it does not have the authority to amend it, nor “bear the responsibility of any breach of the ECHR” or any other international legal court’s or committee’s convents or laws.¹⁸⁰ However, the E.U. and the U.S. have repeatedly said that this is not the case, and the BiH government has the ability and full sovereignty to administer constitutional reform.¹⁸¹ Theoretically, if all parties agreed, the government could completely

<https://www.theguardian.com/world/2011/apr/28/bosnia-crisis-serb-leader-referendum>.

¹⁷⁶ *Id.*

¹⁷⁷ *Second Class Citizens*, *supra* note 146.

¹⁷⁸ *Id.*

¹⁷⁹ *Bosnia and Herzegovina Events of 2019*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/bosnia-and-herzegovina#> (last visited. Nov. 15, 2021).

¹⁸⁰ Claridge, *supra* note 170.

¹⁸¹ *See id.*

replace the Dayton Accords with another binding agreement at any time.¹⁸² Overall, this argument does not hold up under legal scrutiny because they have unquestionable authority to vote on and implement constitutional reform. Still, this fact has not stopped high level governmental institutions of BiH, such as the Constitutional Court, from using it as an excuse.

Second, there are no incentives for BiH politicians to lead constitutional reform initiatives. The Republic of Srpska has specifically sought to maintain the status quo in the recent decades.¹⁸³ All three constituent peoples in BiH have adopted nationalistic rhetoric indicating that any political negotiation – including constitutional reform – is a continuation of the Bosnian War.¹⁸⁴ Further, both political entities do not want to cede powers for the sake of constitution reform, even when it is required to ascend into the E.U.¹⁸⁵ If constitutional reform occurred in the manner required to ascend into the E.U., both the Federation of BiH and the Republic of Srpska would transfer power to non-constituent peoples, who could then be elected to higher positions of power, espouse interests contrary to the constituent peoples, and thus hinder their political “war” efforts after the termination of the Bosnian War.¹⁸⁶ Power centralization around the constituent peoples, therefore, seems to be a main cause of the dysfunction and the overall negative attitude towards constitutional reform. In this context, the tired euphemism “those in power want to stay in power,” applies.

Third, constitutional reform would be an extremely difficult task if BiH would seek to fully adhere to international law, a definite

¹⁸² *Id.*

¹⁸³ See Florian Beiber, *Constitutional Reform in Bosnia and Herzegovina: Preparing for EU Accession*, EUR. POL'Y CENTRE 3 (Apr., 2010), https://www.files.ethz.ch/isn/115432/PB_04_10_Bosnia.pdf.

¹⁸⁴ See Nikolaos Tzifakis & Constantine Arvanitopoulos, *Implementing Reforms in Bosnia and Herzegovina: The Challenge of the Constitutional Process*, EUR. VIEW, June 2008, at 15-22.

¹⁸⁵ See European Commission for Democracy Through Law, *supra* note 138.

¹⁸⁶ Ramic Sanja & Maarten Lemstra, *One Roadblock at a Time for Bosnia and Herzegovina's EU Path*, CLINGENDAEL INST. (Oct. 1 2020), <https://spectator.clingendael.org/en/publication/one-roadblock-time-bosnia-and-herzegovinas-eu-path>.

prerequisite to E.U. accession.¹⁸⁷ The constitution would have to be completely transformed with amendments that not only change the constitution, but the entire workings of institutions of BiH. This includes, on the federal level, the transformation of the “Constitutional Court, the parliament, the Council of Ministers,” and the statistical agencies, just to name a few.¹⁸⁸ In addition, many institutions administered by the entities would need to be changed.¹⁸⁹ Domestic laws would also need to be reformed. The most glaring law that breaks international law is BiH’s election law.¹⁹⁰ Further, all of the changes need to be in accordance of the rulings by international courts, such as the ECHR’s Sejdic-Finci ruling.¹⁹¹ An additional impediment to constitutional reform is the translation of the document – currently only binding in English – into Bosnian.¹⁹² The Bosnian language, like some other Slavic languages in the former Yugoslav Republics, is written with both Cyrillic and Latin alphabets, and direct translation of words and phrases from English is often ambiguous. If such a translation from English to Bosnian were to occur, many disagreements on the exact translations of certain words or phrases would arise by the various leaders from the two entities prone to political bickering, throwing yet another roadblock into constitutional reform.

Fourth, and perhaps the most troublesome, is rampant corruption in all levels of government. The corruption is so ingrained and widespread that some, like Bodo Weber, Senior Associate of the Democratization Policy in Berlin, argue that the “un-reformable public administration,” including the Dayton-instituted constitution, is “an

¹⁸⁷ See European Union, *Accession Criteria*, EUR. COMM’N, https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en (last visited Nov. 15, 2021).

¹⁸⁸ See Florian Bieber, *Why Constitutional Reform Will Not Solve the Bosnian Blockade*, *Balkan Insight*, BALKANINSIGHT (July 31, 2014), <https://balkaninsight.com/2014/07/31/why-constitutional-reform-will-not-solve-the-bosnian-blockade-1/>.

¹⁸⁹ See *id.*

¹⁹⁰ See *id.*

¹⁹¹ See *id.*

¹⁹² See *id.*

instrument of state capture.”¹⁹³ Weber continues with a succinct and poignant perspective on the scale of corruption within BiH. The term “state capture” in this context is defined as the control of a nation’s institutions by political factions who hold a disproportionate advantage in keeping power.¹⁹⁴ This type of state capture is maintained in BiH due to a variety of reasons, but the main one is nepotism. As Weber notes, “[p]ublic administrations are still staffed by relatives and friends of those in power,” and even though “formal educational criteria” became a requirement, private universities offer “sons and daughters of politicians and connected businessmen” the opportunity to buy diplomas without participating in classes.¹⁹⁵ The economy is dependent on this public administration system by as much as 80%.¹⁹⁶ Since there is an inextricable link between the corrupt, nepotistic institutions and the economy, a broad reform to the constitution, or any laws based on the constitution, could threaten BiH’s fragile economy, which incentivizes maintenance of the status quo. In a sense, the economy is being held hostage by the corrupt structure of the BiH government. Weber ends by saying what scholars have recommended for decades: “[public administration/constitutional reform] can only happen with . . . the international community . . . shifting finally to a serious approach in Bosnia-Herzegovina.”¹⁹⁷ This international community that Weber is hopeful for has now failed for twenty-five years to incentivize or materialize any real change in BiH, even before E.U.’s Brexit and the US’ America First national strategy. If the international community failed in the past to push for constitutional change in BiH, it will continue to fail as it now holds, and will likely hold in the near future, relatively weakened power than it had in the past.

IV. THE PATH FOR SUCCESSFUL REPUBLIC OF SRPSKA SECESSION

One final question remains: is it possible for the Republic of Srpska to secede from the BiH? The research analysis indicates that

¹⁹³ Bodo Weber, *BiH’s un-Reformable Public Administration – an Instrument of State Capture*, PERSPECTIVES –SE. EUR. Sept. 2017, at 10.

¹⁹⁴ *Id.* at 11.

¹⁹⁵ *Id.* at 12.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 14.

there are paths the Republic of Srpska could take that would give it a good chance to gain internationally recognized independence through secession. First, certain criteria must be met, such as a cleanly democratic referendum of independence. If the will of the Serbian people in the Republic of Srpska overwhelmingly supports an independent Republic of Srpska, that consensus will create a strong basis for internationally recognized independence, even if threats are given by the E.U. or the United States. For example, the United States and E.U. both supported the referendum for South Sudanese independence in 2011.¹⁹⁸ The referendum and independence of South Sudan met international standards and former President Obama said the vote was “inspiring” because the South Sudanese had “decided their future” with the vote.¹⁹⁹ Even when violence resulted from the results of the referendum, the international community still largely supported the movement and formally recognized South Sudan as a nation-state.²⁰⁰ Although the parallels between these two movements are not plentiful, secession of a nation must begin with the consent of the general population.

Next, the Republic of Srpska cannot use military force *even in defense*. If the Republic of Srpska does not use any force after declaring their secession, the international community will likely support them, especially if the Federation of BiH initiates and sustains military conflict against the Serbians. Although the United States and the E.U. used military intervention against the Republic of Srpska before, it was arguably because the Serbians were responsible for the most callous acts of ethnic cleansing and genocide during the Bosnian War, such as Srebrenica, and the Serbians were painted as the villains because of Milosevic’s actions during the Yugoslavian disintegration.²⁰¹ This time however, the international community would be forced to recognize that the Serbians, not the Bosniaks or Croats, are the victims of what

¹⁹⁸ Valentina Pop, *EU Countries Recognise South Sudan*, EU OBSERVER (July 11, 2011), <https://euobserver.com/foreign/32610>.

¹⁹⁹ Barack Obama, *Statement on the Southern Sudan Independence Referendum*, ADMINISTRATION OF BARACK OBAMA (Feb. 7, 2011), <https://www.govinfo.gov/content/pkg/DCPD-201100073/pdf/DCPD-201100073.pdf>.

²⁰⁰ See Pop, *supra* note 198.

²⁰¹ See Daalder, *supra* note 59.

could be a cruel, one-sided military conflict. If the Republic of Srpska used military action to secure their independence, they would likely not even be supported by their Bosnian Serbian population. A poll from 2015 shows that only a mere 1.7% of Serbians would support secession of the Republic of Srpska through violent means, with the vast majority saying they would peacefully protest to obtain independence.²⁰²

However, widespread and sustained non-military ethnic violence would likely not occur in any great capacity. The same poll from 2015 shows that 27.6% of Bosnian Respondents would do nothing, 57.1% said they would peacefully protest such a secession attempt, 5.9% responded they would violently protest, and 4.3% said they would take up arms.²⁰³ While the promise of violence from over 10% of the Bosnian population is alarming, it remains clear that these individuals are in the minority, and their violent actions would likely be condemned by their fellow citizens, political leaders, and the regional/international community. The majority of people who responded that they would either violently protest or take up arms fell into the age range of 36-50.²⁰⁴ If the United States is any indication, the average age of an enlisted soldier is 27 years old, which makes the threat of serious and sustained violence in BiH following a Serbian secession unlikely due to the aging population in favor of violence.²⁰⁵ This poll also signifies how important generational change will affect potential success of future secession attempts made by the Republic of Srpska. Perhaps the young, whose government has failed in nearly

²⁰² PRISM RESEARCH, PUBLIC OPINION POLL RESULTS ANALYTICAL REPORT 53 (2015), http://www.undp.org/content/dam/unct/bih/PDFs/Prism%20Research%20for%20UN%20RCO_Report.pdf.

²⁰³ *Id.* at 51.

²⁰⁴ *See id.* at 52.

²⁰⁵ *See* Kim Parker et. al., *6 facts about the U.S. military and its changing demographics*, PEW RSCH. CENTER (Apr. 13, 2017), [https://www.pewresearch.org/fact-tank/2017/04/13/6-facts-about-the-u-s-military-and-its-changing-demographics/#:~:text=The%20average%20military%20officer%20was,with%20age%2025%20in%201973;see%20also%20Bradley%20Thayer,%20Considering%20population%20and%20war%20a%20critical%20and%20neglected%20aspect%20of%20conflict%20studies,%20364\(1532\)%20PHIL.%20TRANS.%20ROYAL%20SOC%27Y%203081\(2009\).](https://www.pewresearch.org/fact-tank/2017/04/13/6-facts-about-the-u-s-military-and-its-changing-demographics/#:~:text=The%20average%20military%20officer%20was,with%20age%2025%20in%201973;see%20also%20Bradley%20Thayer,%20Considering%20population%20and%20war%20a%20critical%20and%20neglected%20aspect%20of%20conflict%20studies,%20364(1532)%20PHIL.%20TRANS.%20ROYAL%20SOC%27Y%203081(2009).)

every aspect in its twenty-five year existence, are more willing to accept the magnitude of change created by the peaceful separation between BiH's two entities.

Next comes the reasoning and framing of secession. Prior secession threats from the Republic of Srpska have all had nationalistic and ethnocentric overtones. If framed differently, the international community would have a hard time condemning such calls. The most obvious way to call for secession would be through the framework of constitutional, governmental, and legal reform which promises human rights loudly demanded by the international community since 2002.²⁰⁶ Bosnian Serb political leaders could lament the fact that nearly every attempt at reform in BiH on the basis of human rights has failed miserably.²⁰⁷ Further, they compare the wide ranging and systemic disagreements on reform implementation between Republic of Srpska and the Federation of BiH political leaders with the absence of disagreement among Republic of Srpska politicians on the same matters.²⁰⁸ The Republic of Srpska could draft sweeping reforms promising a complete overhaul or transformation of the constitution which would eliminate constituent peoples, update immigration laws, enshrine minority participation in high offices of government, change the election law, and revise all other legal codifications that would – if implemented and followed – satisfy the international community's recommendations, court decisions, human rights concerns, and E.U. ascension requirements. These reforms would likely be dismissed by the Bosniaks and Croats, showing the international community that even if the Bosnian Serbs wanted to act in accordance with international law, their counterparts do not. The Serbian politicians could then say that, given the full power of a state, away from the seemingly eternal gridlock structure of BiH government, the reform process could finally be implemented, and the same could be assumed about the Federation of BiH. Further, the autonomy they already maintain demonstrates they have the capability to function as a nation-state. Together, both entities will remain in violation of international law. Separated, there is a path for real change and reform. That

²⁰⁶ See U.N. Committee on the Elimination of Racial Discrimination, *supra* note 131.

²⁰⁷ See generally Sahadzic, *supra* note 64.

²⁰⁸ See *id.* at 63.

narrative, arguably, will be the most effective at strengthening the Republic of Srpska's chances to become independent. The question of whether the politicians or citizens of the Republic of Srpska would actually want to act in accordance with international law is a topic for another paper, and more research needs to be conducted. My educated guess is that the Serbian politicians will echo the will of their people, as they have done for decades past, and move forward with the secession attempts if their citizens demand it.

Finally, the Republic of Srpska should not push for combination with Serbia in the near future, as this would feed into fears of a Greater Serbia, the idea that the state of Serbia exists wherever there is a Serbian majority, not defined by historically represented boundaries of Serbia. Although it has been decades since Serbia was in a position to pursue a Greater Serbia, Serbia's current president, Aleksander Vučić, is a former ultranationalist turned liberal populist who has praised Milošević as "a great Serbian leader," whose intentions were "certainly for the best."²⁰⁹ If nothing more, a Serbian attempt to annex a consenting Republic of Srpska would display extremely poor optics given these circumstances, and would provide a strong reason for the international community not to support or recognize Republic of Srpska's independence movement. However, Serbia must support the Republic of Srpska's independence movement. Currently, Serbia has opposed recognizing the legitimacy of Republic of Srpska's independence.²¹⁰ This is most likely because of the parallel situation of the Republic of Srpska and Kosovo. Dodik himself has recently stated, "[i]t is impossible to discuss the special status of Kosovo without discussing the status of [the Republic of Srpska] in parallel."²¹¹ The problem is that Dodik would seek the

²⁰⁹ *Serbian President's Praise Of Milosevic A 'Provocation,' Neighbors Say*, RADIO FREE EUROPE RADIO LIBERTY (Sept. 10, 2018), <https://www.rferl.org/a/serbian-president-vucic-praise-milosevic-provocation-kosovo-croatia-mogherini/29482484.html>; *see also*, Dan Bilefsky, *Ultrnationalist-Turned-Liberal Is Expected to Lead Serbia*, N.Y. TIMES (Mar. 17, 2014), <https://www.nytimes.com/2014/03/18/world/europe/ultranationalist-turned-liberal-is-expected-to-lead-serbia.html>.

²¹⁰ *See* Koeseva, *supra* note 1.

²¹¹ Mustafa Talha Öztürk, *Bosnia: Kosovo, Republic of Srpska identical situations*, ANADOLU AGENCY (July 24, 2020), <https://www.aa.com.tr/en/europe/bosnia-kosovo-republic-of-srpska-identical-situations/1920574>.

Republic of Srpska's annexation into Serbia if independence was gained: "[Dodik] hoped RS and Serbia would one day be one state."²¹² Serbia is in a tough position. If Serbia recognizes the Republic of Srpska's independence, the parallel situation between Kosovo and the Republic of Srpska means that Serbia's claim over Kosovo as a "breakaway province" would be severely delegitimized.²¹³ Thus, it seems that for Serbia to aid the Republic of Srpska independence movement, the issue of Kosovo must be resolved first.

Things, however, are changing on that front. Recently, in September 2020, Kosovo's and Serbia's leaders met in Brussels. After these talks concluded, the E.U. Special Representative of the talks claimed that progress was made in regards to "economic cooperation and missing people."²¹⁴ If future talks progress positively, and Serbia and Kosovo open themselves to at least cooperation, and at most coordination, the Republic of Srpska could use that amiability to their advantage. Again, a major reason that Serbia opposes independence of the Republic of Srpska is that it would also have to recognize the legitimacy of Kosovo.

Despite these developments, there are still many barriers for the Republic of Srpska's independence movement if using Kosovo as an example for secession. First, there is little historical precedent for the geographical boundaries of what is now the Republic of Srpska.²¹⁵ The boundaries of the Republic of Srpska resulted directly from the Bosnian War and Serbian aggression – a fact that has real ramifications for any desire for independence. Second, Kosovo and the Republic of Srpska are different in the fact that Kosovo faced extreme state persecution from Serbia, which was a primary factor for Kosovo's

²¹² *Id.*

²¹³ *See id.*

²¹⁴ Agnes Szucs, *Serbia-Kosovo negotiations advance: EU*, ANADOLU AGENCY (July 9, 2020), <https://www.aa.com.tr/en/europe/serbia-kosovo-negotiations-advance-eu/1965866>.

²¹⁵ *See* Debatepedia, *Debate: Republic of Srpska secession from Bosnia and Herzegovina*, DEBATEPEDIA (2011), http://debatepedia.idebate.org/en/index.php/Debate:_Republicof_Srpska_secession_from_Bosnia_and_Herzegovina.

independence.²¹⁶ The Republic of Srpska has not and is not facing state persecution to the degree that Kosovars did. Third, there are continual fears that unlike Kosovo, a Republic of Srpska secession attempt could not only spark regional tension, but also global conflict because of the polarizing nature of the issue.²¹⁷ Russian backing of the Republic of Srpska secession coupled with Western opposition could render the two sides in opposition especially if actual conflict were to occur in BiH between the ethnicities. Finally, there is a strong possibility that a Republic of Srpska secession attempt would drive a Bosnian Croat secession attempt.²¹⁸ If this were to occur, the Republic of Srpska and its independence movement would be seen as the root of the new Balkanization attempts, and their international image would sour. These arguments against Republic of Srpska secession have been around for decades and must be considered and argued against if the Bosnian Serbs really desire to be fully independent while also appeasing the regional and international community.

V. CONCLUSION

If numerous attempts or threats of secession throughout the past two and a half decades were any indication of the future, it is clear that secession will remain at least an ancillary focus for the Republic of Srpska in the coming decade. Further, the move could actually be realized with the political support of the international community. Ethnic tensions, kept alive by the ethnocentric nature of the Dayton Accords, have left the country ethnically separate in geography, ideology, politics, and culture. This separation has left the BiH economically stagnate and seemingly irreversibly corrupt to its core. While the legality of any secession is perpetually under debate, history

²¹⁶ See Asim Mujkic, *Significance of Kosovo from the point of view of Bosnia and Herzegovina*, SPIRIT OF BOSNIA, <http://www.spiritofbosnia.org/volume-3-no-2-2008-april/the-significance-of-kosovo-from-the-point-of-view-of-bosnia-and-herzegovina/> (last visited Nov. 15, 2021).

²¹⁷ See Andrew Miller, *The Kosovo Battleground*, TRUMPET, <https://www.thetrumpet.com/4934-the-kosovo-battleground> (last visited Nov. 15, 2021).

²¹⁸ See Issue Council, *President: Dodik is the New Slobodan Milosevic*, ISSUE COUNSEL (2008), https://issuecounsel.com/argument/Republic_of-srpska-secession-would-ignite-bosnian-croat-secession/.

of secession and international secession law has proven that independence movements are largely political in nature. Continual human rights violations have arisen directly from the Dayton Accords, along with the government structure dictated by it – a government structure prone to gridlock and injustices incomparable to other nations in the region. The result of this gridlock is the inability of the federal government to implement constitutional reform. However, these human rights violations and lack of success for constitutional reform provide the basis for Republic of Srpska secession. Further, if the issues between Kosovo and Serbia are resolved and if the Republic of Srpska can convince the international community that its intentions for secession are both practical and non-threatening to the regional or international communities, it has a very strong chance of its secession attempt being accepted as legitimate.

There are many areas where this research could be bolstered. First, there has been a continual question of whether the political leaders of the Republic of Srpska will actually follow through with secession, or if talks of it are just used as empty threats to advance their political aspirations.²¹⁹ Further, these secession threats could be just a ploy to garner support from voters.²²⁰ Regardless, a vital factor of the success of the Republic of Srpska secession movement will be determined by the seriousness of their political leader's intentions. Second, an analysis on what could cause a secession movement to primarily occur would greatly aid this piece. Although this comment has highlighted the many different secession attempts of the Republic of Srpska, the conditions that lead to secession attempts has not been considered. To understand the domestic, regional, and international conditions that would favor a secession attempt would provide clarity on when to expect further attempts in the future, and maybe even what the outcome could be. Obviously, this research would be greatly aided by a regional perspective on the issue of Republic of Srpska's secession

²¹⁹ See James Ker-Lindsay, *The Hollow Threat of Secession in Bosnia and Herzegovina: Legal and Political Impediments to a Unilateral Declaration of Independence by Republika Srpska*, RESEARCH GATE (Apr. 2016) https://www.researchgate.net/publication/301517818_The_Hollow_Threat_of_Secession_in_Bosnia_and_Herzegovina_Legal_and_Political_Impediments_to_a_Unilateral_Declaration_of_Independence_by_Republika_Srpska.

²²⁰ See *id.*

attempts. This comment is from a Western and purely academic perspective, which has its inherent and consequential impediments.

Bosnian Serb secession ideas have been fomenting since the creation of BiH. Ethnic hatred of the past, propped up by the Dayton Peace Accords, has contributed to the continual human rights violations and political warfare in the federal government from the three constituent peoples. This has been the main reason behind economic, cultural, and political stagnation since the end of the Bosnian War. This analysis has found little reason to believe that political infighting will not continue in the decades to come. If peaceful secession is gained by the Bosnian Serbs, there will be tangible hope for constitutional change to eliminate discrimination at all levels of society at the very least. At most, Serb secession could fulfill a long-sought after peaceful solution to the ethnic tensions that have persisted for many decades.