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# MILORAD DODIK'S METAMORPHOSIS AND THE HIJACKING OF THE DAYTON PEACE AGREEMENT<sup>1</sup>

**Michaela Ulbrichtová\***

## **ABSTRACT**

Bosnia and Herzegovina (BiH) is currently facing a situation where the rule of law (whose promotion and strengthening is one of the European Union's main priorities in BiH and the wider Western Balkan region), has become an area for the further destabilisation of the country's political and security situation by dominant local political actors, as the case of Milorad Dodik shows. The reactions of some International Community actors (e.g., the High Representative Christian Schmidt), who aim to prevent further destabilisation, are subsequently questioned, as their (and their decisions') legitimacy is downplayed by local BiH actors and significant states (e.g., China and the Russian Federation). The aim of this article was thus not only to examine the logic behind Dodik's long-term political strategy in BiH, but also to demonstrate his capability to subvert the system established by the Dayton Peace Agreement (DPA) via standard legislative procedure, for the sake of securing his own power position in the country's political environment. It also analyses HR Schmidt's use of illiberal means to reach liberal outcomes, and his response to Dodik's activities of June and July 2023. The unique insights from thirty-nine personalised semi-structured interviews, which took place in parts of BiH (Sarajevo, Mostar, Banja Luka, and Tešanj) in May, June, October and November 2023, and January and February 2024, as part of the author's ethnographic research, are presented in the article. The interviewed individuals have backgrounds in academia, culture, media and local politics. The analysis demonstrates that Dodik's actions should be interpreted within the broader context of BiH's political landscape, where ethno-nationalism is intertwined with power distribution and formalised by the provisions outlined in the DPA. Although his secessionist rhetoric has intensified since 2021, Dodik's political strategy has pragmatic contours, which means that global geopolitical developments could

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play a more significant role in deepening the political crisis in BiH. A return to greater interventionism from current HR Schmidt is therefore not an adequate panacea for the country's ongoing political complexities

**Key words:** Dayton Peace Agreement, Bosnia and Herzegovina, Dodik, The High Representative, rule of law, peacebuilding, statebuilding, The International Community, stabilitocracy

## Introduction

*They [the International Community] are hypocrites because they are forcing us to make a deal between the three but we are not just three... We are more and the leaders of the three groups have an agreement to be in disagreement.*<sup>2</sup>

Respondent 7, 2023

The stabilitocratic interplay between actors from the International Community (IC) and Bosnia and Herzegovina's (BiH) ethno-political elites analysed by various scholars – e.g., **Bieber** (2018), **Bieber** (2020) and **Belloni** (2020) that has been taking place for decades has recently acquired destabilising contours. A further deepening of the country's ongoing political crisis has been caused by local political leaders whose authoritarian excesses were purposefully ignored by international actors for more than ten years, in exchange for the promise of maintaining the status quo. The logic of the interplay between local and peacebuilding and statebuilding actors has, however, ceased to be applicable, particularly since June 2023, and to an extent since October 2021. The attempts of a leading Bosnian Serb politician **Milorad Dodik** – Savez nezavisnih socijaldemokrata (SNSD) party member and President of Republika Srpska (RS) – to delegitimise the rulings of the Constitutional Court of Bosnia and Herzegovina (CCBIH) and the decisions of current High Representative (HR) **Christian Schmidt** on the territory of RS in summer 2023, could serve as evidence. Additionally, many interviewed individuals questioned the sustainability of peacebuilding and statebuilding activities in BiH, and expressed their concerns related to the country's future development in light of current geo-political changes and ongoing conflicts around the world.

This article aims to provide the answers to the following questions: What is

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<sup>2</sup> Interview with Respondent 7, local visual artist, 5 May 2023, Sarajevo.

the real logic behind **Milorad Dodik's** current political strategy vis-à-vis the current HR **Christian Schmidt's** renewed interventionist approach? Does he (**Dodik**) again demand to divert attention from his corruption scandals and simultaneously gain additional political credit from media publicity or has his current political game gained more threatening contours?

The era when **Dodik's** presence was described by former United States (US) Secretary of State **Madelaine Albright** as a "breath of fresh air [that blew] through the room" is long gone (Niksić, 2022). Since then, especially after his loss in the RS presidential elections in 2001, the previously moderate Bosnian Serb politician has modelled his political perceptions according to hard-line ethno-nationalistic rhetoric, and ideals that intensify in moments when he needs to divert attention from his personal corruption scandals, the fiscal problems of RS, or both. According to author's opinion, **Dodik's** political moves must be understood in the wider context of BiH's political environment, which is characterised by the connection of ethno-nationalism to the distribution of power, and its formalisation by the provisions stated in the Dayton Peace Agreement (DPA) that ended the war in 1995, which to a large extent resulted from a lack of consensus among the leading political representatives of the three main ethnic groups in BiH, regarding the nature and existence of the BiH state. This resonates with some of the viewpoints presented by **Belloni** and **Donais** in their earlier works (Belloni, 2009, Donais, 2013). In reference to Dodik, the variability of his political perceptions during his career are more reflective of a skilfully tailored strategy of control and power maintenance over his sphere of influence (which he managed to establish over decades in BiH's elite political circles) than his fanatical chauvinism.

His current unprecedented destabilising moves have not yet received closer scholarly attention; however, they are being realised via the sphere of the rule of law and official legislative procedure, which is the area representing the main pillar of demanded EU reforms necessary for BiH's membership within EU structures. **Dodik's** ongoing approach therefore not only reflects the complexities associated with the functioning of BiH's institutions at all levels of governance since signing the DPA in 1995, but to a great extent resulted from the stabilitocratic approach of the IC towards BiH (Bieber, 2018), which has become the main modus operandi of primarily the EU in BiH during recent decades. As the examined case of M. Dodik demonstrates, however, the stabilitocratic approach of the IC in BiH has recently significantly lost its stabilizing potential.

The nature of BiH politics within the IC's peacebuilding/statebuilding context and the interplay between local and international actors has been analysed by

various academics, e.g., **Belloni** and **Strazzari** (2014), **Bieber** (2011), **Chandler** (2013), **Kartsonaki** (2017), and **Richmond** and **Kappler** (2011). **Dodik's** political strategy and rhetoric regarding the eventual organisation of the referendum for RS' independence were examined by e.g. **Beglerović** (2020). The aim of this article is not only to examine the logic behind **Dodik's** long-term and current political strategy in BiH, but also to demonstrate his capability to subvert the system established by the DPA, for the sake of securing his own power position in the country's political environment. Additionally, the article analyses HR's use of illiberal means to reach liberal outcomes by discussing the changes he imposed on electoral law and the FBiH constitution after the closure of parliamentary election polls in October 2022, and his response to **Dodik's** instigation and support of the aforementioned unconstitutional laws adopted by RSNA in June 2023.

The June 2023 events represent the strongest attack on the DPA and BiH's institutional order since the end of the war in 1995, and have led to a further deepening of political crises in the country. A detailed analysis of the strategies of one of the dominant local political actors (**M. Dodik**) and the dominant external peacebuilding actor (C. Schmidt) in these events using insights provided by primary data derived from thirty-nine personalised semi-structured interviews represent this article's unique contribution, since the examined topic has not yet received adequate scholarly attention.

**Dodik's** foreign visits to Belarus, Hungary, and the Russian Federation (RF) during 2023 and 2024, and his secessionist rhetoric that materialised in unlawful actions in June 2023 – in relation to the instigation and support of the adoption of certain laws in RS' National Assembly (NA – are described later in this article. Combined with the entity's unprecedented fiscal problems, these actions make it difficult to predict how far **Dodik** is willing to go, and whose interests, in addition to his own, he will promote and protect.

The more interventionist approach of current HR **Christian Schmidt** (supported by the United States of America [USA]), who was appointed in July 2021 with the aim of bringing more functionality into BiH's institutional and political life via a return to the frequent use of the Bonn Powers (often in sensitive cases at inappropriate times), adds an additional potentially destabilising dynamic to BiH's current political environment and political crises further deepened by **Dodik's** actions.

In particular, based on the analysis of **Dodik's** long-term and current strategy in reference to the aforementioned June 2023 events, the article demonstrates

the destabilizing effect of the stabilocratic and renewed interventionist politics between one of BiH's leading politicians (**M. Dodik**) and leading external peacebuilding actor (**C. Schmidt**), thus not only contributing further to the critique of the peacebuilding involvement of external actors in BiH, but also demonstrating the local leader's capacity to undermine the order established by DPA in an unprecedented scope, via standard legislative procedures.

To address the aforementioned points, the article is divided into five parts. The first section explains the method used, and is followed by an examination of the position of the rule of law in peacebuilding and statebuilding concepts, and simultaneously focuses on analyses of the complexities associated with the provisions established by the DPA and the post-Dayton political and institutional reality in BiH, in line with the arguments of **Chandler, Donais, Kaldor, Belloni** and other respected scholars. The third part analyses the evolution of **Dodik's** political path within BiH's elite political circles, and explains the logic of his long-term political strategy. The fourth part of the text examines HR **Schmidt's** decision to make last-minute changes to BiH electoral law and the FBiH constitution just after the closure of polls in the election on 2 October 2022, his reactions to **Dodik's** secessionist threats, and his support of laws adopted by the RS' NA in June and July 2023. These acts demonstrate the current HR's increased use of illiberal means to reach liberal outcomes, and also exemplify **Dodik's** attempts to hijack the DPA-established system via official institutional procedure. The final section analyses EU and US reactions to the laws imposed by the HR in October 2022, and demonstrates the inconsistency of their approaches to BiH political development.

## 1. A Note on the Method

The research presented in this article includes empirical findings derived from qualitative data obtained through the aforementioned interviews, employing the snowball sampling method. The sensitive and nuanced focus of the study (Dragan and Isaic-Maniu, 2013) meant that the collection of primary data required not only the author's comprehensive knowledge of the local environment, but also access to specific groups, often facilitated by the knowledge of the insiders (Kircher and Charles, 2017). In addition to the interviews conducted in BiH, several interviews took place online to overcome author's physical distance from interviewees. The full anonymity of the interviewees and confidentiality of the primary data were guaranteed by the author, who followed the ethical guidelines

associated with the organisation of personalised semi-structured interviews, primary data collection, storage and data analysis (Millar, 2015). The primary data included in the article have been precisely selected to depict the essence of the respondents' perceptions on the discussed topic. Moreover, the data reflect the viewpoints of various respondents from diverse, unrelated environments, thereby preventing repetition and a one-sided perspective on the examined themes.

The article presents unique insights derived from thirty-nine personalised semi-structured interviews conducted in various parts of BiH (Sarajevo, Mostar, Banja Luka and Tešanj) in May, June, October and November 2023, and January and February 2024. This research is part of the author's ongoing research presence in BiH, which has to date lasted more than two years.

The interviewed individuals came from various environments related to local politics, academia, media and culture. Personalised semi-structured interviews were also conducted with employees of embassies, international peacebuilding and statebuilding organisations active in BiH, and NGO workers. The primary data from these interviews provide vital insights into the diverse perceptions of the current state of the political and security environment in BiH and of the performance of statebuilding and peacebuilding actors, and in terms of the political strategies of leading BiH politicians, with particular emphasis on M. Dodik, and of the current approach of High representative C. Schmidt.

## **2. Conceptual Considerations: The Rule of Law in BiH's Peacebuilding as a Statebuilding Stabilitocratic Reality**

According to **Kaldor**, *"law, in functioning rule of law situations, can be understood as codification of an implicit, and in some cases explicit social contract, negotiated among individual citizens domestically and among states at the international level"*

(Kaldor, 2016, p. 147).

The rule of law has been part of post-conflict peacebuilding strategies since the end of the Cold War in 1989. In conjunction with the promotion of democracy, the free market, and human rights, it is a crucial element of the peacebuilding paradigm. This is true both in the latter's previously promoted liberal version, and in subsequent approaches that stress the importance of local cultures, norms and practices as part of the *"peacebuilding as statebuilding"* concept, which has led

to a hybridised form of IC peacebuilding engagement (Richmond, 2014, Chandler, 2017, Belloni, 2020). According to **Chandler**, disassociation of law from the political process of consensus-building has significant potential to create law as a political statement rather than a law of the land. He also defines as “*bureaucratic fantasy*” the liberal peacebuilding premise that more suitable laws can be created by international officials than by local actors (Chandler, 2004, p. 586).

The significance of rule of law’s specific nature is also reflected in the fact that it is often perceived as a vital precondition for the establishment of an accountable and functional government and a stronger economy, and for the protection of human rights and freedoms.

Although strong consensus exists among international peacebuilders and statebuilders regarding the importance of the rule of law as a vital ingredient with the high potential to increase the overall success of their missions, there is also a lack of consensus regarding its nature and its achievement. In terms of the former, perceptions vary from understating the rule of law in minimalist terms, such as the necessity to legally authorise government actions, to a maximalist understanding that stresses the capacity of law to constrain or limit them. Nor are opinions unified regarding the establishment of the rule of law in post-conflict environments that experience peacebuilding and statebuilding missions, and often suffer chronically from either lack of rule of law, or its limited existence.

Although much of the work that addresses the rule of law thematic is legalistic and technical, it is simultaneously political and normative, as it operates via the twin logics of consequences and appropriateness. This means that both citizens and their official representatives need to feel that compliance with the rule of law is a consequence not only of avoiding punitive measures, but also of the understanding that such behaviour is correct and desired, which is long-term process that is closely tied to the unique historical and cultural legacies of particular states (Donais, 2013).

In reference to BiH, the three main ethnic groups are divided over the rights of citizenship, the territorial boundaries of political communities, and the nature of the BiH state, which has remained in question since the dissolution of Yugoslavia, and to a great extent remains at the core of BiH’s complex political environment.

In respect to Bosnian Croats and Bosnian Serbs, their approaches to the nature of the BiH state are influenced by the fear of Sarajevo government dominated by Bosniaks (Bosnian Muslims), whose engagement in the 1990s conflict was motivated by consolidation and sustainment of BiH, in order to



guarantee their national and political survival. Bosnian Croats and Bosnian Serbs argue that their position is influenced by the assumption that the Bosniaks' relative majority in the country might cause the imposition of their cultural, political and religious perceptions on the rest of the population. As a result, both Bosnian Croats and Bosnian Serbs favour further decentralisation, the deepening of extensive local autonomy, and closer ties with Croatia and Serbia respectively (Belloni, 2009).

According to **Bell**, the disaggregation of power in reference to politics and security – a component of peace agreements – often creates obstacles to the rule of law, since any reformist attempts by external peace/statebuilders are likely to be subverted, resisted or opposed by local political actors whose power positions might be endangered or significantly diminished by such reforms (Bell, 2008).

As such, despite the often-mentioned apolitical character of rule of law, the reforms associated with it in post-conflict environments should be perceived as both normative and political projects, as they always transform the division and control of political power to a greater or lesser extent, (Park, 2010) which might add additional complexity to the establishment or reform of the state system under the provisions of rule of law.

The existence of a stabilitocracy is indicative of the EU and IC's long-standing policy in BiH, in which they ignore violations of democratic principles by local politicians, as long as they are able to guarantee stability (Belloni 2020, BiEPAG, 2017, Bieber, 2018, Bieber, 2020, Börzel and Grimm, 2018, Cvijić, 2020, Pavlović, 2017). Taking into account the stabilitocratic character of the ongoing "*peacebuilding as statebuilding*" (Chandler, 2017, p. 69) mission in BiH, the reformation and/or establishment of functioning rule of law institutions and reform in this sector is also subjected to obstacles resulting from the predatory political practices of local ethno-political elites. During the last decades, these practices have contributed to the establishment of "*state capture*", which refers to a situation where the "*regulatory framework is tailored to suit the interests of particular economic agents ... with nationalist elites prioritizing their own over the public*", (Blagovčanin and Divjak, 2016, p. 14) while at the same time securing their position and avoiding prosecution via intense control of judiciary and law enforcement agencies. The following statement from a local artist referring to the level of corruption in BiH and the activities of the IC in this country adds additional dynamism to the above-stated facts.

*We are the hostages of corrupt individuals from within and from outside*

*Our tragedy is that they [the IC] let the worst of us become leaders and they [the IC] say that you [BiH citizens] elected them, which is not true. We [BiH citizens] did not have the proper supervision of the elections for last two elections and they [the IC] do not force for electronic voting.<sup>3</sup>*

Respondent 7, 2023

The above-mentioned development has contributed to the creation of a “virtual peace” characterised by the limited impact of external norms and institutions on the practices of domestic governance. (Richmond and Franks, 2007) Such “virtual peace” has led to the environment expressing patterns of “virtual law” defined by the author of this text as minimal or zero implementation and compliance with laws that would create greater functionality of the state and its judicial institutions, if the undesired adjustments of power distribution among local political elites were an outcome of these reforms.

In terms of BiH, both “virtual law” and “virtual peace” exist in an environment that envisages the inconsistency of arguments referring to the nature and existence of the BiH state among leading political elites, (Belloni, 2007) the zero-sum nature of the BiH political arena, and a strong IC peacebuilding and statebuilding engagement.

In addition, the power-sharing and status of BiH political elites is directly tied to the DPA – a classic consociation settlement in which political elites are required to share their power, additionally to the agreement’s guarantee of mutual veto rights, communal autonomy and prescription of proportionality in government. As **Deane** states, “consociation results from the bargain between political leaders of ethnic or religious groups in deeply divided societies”. (Belloni and Deane, 2007, p. 221) The leading political elites are, however, willing to engage in the bargaining process, as long as it brings them expected or desired outcomes.

## **2.1. The Dayton Peace Agreement and the Nature of the Political Environment in Post-Dayton Bosnia and Herzegovina**

Although considerable progress has been made in terms of development of BiH state – primarily by strengthening civil society and central state institutions via robust IC peacebuilding and statebuilding engagement since the signing of the DPA that ended the three and half years long war in 1995, the country’s daily reality is far from being perceived as peacebuilding success story (Belloni and

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<sup>3</sup> Interview with Respondent 7, local visual artist, 5 May 2023, Sarajevo.

Ramović, 2018). According to **Bieber** and **Chandler**, the IC's engagement in BiH has led to a de facto protectorate, characterised by a weak central government, loose federation and highly complex, expensive institutional structures at all governmental levels (state, entity, cantonal, and municipal), which suffers from endemic corruption, nepotism and patronage (Bieber, 2018, Chandler, 2017).

Initially, the DPA divided the country into two entities and one district: the Federation of Bosnia and Herzegovina (FBiH), dominated by Bosnian Croats and Bosniaks, Republika Srpska (RS) controlled by Bosnian Serbs, and Brčko District, whose status was defined in arbitration in 1999. The FBiH covers fifty-one percent of BiH's territory, and is further divided into ten cantons, each with its own constitution, an assembly directly elected by federation voters, and a prime minister and ministries. The RS covers the remaining forty-nine percent of BiH's territory and has a more centralised constitutional structure. The DPA therefore created a complex institutional structure of one state, two entities, three peoples, an estimated 3.9 million citizens, and five levels of governance led by fourteen prime ministers and governments. As a result, BiH has the highest number of presidents, prime ministers and ministers per capita in world with the significantly strong role entitled to the IC (Kapic, 2022, Belloni, 2020).

In general, although BiH was preserved as an independent state, its democratic and multi-ethnic government possessed only limited functions in foreign, economic and fiscal policy, since the central government that stands above the two entities was given only limited powers. Specifically, during the signing of the DPA only three ministries were created – Ministry of Foreign Affairs, Foreign Trade, and Civil Affairs and Communication. Although the total number of state ministries has increased to nine, much political and legislative power is concentrated at the entity level, leaving the BiH state comparatively weak. This weakness can be primarily observed in the budget of central institutions, which is largely dependent on transfers from the significantly more substantial entity budgets (Belloni, 2013).

From a security perspective, the DPA's initial success should not be questioned, since the success of peace agreements is primarily measured not by the delivery of the rule of law, but by the reoccurrence of the conflict (Kaldor, 2016). Although the DPA has been perceived as successful at concluding the war, it did not succeed in establishing a functioning polity. Moreover, it has cemented ethnic divisions via the ethnicisation of state institutions, since membership of the BiH presidency and the House of Peoples in the state parliament are guaranteed only to those who define themselves as one of the country's constituent peoples

– Bosnian Croats, Bosnian Serbs and Bosniaks. Citizens who do not identify as one of these groups are defined in the constitution as “others”, and are prohibited from holding major state posts. Initially, the logic behind the DPA was to create a political system that prevented the imposition of the views of one group on another, rather than to establish a functional government, since it managed to create institutions with a low level of efficiency that are highly prone to nationalist manipulation (Chandler, 2017).

In addition to engendering these structural weaknesses, the DPA created the BiH constitution (Annex IV of the DPA) and prescribed specific and supreme role to the IC with HR being responsible for monitoring of the implementation of the civilian aspect of DPA according to its Annex V (Everly, 2006). **Ademović** and **Steiner** analyse the character and complexities of the BiH constitution in greater detail (Ademović and Steiner, 2010).

In 1997, the HR was additionally granted the Bonn Powers, which enabled a more active stance in the case of “*violation of the legal commitments made under the Peace Agreement or the terms of its implementation*” (Peace Implementation Council, 1998). As a result, the HR and his office have become able not only to dismiss elected politicians at all levels of BiH governance, but also to impose new laws or cancel adopted ones, impose sanctions, challenge the decisions of institutions, amend all three constitutions in BiH with the exception of the national one, and terminate or establish institutions (Banning, 2014). The OHR and HR’s initial mandate of assistance was thereby transformed into one of an undeclared protectorate, primarily because of the detachment of political accountability from local political decision making, since the HR and his staff are able to impose any of the mentioned measures on BiH citizens without being either politically accountable or responsible for their actions (Chandler, 2017, Belloni, 2009).

The Bonn Powers’ wide scope has been the subject of criticism since their introduction, not only among some of the scholars in the area of peacebuilding (Chandler, 2001, 2006, 2010, 2017, Richmond, 2011, Belloni, 2020, Kappler, 2014, Bieber, 2020), but also among the strongest opponents of the OHR in BiH (primarily from RS), and more recently from countries like China and RF, who did not support the appointment of HR **Schmidt**. The latter countries’ position on the current HR has been frequently used by leading Bosnian Serb politicians, including **Dodik**, to question the HR’s legitimacy, and the legitimacy of his decisions. The HR is, however, nominated by the Peace Implementation Council (PIC) consisting of 55 countries and agencies/organisations, who are not only responsible for her/his appointment, but also for the provision of strategic

guidance to her/his actions (Belloni, 2009).

In terms of the IC, its highly interventionist approach, which was characteristic of its peacebuilding strategy in the early post-war years (from 1995 onwards), has also created dependency between the IC and local politicians, by emboldening the latter to indulge in extreme ethno-nationalist politics, especially before the elections, with the assumption that the HR would invoke his Bonn Powers and intervene, if their behaviour or adopted laws endangered peace and stability, or if they refused to implement significant political, economic, and social reforms. This dependency syndrome has thus decreased the responsibility of local politicians for their behaviour within the domestic political arena. Moreover, an additional side-effect of the external imposition of various policies is that it has created a perception of the overall functionality of the established system. The delivery of the most positive results in DPA implementation, however, is the result of the pressure, presence and assertiveness of the IC during its peacebuilding engagement in BiH, especially in the first decade after the end of the war in 1995 (Bieber, 2002).

In terms of BiH's local politics, the leading ethno-nationalist politicians are more concerned with preserving the status of their representative political groups and their own positions within them than with engagement in comprehensive institutional change. Moreover, the *"leadership latitude"*, defined as political capacity or will of political elites to establish functional conflict regulation mechanisms, is influenced by their capability to agree upon the division of power (Belloni and Deane, 2007). As a result, any power adjustment can have a direct impact on leadership latitude, and therefore influence the character or the very existence of established conflict regulating mechanisms.

In general, the domestic political environment in BiH operates under the logic of the zero-sum game and *"faked compliance"* (Noutcheva, 2009), in terms of the political elites' unwillingness to adopt the reforms necessary to the further progress in the EU membership process, of which rule of law reforms represent the main priority. In addition, the BiH political environment displays the patterns of a *"political marketplace"*, in which political actors hide behind extreme ethnonationalism as they bargain for resources and power (Kaldor and de Waal, 2021) in a political reality containing various perspectives on the nature and existence of the BiH state, framed by the DPA's systemic contours. Not surprisingly, this elite-driven reform process (which has applied the logic of locally-owned peacebuilding and statebuilding process, as promoted by the EU since 2009) has contributed significantly to a stalemate in BiH's EU accession

process (Kappler and Richmond, 2011).

Regarding recent political developments in BiH, the old-new interventionist approach of current HR **Schmidt** will be analysed in subsequent sections of the article. The discussion will focus on the HR's changes to the FBiH electoral law made after the announcement of the BiH parliamentary election results on 2 October 2022, and on **Schmidt's** response to **Dodik's** intensifying destabilising practices, with an emphasis on the approach of both actors towards the rule of law in BiH.

### 3. The Logic Behind Milorad Dodik's Political Metamorphosis

While the first phase of the IC's peacebuilding mission in BiH was the imposition of external values and practices en masse, the country's current political culture can be described as the abuse of financial resources en masse, accompanied by practices often associated with the misuse of public position, the establishment of loyal electorates within the patronage network, the political capture of state institutions, and the maintenance of party-political control over the media. According to Transparency International's (TI) 2023 survey, BiH's Corruption Perception Index (CPI), which refers to the corruption level of states, *"ranks by far the lowest in the region and third worst in Europe"*, above only Ukraine and the RF. The TI report further mentions that the suppression of organised crime and corruption in BiH is almost impossible, because the *"deterioration of the rule of law and captive judiciary"* have led to significant delays (sometimes for years) in processing cases of organised crime and corruption in general, and those against high-ranking officials specifically (Transparency International, 2023).

While the above-stated corruption and other practices of state capture could be found among politicians from various political parties and ethnic groups throughout BiH, **Dodik's** secessionist claims, which have intensified since 2021, his approach towards the role of the IC in general and HR in particular, and his open support of president **Vladimir Putin's** politics (including the RF's attack and war in Ukraine) often leads to **Dodik's** perception as not only another representative of the *"bigmanist"* politics typical of many autocratic Western Balkan leaders, (Cenić, 2022) but also the most vocal critic of IC engineering in BiH, who frequently questions BiH's long-term sustainability as a sovereign state within its internationally recognised boundaries. It has to be stated, however, that the logic behind **Dodik's** behaviour is more complex.

The understanding of **Dodik's** activities is closely tied to the logic incorporated in the division of power under the consociation structure of the BiH state introduced by the DPA. In reference to power sharing defined by the DPA in 1995, **Dodik's** actions reflect the fact that since the DPA was signed Bosnian Serb political representatives have been the strongest promoters of preserving the status quo in terms of the minimal adjustments to the agreement's original version (Belloni, 2009).

But what is the real logic behind **Milorad Dodik's** current political strategy? Is he again seeking to divert attention from his corruption scandals and simultaneously gain additional political credit from media publicity, or has his political game gained more threatening contours in light of global geo-political changes and his close ties with the Russian Federation? The following section will provide answers to the questions above.

**Dodik** rose to prominence in 1998, as a moderate reformist and the narrowly-elected regional prime minister of RS. At the beginning of his career, he was actively supported by the US and IC, who perceived him as vital ally and a key actor in their BiH peacebuilding project. Speaking of her meeting with **Dodik**, former US Secretary of State **Madeleine Albright** stated that it "*felt like a breath of fresh air had blown through the room*" (Niksić, 2022). In 2001, **Dodik** and his SNSD party members, who were opposition members at the time, received training from a Canadian NGO, which aimed to help them attract voters. As the former employee of this NGO explained:

*The West helped Dodik to become leading RS politician. I was employed by this NGO that was focused on training and education of SNSD members in the so called "Go to vote" technique, which aim was to assist SNSD members in finding new voters, and on the voting day via "door to door" tactic to remind them [voters] and encourage them to vote.<sup>4</sup>*

Respondent 21, 2023

Importantly, **Dodik** began his political career with a moderate position in local politics, but after losing the 2001 RS presidential election he modelled his political worldview in line with hard-line ethno-nationalist rhetoric and ideals that have intensified significantly since the 2006 failure of the constitutional reforms known as the April Package. The April Package failed to achieve the necessary two-

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<sup>4</sup> Interview with Respondent 21, former employee of a Canadian NGO, 9 October 2020, Sarajevo.

thirds majority in the BiH parliament, with opposing votes coming from the Bosniak-dominated Party for Bosnia (which argued that it would strengthen the RS) and a small Croat party that sought the establishment of a third (Croat) entity. The refusal of the April Package by these two parties was mainly motivated by their campaigning and posturing before the October 2006 elections, and by reasons of principle. **Belloni**, referring to the 2006 attempt to reform the BiH constitution, claims that the Bosnian Serbs' bargaining position during initial talks was motivated by the preservation of RS as their primary political goal (Belloni, 2009).

**Dodik's** secessionist rhetoric has historically intensified in moments when he needed to divert attention from his own corruption cases, accusations of corruption, or RS' fiscal problems (Beglerović, 2020). At the moment, he faces all these complexities, which makes the situation more turbulent. A high profile BiH politician in one of the state ministries described RS's financial difficulties, and the potential public protests that may occur as a result:

*Yes, RS is facing fiscal problems that are higher than before. He [Dodik] is also facing sanctions by the USA and Germany. This could lead to protests coming from within the RS. The fiscal problems are so significant that I even heard that the RS government is transferring the financial resources from municipal budgets to entity budget.<sup>5</sup>*

Respondent 28, 2023

Although **Dodik** has been accused of involvement in corruption several times by various international organisations and governmental representatives, a convincing verdict against him has never been delivered, similarly as in the majority of serious corruption offences of other high profile BiH politicians. As **Blagovčanin** and **Divjak** explain, the careers of the judges who acquitted **Dodik** in 2005, when he was accused of the misuse of public funds, have rapidly developed since (Blagovčanin, Divjak, 2016), and to the present day these individuals have held lucrative positions in public, political or business sectors, which also sends a clear message regarding the level of independence of BiH courts, and the scope of influence of dominant political actors over the country's judicial system. **Srdan Blagovčanin**, Chairman of the Management Board of TI in BiH interprets the findings presented in the Transparency International (TI)

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<sup>5</sup> Interview with Respondent 28, high-profile BiH politician in a state ministry, 1 November 2023, Sarajevo.



2022 survey: *“Not only there is no strategy, policy or activity of state institutions to prevent corruption, but state institutions, completely captured by political control, focus their activities almost entirely on causing corruption. Unfortunately, corruption has become the primary reason for the existence of institutions. A special danger for the state is the complete symbiosis of organized crime and state institutions, which will lead to further destabilization of the country and the collapse of security”* (TI, 2023).

In 2016, **Dodik** instigated organisation of referendum in RS on the celebration of 9 January as Republika Srpska Day. That particular date is perceived by many BiH citizens as the beginning of the war that started in 1992. Many suspect that **Dodik's** insistence on the referendum was preceded by an aggressive campaign to prevent the continuation of the state prosecutor's investigation into his corruption activities (Kaldor, 2016). The Constitutional Court of BiH (CCBiH) defined the celebration of 9 January as unconstitutional holiday, and by 2023 had delivered several rulings that cited its unconstitutional nature (U.S. Embassy BiH, 2024). Moreover, in summer 2021, in response to the HR-imposed law that prohibited genocide denial and the glorification of war criminals in BiH, (OHR, 2021) **Dodik** sparked the most significant political crisis since the end of the war, stating that RS would withdraw from BiH's multi-ethnic institutions, thereby blocking their decision-making capability. Additionally, **Dodik's** secessionist campaign further intensified in winter 2022, via threats to form an exclusive Serb army, tax system and judiciary (Nikšić, 2022). In January 2023, the unconstitutional celebration of RS Day on 9 January took place for the first time in East Sarajevo, with the presence of armed police, pro-Russian bikers the Night Wolves, and official representatives of the Serbian, Montenegrin, Chinese and Russian delegations, who attended not only the parade, but also the subsequent concert. The choice of the location of this unconstitutional 2023 celebration provoked a strong reaction from Bosniak politicians and war veterans (Kurtić, 2023). The positive attitude of **Dodik** towards **Putin** and vice versa can be also observed in **Dodik's** 2023 visits to the RF, where the two met personally. In addition to Putin, **Dodik** met officially with **Viktor Orbán** in 2023, and with **Alexander Lukašenko** in February 2024. A statement by an independent journalist from RS further confirms the close ties between **Dodik** and **Putin**:

*The Russian Federation has influence over development in RS, since they have there their loyal person Milorad Dodik ... I guess they can activate*

him whenever it suits their interests.<sup>6</sup>

Respondent 29, 2023

A further statement from the previously-mentioned high-profile BiH politician on **Dodik's** threats of RS secession from BiH deserves closer attention:

*If he realises the secessionist attempts via referendum that is for us the red line. If this happens that would lead to conflict/war. If the security situation significantly deteriorates in BiH, the IC, specifically HR, as well as EUFOR, if needed, supported by NATO, are obliged according to DPA to help us to protect BiH citizens and to protect the territorial integrity and sovereignty of BiH.<sup>7</sup>*

Respondent 28, 2023

According to the interviewed independent political analyst, “*Dodik is a pragmatic opportunistic ethno-nationalist*”,<sup>8</sup> (Respondent 30, 2024) who could easily change his rhetoric and political orientation, as happened in the past, if there is a guarantee that such a shift would bring him political credit and secure his power status. The analyst further added that “*Western sanctions will bring him only closer to his friends – Russia, China, Hungary and Serbia*”, thereby questioning the efficiency of sanctions brought against him by the US and UK, however, parallelly acknowledging that the IC should not ignore his recent statements and behaviour.

While taking into account the logic of the “*political marketplace*” within the zero-sum environment of BiH politics combined with the pragmatic opportunism of **Dodik's** ethno-nationalist orientation, his secessionist statements, increased focus on illiberal allies and inappropriate visits are likely intended to give him the advantage in negotiations with IC representatives and local political counterparts, with the aim to preserve the status quo of power distribution among leading ethno-nationalist actors, who need the ever-present risk of renewed violence to preserve control over their electorates. Equally importantly, **Dodik's** intensified secessionist rhetoric has previously appeared during his corruption accusations or trials, and can therefore be perceived as a deflection tactic, aimed to guarantee

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<sup>6</sup> Interview with Respondent 29, independent journalist from Banja Luka, 16 November 2023, Sarajevo.

<sup>7</sup> Interview with Respondent 28, high-profile BiH politician in a state ministry, 1 November 2023, Sarajevo.

<sup>8</sup> Interview with Respondent 30, independent political analyst. 20 January 2024, Tešanj.

the support of his electorate and depict him as the saviour of RS and its citizens. Moreover, **Dodik's** argument to return to the so-called original 1995 DPA without recognising the legal amendments made since 1996 further supports this statement. A former journalist living in Mostar expressed a similar logic in relation to the likeminded strategies of **Dodik** and Serbian president **Aleksandar Vučić**:

*When we talk about political game of Milorad Dodik, who so much indebted RS that he currently searches for exit strategy for himself. The only way that he can realise such exit from this situation is to strengthen the tensions on the political level. Dodik's strategy is very similar with A. Vučić, president of Serbia, who whenever he faces public protests that demand his departure increases or creates tensions in Kosovo.<sup>9</sup>*

Respondent 31, 2024

Overall, **Dodik's** behaviour must be understood in the wider context of the nature of BiH's political scene, where ethno-nationalism is tied to power distribution and formalised by the provisions stated in the DPA, which ended the war in 1995. The conflict resulted to a great extent from the inconsistency of the perceptions of the three main ethnic groups' political representatives regarding the nature and the existence of the BiH state (Donais, 2013). As a result, any significant changes to the state or entity constitutions, or to the organisation of the electoral process, are strongly opposed by leading local politicians, who are not in favour of the rule of law reforms demanded by the EU. At the same time, these politicians will continue to oppose any attempts to decrease ethnic segregation and return to a multi-ethnic coexistence, since this would lead to undesired changes in the ongoing power distribution, which currently favours their exclusive political positions.

#### 4. The Logic Behind the High Representative's Last-Minute Changes in October 2022

*When we were more in the focus of the strong world actors, the high representatives in BiH were respected diplomats, who were great actors. The elected HRs were reflecting the EU and greater world power's aims towards BiH. With the decline of the IC's interest in reference to BiH, the quality of the HRs has declined as well. Christian Schmidt represents the*

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<sup>9</sup> Interview with Respondent 31, former journalist, 5 February 2024, Mostar

sixth league.<sup>10</sup>

Respondent 31, 2024

The behaviour of local political actors and the decision of HR Schmidt regarding the last-minute changes of the BiH constitution and BiH electoral law a few minutes after the closure of polling stations in the elections on 2 October 2022 have been perceived with a high level of controversy by some local citizens, various analysts and several politicians, who perceived this as an illiberal act. Specifically, **Jasmin Mujanović** called it an “*illiberal putsch attempt*” (Mujanović, 2022).

**Schmidt** justified his October 2022 moves (made in a document called the Functionality Package) according to the logic of promoting the FBiH’s functionality and implementing the election results on time, and added that his decision was based on coalition building and government processes, since local BiH political actors were unable to reach an agreement on amendments to the electoral legislation, even during negotiations led by the USA and EU in Neum in January 2022 (The Initiative for Monitoring the European Integration, 2022). The following sentence from the HR’s letter to the public deserves full citation, due to its interventionist and almost post-colonial essence: “*To the voters, to you, I want to say that, while you were at the polls and voted, I made decisions to ensure that your vote was counted and that your democratic will was respected. You have shown your responsibility by voting democratically. Now, your voting will must be respected*” (Ozturk, 2022).

It should be noted that the core of the criticism of the changes imposed by the HR on 2 October 2022 is comprised of two arguments: the first one refers to the timing and the second one to the character of the initial changes. While the former does not require further detailed elaboration, as it is against democratic principles to change the rules of governmental formation after voting has taken place in reference to both the political subjects’ strategies (which are formed months before the elections), and towards the voters, the nature of these changes deserves closer analysis. The core of the Functionality Package mainly involves the number of delegates elected to the House of Peoples, which has increased from 58 to 80. Specifically, the House of Peoples will now comprise 23 Bosniaks, 23 Bosnian Croats and 23 Bosnian Serbs (members of the so called three constituent peoples) as well as 11 “*others*” – individuals living in BiH who do not

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<sup>10</sup> Interview with Respondent 31, former journalist, 5 February 2024, Mostar.

identify as members of these three ethnic groups (Brezar, 2022).

Since the demographic composition of BiH according to 2013 data presented in the CIA world factbook is 50.1 percent Bosniak; 30.8 percent Bosnian Serb; 15.4 percent Bosnian Croat; and 2.7 percent “others”, and 1 percent of respondents refused to answer (CIA, 2023), the HR’s changes introduced proportional representation of the three constituent peoples in the House of Peoples, since the voting rule will no longer be one person one vote. This move might lead to an even greater ethnicisation of BiH’s political environment, by further cementing the ethnic divisions introduced by the DPA. It may also cause positive discrimination of one ethnic group over the other groups, by giving greater weight to Bosnian Croat votes than Bosniak votes within FBiH. It has been assumed that the HR thus responded to previous claims by Bosnian Croat representatives – for more detail, see the case of Ljubić.

Overall, **Schmidt’s** decision sparked further debate regarding the strength of Croatian lobby groups in the European Parliament (EP) and their potential direct impact on OHR decisions, and on the behaviour of the HR in reference to the Functionality Package, (Brezar, 2022) as further stated by a local writer and cultural worker:

*There are rumours that Croats have direct influence on Schmidt and Schmidt’s decisions. Both of them deny it, but some of his decisions send clear message that some close connection between these two most probably exists.<sup>11</sup>*

Respondent 9, 2023

The HR denied these claims, stating “*I make my own decisions*” (N1, 2022). He is, however, yet to explain why he did not invoke the Bonn Powers to impose earlier rulings by the European Court of Human Rights (ECHR) (such as that of **Sejdić and Finci v. BiH** from 2009, which addressed the ability of BiH citizens who identified as “others” to be presidential candidates), since their adoption is a necessary pre-requisite for BiH’s EU accession (The Initiative for Monitoring the European Integration of BiH, 2022). In addition to the introduction of proportionate voting in respect to the election of the House of Peoples, the HR’s October 2022 changes introduced an “*unblocking mechanism and strict deadlines that will safeguard the functioning of FBiH*” (OHR, 2022). According to analysis presented

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<sup>11</sup> Interview with Respondent 9, writer and cultural worker, 15 May 2023, Tešanj.

by Istinomjer, however, this desired outcome is disputable (The Initiative for Monitoring the European Integration of BiH, 2022). The HR's justification of the imposed changes presented in the Functionality Package are therefore not entirely consistent.

In comparison to **Valentin Inzko**, who held the position of HR for twelve years from March 2009 to end of July 2021, and used the Bonn Powers only once, during the final days of his mandate, (OHR, 2021) **Schmidt's** active use of the Bonn powers during his HR mandate (which to date is less than three years long) demonstrates a significant change in the OHR's peacebuilding approach in BiH, which is supported by the USA. Moreover, **Schmidt** last invoked the Bonn Powers on 26 March 2024, to impose technical changes to the electoral law of BiH, when local leaders were unable to do so in the given timeframe (OHR, 2024).

According to Annex V of the DPA, the HR is responsible for monitoring the implementation of civilian aspects of the DPA, and for maintaining a peaceful environment in BiH. This means the HR should function for the interests of all BiH citizens, whether they identify as Bosnian Croats, Bosniaks, Bosnian Serbs or "others". **Schmidt's** previously analysed behaviour, however, along with the information obtained during the semi-structured interviews, raises the question of whether he is truly following the essential purpose of his mandate.

While considering Dodik's escalating secessionist rhetoric and behaviour and steps that have been adopted or threatened to be adopted by RS authorities since 2016, and even more intensely since August 2021 and June 2023, the question of endangering peace or territorial integrity, along with threats made to public officials and the prohibition of their political activity, has started to resonate more often within various levels of BiH's political arena.

The HR has the right to dismiss such individuals, as demonstrated by former HR **Miroslav Lajčák**, who dismissed a municipal mayor in 2009. In contrast, his successor **Inzko** never applied this mechanism. As a local academic and university professor stated, **Dodik's initial** dismissal is improbable, since **Dodik** himself will try to avoid such a scenario:

*Dodik will never be dismissed by the current HR, unless he is a security threat to the country and Dodik is too smart. He will know when to stop.*<sup>12</sup>

Respondent 24, 2023

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<sup>12</sup> Online interview with Respondent 24, local academic and university professor, 22 October, 2023.

Schmidt versus Dodik: The High Representative's Response to Dodik's Increased Secessionist Rhetoric and Associated Events in Summer 2023

During a two-day session of the PIC in June 2023, members stated that BiH was at a critical juncture, and that entities had no right to secede (OHR, 2023). In his press conference on 7 June 2023, the HR directly warned individuals from RS who used secessionist threats that they would “*suffer the consequences of the international community*”, but did not specify the character and scope of the steps that the IC, including the OHR, could use against Dodik and his loyal political colleagues. Additionally, Schmidt stated that he did not want to reveal the content of such consequences, but that “*he (Milorad Dodik) must be aware of the fact that certain steps could be taken and that they do not necessarily have to be the steps of one particular person*” (OHR, 2023). As previously mentioned, the USA and UK imposed sanctions against Dodik, which included a ban on travel within their borders, and the prohibition of companies to engage in business with him (CIN, 2022). Moreover, the European Parliament also tried to impose sanctions on Dodik, but these attempts were not successful and he was not put on the EU's blacklist.

Dodik's reaction to Schmidt's June 2023 statement demonstrates both the logic of “*bigmanism*”, (Cvijić, 2022) and Dodik's capability to subvert the established system via official, institutional means. In a classic example of the former, a few days after Schmidt's statement, Dodik announced that he would sue him before an international court, since a decision adopted by former HR Christian Schwarz-Schilling in March 2007 prohibits cases involving HRs or the OHR from being brought before the BiH courts (RFE, 2023). In addition, Dodik instigated an urgent vote in the RS' NA on 15 June 2023, to address proposed legal and regulatory changes that would mean the HR's future decisions would not be published in the Official Gazette of RS (NARS, 2023). Moreover, in posts on social media platform X, Dodik stated that “*the national assembly [of RS] has a legitimate right and a constitutional obligation to protect Republika Srpska from the anti-Dayton activities of the false high representative*” (Dodik's X statement, 2023), and that “*Republika Srpska cannot cooperate with the high representative because there is currently no high representative in Bosnia and Herzegovina ... since he has never been confirmed by the UN Security Council*” (Dodik's X statement, 2023). These statements, in conjunction with events in the RS' NA, demonstrate Dodik's intention to not only delegitimise the OHR as an institution and the HR himself, but also to invalidate any laws, decisions or regulations created by this institution and imposed by the HR. On July 7 2023, Dodik passed

two decrees on the promulgation of the Law on the Amendments to the Law on the Publication of the Law, and other RS regulations regarding the HR's decisions. He also passed a decree on the promulgation of the Law on the Non-Applicability of the Decisions of the CCBiH in RS (RFE, 2023).

The HR reacted to the adoption of these laws, which Dodik instigated and confirmed on July 1 2023, invoking the Bonn Powers to annul the Law on the Non-applicability of the Decisions of CCBiH in RS. He also imposed changes to the Criminal Code of BiH that made non-implementation of the HR's decisions a criminal offense, punishable by up to five years' imprisonment and the prohibition of performing any duty in any public body that is fully or partially financed from the public budget. As a result, the Prosecutor's Office of BiH has charged Dodik and Director of the Official Gazette of RS Miloš Lukić with failing to implement the decisions of the HR in BiH (RFE, 2023).

Refusing the legitimacy of the CCBiH and its rulings, along with RS' unprecedented stance towards the validity of the HR's decisions by delegitimising his position (which is guaranteed in Annex 5 of the DPA), and the annulment of his decision within the RS, represent so far the strongest and the most alarming violation of the DPA provisions to date. Moreover, even with the HR-imposed changes to the Criminal Code of BiH that enabled the Prosecutor's Office of BiH to bring charges against Dodik and Lukić for their unlawful behaviour, both RS NA decisions have the high potential, if not solved successfully, to further destabilise BiH's already fragile political and security situation with long-term consequences not only for the country, but also for the wider Western Balkan region. According to a local academic and security expert, an unprecedented and dangerous circumstance could occur if:

*Dodik was found guilty by the state judicial institution and his party (SNSD) protected him from the state institutions' capture.<sup>13</sup>*

Respondent 24, 2023

In addition to the above-stated facts, **Dodik's** moves that led the HR to repeal these laws adopted in the RS and impose changes to BiH's criminal law deserve closer examination. Firstly, **Dodik's** behaviour could have been driven by an attempt to divert attention from the unprecedented fiscal problems RS has been facing for several months, and its incapability to receive loans, as the entity's

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<sup>13</sup> Interview with Respondent 24, local academic and university professor, 22 October, 2023, online.



leadership does not cooperate with state monetary and EU institutions. Secondly, the open delegitimation of the HR's position and his decisions, along with the ongoing trial, have been skilfully used by **Dodik**, not only to express disrespect for the leading state judicial institution and IC actors in BiH, but also to create the impression of being a victim of "*the false HR's decision*" ("*the false HR*" is how he often refers to HR Schmidt) (European Western Balkans, 2023), and to gain significant media coverage on various media channels in the country.

Additionally, because leading Bosnian Serb politicians perceive the existence and name of RS as the DPA's main achievement, the creation of an assumed threat towards RS' function or its very existence, and depicting himself as the saviour of RS and its citizens, as often stated by Dodik, has been a well-known and frequently applied tactic by this leading RS politician. (Belloni, 2009) To explain the real interest behind **Dodik's** political strategy, a former journalist from Mostar offered the following argument:

*Generally, Dodik presents himself like the protector of the Bosnian Serbs' interests, but in fact he protects only his own interests.* <sup>14</sup>

Respondent 31, 2024

Additionally, Bosnian Serbs and Bosnian Croats have been trying to maintain, and ideally deepen, decentralisation since signing the DPA, and consequently question the decisions of the CCBiH and the HR, which strive to strengthen the country's central institutions. This stance suits the interests of leading Bosnian Serb and Bosnian Croat political representatives, who would prefer to have loyal local judges, who would be under their control, in BiH's highest judicial institution (Karabeg, 2024).

Overall, the variability of **Dodik's** position during his political career is less indicative of his fanatical chauvinism than of his skilfully tailored strategy of control and power maintenance over his sphere of influence, which he has managed to establish over decades of engagement in the highest circles of BiH politics. In the spirit of the end justifying the means, he might be willing to go as far as it suits his interests. How far he will be able to go, however, will depend largely on the attitude of external actors, who have a direct influence not only on **Dodik**, but also on events in BiH. As further stated by a local citizen, who wished to conceal his affiliation:

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<sup>14</sup> Interview with Respondent 31, former journalist, 5 February 2024, Mostar.

*There is too much talk about Dodik. He is everywhere. The local media monitors his daily steps. He is a man of rude words and big gestures. However, I think there exist other local actors that work in greater silence, and maybe their activities could be potentially more dangerous for the overall stability in BiH ... It seems that International Community understood BiH more in the past. Right now, it is one big chaos, since [they IC] have problems agree among themselves what should be done in BiH. And the citizens are trapped in this.<sup>15</sup>*

Respondent 15, 2023

The IC's stabilitocratic approach, however, has reached a dead end in contemporary BiH. The interplay between HR **Schmidt** and **Dodik** demonstrates the decreased functionality of the present stabilitocratic approach in BiH, since the local political players, whose undemocratic excesses have long been overlooked and tolerated by the IC in exchange for stability, have themselves become significant destabilising agents, as the case of **Dodik** demonstrates. **Dodik's** current unprecedented attempts at destabilisation are being realised via the rule of law, which represents a main pillar of democracy and is also an arena whose strengthening is one of the main priorities of the IC's mission in BiH. **Dodik's** current approach, however, is a product not only of nepotism, clientelism, endemic corruption and a system of patronage that represents the dominant characteristics of BiH's public institutions, but also of the stabilitocratic approach of the IC in BiH and some systemic functions of the DPA. Consociationalism, defined previously in this article, has therefore become a tool of the country's leading ethno-national political elites, used "*to continue in the war by other means*", as stated by **Belloni**, reversing **Clausewitz** (Belloni, 2007, p. 360). It is, however, vital to remember that the original version of the DPA envisaged the previously defined and still present inconsistency of the dominant political representatives of the three main ethnic groups, when referring to the nature and existence of BiH state (Donais, 2013).

## 5. The EU and OHR's Inconsistent Approaches to BiH

Several experts and journalists strongly opposed the HR's previously discussed October 2022 changes, either in their own work or during interviews

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<sup>15</sup> Interview with Respondent 15, a local citizen who demanded full anonymity regarding his affiliation, 15 June 2023, Sarajevo.

conducted for this article. Intense feelings of discontent also came from Green Party MEPs **Thomas Waitz** and **Tineke Strik**, who viewed it as “*disrespectful*”, and “*a slap in the face for the voters*” (Brezar, 2022). The EU’s Sarajevo office responded with a somewhat neutral, distancing statement: “*This was a decision of the High Representative alone. The executive powers of the HR (Bonn Powers) should be used solely as a measure of last resort against irreparable unlawful acts*” (EU delegation in BiH, 2022). This response demonstrates the logic of local ownership of the statebuilding process in BiH, which does not favour direct intervention or other impositions into domestic affairs, or into the creation of norms and laws. The HR’s decision has, however, been strongly supported by the US Embassy in Sarajevo, which viewed his actions as “*an urgent and necessary intervention*”, justified by BiH’s ongoing paralysis and incapability of implementing the results of the 2018 general elections. It stated that “*the restoration of functionality to the Federation BiH is the first step towards restoring the internal balance [BiH] requires to address governance issues, deliver prosperity, respond to wider geopolitical challenges, and secure its place in the Euro-Atlantic community of nations*” (Heil, 2022). The USA’s statement supports a return to a more interventionist peacebuilding approach towards BiH, which was characteristic of the IC’s engagement in the first decade after the end of the conflict in 1995, and was enabled by the active role of the OHR and previous HRs. This old-new approach is being promoted via the USA’s open support of a more assertive approach by the OHR and HR with regard to BiH’s political affairs. The rise in BiH’s importance to US foreign policy has been largely influenced by challenges to the established division of world power, which became more obvious after 24 February 2022, when the RF’s attack on Ukraine began. On 11 May that year, during a meeting of the UN Security Council, **Schmidt** stated that “*the international community has long advocated for local ownership over the situation [in BiH]. However, facing escalating challenges, [he] and the ambassadors of the PIC Steering Board agreed on the need for a different response*” (UN SC, 2022). He then added that “*with the support by the Board, [he] used his executive authority as HR to issue decisions as a countermeasure to the illegal and destabilizing actions being taken by Republika Srpska*”, in reference to his first invocation of the Bonn Powers on 12 April 2022, undertaken to suspend the registration of state property to the entity of RS. China and the RF’s unprecedented refusal to support **Schmidt’s** appointment as HR in 2021 could be viewed as an anticipated pre-condition, if the aforementioned facts and the RF’s approach towards Ukraine are taken into account.

The above-mentioned inconsistency of perceptions of these events, materialised in the activities of the OHR and the EU's reactions to those activities, demonstrates the difference in the approaches of these two actors to the situation in BiH. In October 2023, an employee of one of these institutions, who requested full anonymity, stated:

*It seems that EU activities in BiH are not so powerful on the ground ... The EU is not equipped for a peacebuilding operation ... and EU member statebuilding via future EU membership does not seem sufficient compared to peacebuilding.*<sup>16</sup>

Respondent 22, Sarajevo.

BiH's EU candidate status, received in December 2022, was a largely political decision, influenced by recent turbulent developments in global geo-politics. Since December 2022, conflicts with the potential to spread to their wider regions have erupted around the world, such as in Israel/Palestine. During her visit to Sarajevo in November 2023, Ursula von der Layen raised the possibility of opening accession negotiations with BiH as early as March 2024, under the condition that the country makes progress in the implementation of reforms set by the EU (European Commission, 2023). As Blagovčanin and Divjak state in their 2016 analysis, however, the will of BiH to exercise its own sovereignty and meet EU entry requirements does not exist today, "because many of those in power expect to lose benefits and even fear going to prison, if an independent judiciary, free media, energetic civil society and truly democratic processes were to hold corrupt parties accountable for exploiting the public trust for private gain" (Blagovčanin and Divjak, 2016).

Whether accession negotiations begin or not, the length of BiH's journey to full EU membership is not entirely dependent upon the country's fulfilment of EU criteria – equally important is the will of EU politicians, and more significant are global geopolitical developments.

Since the approach of HR Schmidt embodies the willingness of the IC (precisely: the OHR) to return to a more interventionist approach via the increased use of illiberal methods to reach liberal goals, it is highly probable that BiH will remain the "world capital of interventionism" (Chandler, 2001, p. 116) in the years to come.

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<sup>16</sup> Respondent 22, foreign employee of a peacebuilding/statebuilding institution active in BiH, 15 October 2023, Sarajevo.

## Conclusion

The stabilitocracy in BiH is dead, long live the stabilitocracy! The stabilitocratic interplay between IC actors and BiH's ethno-political elites **Bieber** (2018), **Bieber** (2020) and **Belloni** (2020) has been taking place for decades, but has recently acquired destabilising contours. This is supported by **Dodik's** attempts to delegitimise the HR by annulling his decisions and CCBiH rulings in RS in summer 2023, through official RS institutional procedure. Even if HR **Schmidt** decides to dismiss **Dodik**, which is highly improbable, it would not solve the long-term underlying inconsistency of political elites from BiH's three main ethnic groups regarding the nature and the existence of the BiH state (Donais, 2013). A victim of the contested nature of its state, BiH's local politics embody the zero-sum logic within consociation power-sharing framework often subjected to blockades (e.g., via the frequent use of vital interest), and faces the risk of endless external supervision. A strengthened rule of law and changes to the functioning of institutions at all levels of governance demand political consensus. Because the majority of leading local politicians profit the most from the current complex state of affairs, they are therefore unmotivated to adopt and implement any reform that could jeopardise their power distribution for the benefit of BiH citizens. The case of BiH shows that externally driven or imposed reforms to the rule of law are often subjected to criticism, because the illegitimacy of such processes removes the accountability and responsibility of both IC and local political actors and overlooks local contexts and practices. As **Sisk** and **Risley** state, local-level governance should allow citizens to exercise both voice and agency over the decisions that directly impact their daily reality (Risley and Sisk, 2005).

This article aimed not to analyse the current state of BiH's justice and judiciary, but to demonstrate that the country is currently in a situation in which rule of law – whose promotion and strengthening is an EU priority for BiH's accession, and that of countries in the wider Western Balkans – is used by dominant local politicians to further destabilise the political and security situation. This is achieved via the delegitimation of DPA provisions through official legislative procedures, as this article demonstrates in the case of **Dodik**. The article also examined HR **Schmidt's** adoption of illiberal means to deliver liberal outcomes, promoted by the IC's peacebuilding and statebuilding mission in BiH.

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### **Primary data: Interviews**

Respondent 15, local citizen who demanded full anonymity regarding his affiliation, 15 June 2023, Sarajevo.

Respondent 21, former employee of a Canadian NGO, 9 October 2020, Sarajevo.

Respondent 22, foreign employee of a peacebuilding/statebuilding institution active in BiH, 15 October 2023, Sarajevo.

Respondent 24, local academic and university professor, 22 October 2023, online interview.

Respondent 28, high-profile BiH politician in a state ministry, 1 November 2023, Sarajevo.

Respondent 29, independent journalist from Banja Luka, 16 November 2023, Sarajevo.

Respondent 30, independent political analyst, 20 January 2024, Tešanj.

Respondent 31, former journalist, 5 February 2024, Mostar.

Respondent 7, local visual artist, 5 May 2023, Sarajevo.

Respondent 9, local writer and cultural worker, 15 May 2023, Tešanj.