

# The Best Legal Framework Cannot Compensate for the Lack of Political Will

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## ABSTRACT

The Dayton peace agreement ended the war in Bosnia and Herzegovina and established peace. One can hear different criticisms and objections about it – coming from international as well as BiH political and other circles. As the majority of such criticism and objections are related to Annex IV, the requests and proposals for transformation of the Agreement are predominantly related to Annex IV. This paper offers an analysis of whether such an approach is founded. In conditions of the existing dominance of ethno-nationalist philosophies, would a different constitutional solution remove the impediments to the development of internal trust and accelerated development of the country? The underlying thesis of this paper is that, regardless of all the wishful thinking that would not be possible. The conclusion is that there cannot be any acceleration of the integration processes in BiH without a change in the political paradigm. It would take place of the existing political paradigm by replacing national collectivities and their respective interests with the interest of human beings and their right to a normal life.

**KEYWORDS:** Dayton agreement, Annex IV, BiH Constitution, ethno-nationalist philosophies, integration processes, change of political paradigm

## POVZETEK

Daytonski mirovni sporazum je končal vojno v Bosni in Hercegovini in vzpostavil mir. Resnici na ljubo je danes mogoče slišati različne kritike in ugovore v zvezi s tem - tako iz mednarodnih kot tudi iz političnih in drugih krogov v BiH. Ker je večina takšnih kritik in ugovorov povezanih s Prilogo IV, so zahteve in predlogi za preoblikovanje sporazuma pretežno povezani s to prilogo. Članek analizira ali je tak pristop utemeljen. Ali bi drugačna ustavna rešitev v razmerah obstoječe prevlade etno nacionalističnih filozofij odpravila ovire za razvoj notranjega zaupanja in pospešeni razvoj države? Osnovna teza tega članka je, da ne glede na želeno razmišljanje, to ne bi bilo mogoče. Sklep je torej, da do pospeševanja integracijskih procesov v BiH ne more priti brez spremembe politične paradigme, ki bi obstoječo politično paradigmo nadomestila z novo. Ta bi nacionalne interesne skupine in njihove interese nadomestila z interesi ljudi in njihovo pravico do običajnega življenja.

**KLJUČNE BESEDE:** Daytonski sporazum, Priloga IV, Ustava BiH, etno nacionalistične filozofije, integracijski procesi, sprememba politične paradigme

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## INTRODUCTION

Twenty five years ago<sup>2</sup>, in the Wright-Patterson military base in Dayton, Ohio, the text of the General Framework Agreement for Peace in BiH, also known as the Dayton peace agreement<sup>3</sup> was agreed. The agreement was officially signed less than a month later, on 14 December 1995, at the Élysée Palace in Paris. The most important achievement of the Agreement was that it stopped the war, which had already been going on for a bit less than four years, and all the atrocities caused by the war in BiH. The atrocities were of such a scale that people should constantly be reminded of them – more than 100 thousand killed, more than 50% of citizens were exiled from or fled their homes, because their lives had been endangered, and moved to other parts of BiH or abroad, devastated or completely ruined hundreds of thousands of economic capacities, public and private facilities, a decimated economy in comparison to the prewar period, etc.

Nowadays, with the benefit of a quarter-of-the century's hindsight, the Dayton peace package is analyzed from different perspectives- particularly the perspective of the current situation in BiH, which is often attributed to the structure of the Dayton document - primarily its Annex IV. The aim of this paper is to try to find an answer to the questions that are being raised in this context. Specifically, should the Dayton agreement, and the Constitution as its integral part, be “exclusively accused” for the current situation in BiH and all the associated issues? Or should the causes of the less than promising situation in the BiH state and society, partly or completely, be sought elsewhere - in the lack of political will, which is such that it would neutralize even the legal frameworks that are much more acceptable than the Dayton constitution of BiH?

## POSITIVE EFFECTS OF THE DAYTON AGREEMENT

On the occasion of the 25th anniversary of the Dayton peace agreement, various political circles, both local and international, offered a plethora of positive opinions on its effects. For example, in a joint

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2 The Dayton conference was held from 1 November to 21 November 1995, when Bill Clinton, US President addressed the public and announced the news that a peace agreement had been reached. On this occasion, he said, *inter alia*, that BiH would preserve as a “single state”, that there would be “a central government, including a national parliament, a presidency and a constitutional court”, and that “people will be able to move freely throughout BiH, and the return of refugees will be made possible.” (<https://www.klix.ba/vijesti/bih/cetvrt-vijeka-dejto-na-stara-radost-danas-je-elan-za-bjezanje-iz-zemlje/201119102>).

3 The Dayton peace agreement consists of the text of the General Framework Agreement for Peace in BiH, and 11 annexes, including Annex IV, BiH Constitution.

statement the BiH Presidency welcomed the progress achieved since the Dayton agreement “in the fields of economy, education, democratization of the society, rule of law, public administration and all other areas”, expressed “its full readiness and commitment to respect the provisions of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Constitution of Bosnia and Herzegovina, which forms the integral part of the GFAP”, and confirmed its commitment “to create a society tailored to all its peoples and citizens, especially the young people whom we want to enable to stay and build the future in their homeland.”<sup>4</sup>

The Presidency expressed similar readiness in the talks with US officials, organized on the occasion of the anniversary of the Dayton agreement.<sup>5</sup> In fact, it went a step further in these talks. Namely, it reiterated the unquestionable commitment of BiH regarding the membership in the EU and the readiness of BiH institutions to fulfill the conditions for obtaining the status of a candidate country for membership in the EU and particularly those related to the economic reforms and the fight against corruption.

Undoubtedly, the spirit of positive valorization is also immanent in global centers of power as the impression is that the 25th anniversary of the Dayton agreement had motivated them to comment on the Dayton agreement and its effects much more frequently, and much more clearly, than they did over the past ten years or so.

First of all, the undivided opinion is that the Dayton agreement deserves the credit for ending the war and establishment of peace. Such an assessment could have been heard, for example, from Matthew Palmer, US Deputy Assistant Secretary of State and Special Representative for the Western Balkans.<sup>6</sup> Later, Jens Stoltenberg, NATO Secretary General<sup>7</sup> voiced the same stance as well as the High Representative and

4 <https://www.klix.ba/vijesti/bih/procitajte-zajednicku-izjavu-predsjednistva-bih-o-25-godisnjici-dejtona/201119132>

5 Members of the BiH Presidency talked via video link with Philip Reeker, Acting Assistant Secretary of State for European and Eurasian Affairs, US Ambassador to BiH Eric Nelson, Maureen Cormack, Principal Deputy Assistant Secretary of State and former US Ambassador to BiH, Matt Palmer, Deputy Assistant Secretary of State, and Stephen Biegun, US Deputy Secretary of State.

6 Palmer said in an interview with the Voice of America that the Dayton peace agreement was “successful in achieving its primary objective, which was to bring an end to the war, an end to the violence, an end to the suffering.” (<https://ba.voanews.com/a/matthew-palmer-daytonski-sporazm-bih/5668931.html>).

7 On this occasion, he emphasized, *inter alia*, that 25 years ago “the Dayton Peace Agreement brought an end to nearly four years of brutal war in Bosnia-Herzegovina”, but also added that “the presence of NATO troops played a central role in bringing the warring parties to the negotiating table.” (<https://vijesti.ba/clanak/515506/stoltenberg-o-godisnjici-dejtona-nato-ostaje-uz-bih>).

the Board of Principals of leading international organizations, when they congratulated BiH and its citizens on the 25th anniversary of the Dayton agreement<sup>8</sup>. Finally, it is worth noting that Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy, had presented an identical opinion prior to his visit to Bosnia and Herzegovina. In a text drafted on that occasion for the BiH media, Borrell underlined, *inter alia*, that the Dayton agreement had ended the “bloodiest war in Europe after World War II.”<sup>9</sup>

Naturally, all other positive effects generated by the Dayton agreement over the last quarter of the century were also mentioned. However, the differences between the stances of different centers of global power were also noticeable.

For example, the High Representative’s position is that thanks to the Dayton agreement in the first post-war decade, hundreds of thousands of BiH citizens were able to return to their homes. Also the Convertible Mark was successfully introduced, along with biometric passports and ID cards, common license plates, border police, the flag and the anthem, the indirect taxation system, while the police reform and the judicial reform had been initiated, etc. And most importantly, the incentive for positive changes throughout the entire postwar period came not from the political caste, but citizens themselves.<sup>10</sup>

In his statement issued on the occasion of the 25th anniversary, NATO Secretary General focused on the positive effects of the Dayton agreement - it “covers” the establishment of the Armed Forces of BiH. As he underscored, at the end of the war there were more than 400,000 troops and today there is “a single professional army”, of around 10,000 soldiers “under a unified chain of command.”<sup>11</sup>

Finally, the first person of the EU for foreign affairs and security policy “rounded up” the story about the positive effects of the Dayton agreement. He underlined that, regardless of everything, “it is evident that what unites the people of Bosnia and Herzegovina is far stronger than

8 It was stipulated that the agreement had “successfully ended the war and established a framework for reconstruction of the country”. (<http://ba.n1info.com/Vijesti/a488532/Ambasadori-zemalja-PIC-a-Nakon-Daytona-doslo-je-do-pozitivne-transformacije.html>)

9 <https://www.klix.ba/vijesti/bih/borell-postignut-je-napredak-u-izgradnji-demokratske-bih-ali-jos-nije-kraj-puta/201120087>

10 “The families of those who were killed or went missing in the war came together from every community for a common cause, to ensure that their loved ones are remembered with dignity and with respect. The families of those who have suffered because of corruption and inefficiency have come together in citizens’ initiatives to demand accountability,” Inzko explained. (<https://www.klix.ba/vijesti/bih/inzko-dejtonski-sporazum-je-odrzao-mir-ali-gradjani-u-bih-zele-dostojanstven-zivot/201121044>)

11 <https://vijesti.ba/clanak/515506/stoltenberg-o-godisnjici-dejtona-nato-ostaje-uz-bih>

what divides them” and that Bosnia and Herzegovina has “traditionally been united in diversity.” “The war brutally disrupted that diversity but did not destroy it,” he added.<sup>12</sup>

However, from the Russian perspective, the most important achievement of the Dayton agreement is the fact that it had “established peace and security in BiH and the wider region”, and, subsequently, “the foundations were laid for stable political, economic and social development of BiH as a sovereign and independent country”. Agreement had “defined the modalities of internal organization of the country, the constitutional status of the two entities, and the separation of powers between different levels of government. It also guaranteed the equality of the three constituent peoples and established efficient mechanisms for implementation of their rights, including the mechanism for protection of vital national interests.” The Russian stance is that on the basis of everything listed, the agreement has “reaffirmed sustainability and functionality of administrative organization of BiH, and ensured the balance of interests of all and every one” – a testimony of which is the 25-year-long experience.<sup>13</sup>

## **INSUFFICIENCIES OF THE DAYTON AGREEMENT IDENTIFIED OVERTHE PAST 25 YEARS**

### ***WARNINGS BY CENTERS OF GLOBAL POWER***

The world is unanimous in its belief that the Dayton agreement is “not the end of the road.” On the contrary, in the words of the High Representative of the European Union for Foreign Affairs and Security Policy, “a lot of hard work remains to ensure that all citizens of Bosnia and Herzegovina can look confidently to a more prosperous future, based on a clear political perspective: EU integration.”<sup>14</sup>

In other words, in addition to all the positive things that are a result of the Dayton agreement, various addresses and institutions- global, regional, local, political, etc.- also warn of all the things that have not been achieved after the signing of the agreement- but should have been achieved to the benefit of BiH and its citizens.

12 <https://www.klix.ba/vijesti/bih/borell-postignut-je-napredak-u-izgradnji-demokratske-bih-ali-jos-nije-kraj-puta/201120087>

13 <https://www.nezavisne.com/novosti/bih/Ivancov-Dejton-otvorio-put-za-dugorocna-rjesenja/632796>

14 <https://www.klix.ba/vijesti/bih/borell-postignut-je-napredak-u-izgradnji-demokratske-bih-ali-jos-nije-kraj-puta/201120087>.

For instance in the words of Christian Schwarz-Schilling, former High Representative in BiH “the Dayton Peace Agreement has turned Bosnia and Herzegovina into a country that is impossible to govern(...) A very complicated state structure, with several levels of government (...) In practice, however, Bosnia is stuck on a dead-end road. The local ownership policy doesn’t work and the international community is not taking the necessary steps!”<sup>15</sup>

It was also accentuated that the Dayton agreement should not be understood as a “holy script.” Because, as on the occasion of the 25th anniversary, the High Representative paraphrased one of his predecessors and said that “the peace is not the end,” it is just “a starting point.” “The Dayton agreement is the floor, not the ceiling... It is the foundation for the country we are working to build and upgrade together,” he emphasized. The High Representative also noted that for all these years “the people of Bosnia and Herzegovina have demanded – and continue to demand – the right to live in a society that respects all citizens, that provides schools and good hospitals and public amenities, and offers decent jobs and economic opportunities.” However, as he stressed, in this respect “we are moving much more slowly than citizens have a right to expect.” In fact, “the pace of progress has slowed almost to a halt, and people – especially young people – are leaving Bosnia and Herzegovina and moving to economically more stable countries.”<sup>16</sup>

Bill Clinton, the US President at the time of the signing of the Dayton Agreement, also warned that there is still a lot of work to be done on development of a more stable, prosperous and peaceful future of BiH. In his address on the occasion of the marking of the 25th anniversary of the signing of the Dayton Agreement, he underlined that “we are all aware of the deep internal tensions, which are still present (...) In the past decade we saw a steady return of hardline nationalism, disrespect for the rule of law and dangerous rhetoric among politicians that re-inflames old tensions for the purposes of scoring short-term political points. We know that too often integral parts of the federal system become an excuse for not doing anything in many areas.”<sup>17</sup>

On the same occasion, US diplomat Matthew Palmer made a similar

15 <http://ba.n1info.com/Vijesti/a494808/Svi-naknadno-znamo-sta-je-trebalo-uraditi-ali-nesto-se-mora-poduzeti-sada.html>

16 <https://www.klix.ba/vijesti/bih/inzko-dejtonski-sporazum-je-odrazio-mir-ali-gradjani-u-bih-zele-dostojanstven-zivot/201121044>

17 <http://ba.n1info.com/Vijesti/a494820/Clinton-Bosna-i-Hercegovina-ima-mnogo-prijatelja-sirom-svijeta-posebno-u-SAD.html>

point. He underlined that “the vision of Bosnia-Herzegovina integrated completely into the European family of nations has not yet been fulfilled.” He added that fulfillment of such a vision requires implementation of the necessary reforms and establishment of a system that is “more functional” and in which “those who are in positions of power and responsibility will be held to account” for the functioning of the system. To simplify, “the BiH that will qualify for membership in the EU will be a different BiH.” The one that can “create peace, prosperity and stability,” in which “there will be a rule of law and an opportunity to build a normal life” – and the one in which the young people will want to stay.<sup>18</sup>

However, nobody will deliver such a state of prosperity and stability to BiH citizens. The PIC members also reminded BiH citizens that such a state is not possible without “a greater commitment by BiH officials.” “This commitment should also include reconciliation amongst all peoples, building a mature democratic and functional country underpinned by the rule of law and respect for human rights” - and a list of other things.<sup>19</sup> This was also reflected in the opinion of the European Commission (EC) on the application of BiH for membership in the EU from May 2019. Specifically, the EC did not recommend award of the candidate status, but reiterated the 14 priorities related to the rule of law, fight against corruption, protection of fundamental civil and human rights, etc.- as the areas in which progress needs to be made before any discussion on next steps becomes possible.

Frankly, the world continuously conveys messages about its readiness to assist. This was also repeated on the occasion of the 25th anniversary of the Dayton Agreement. *Bill Clinton*, the Steering Board of the Peace Implementation Council (PIC)<sup>20</sup> and Philip Reeker, US Assistant Secretary of State for European and Eurasian Affairs<sup>21</sup> did that in the most direct way. However, the most concrete was the High Represen-

18 <https://ba.voanews.com/a/matthew-palmer-daytonski-sporazm-bih/5668931.html>

19 <http://ba.n1info.com/Vijesti/a488532/Ambasadori-zemalja-PIC-a-Nakon-Daytona-doslo-je-do-pozitivne-transformacije.html>

20 The statement issued by the PIC Steering Board reads, *inter alia*, “the international community remains ready to support and assist Bosnia and Herzegovina” in reconciliation “amongst all peoples, building a mature democratic and functional country underpinned by the rule of law and respect for human rights,” as a goal that should be achieved. (<http://ba.n1info.com/Vijesti/a488532/Ambasadori-zemalja-PIC-a-Nakon-Daytona-doslo-je-do-pozitivne-transformacije.html>)

21 In the talks with members of the BiH Presidency, Philip Reeker deemed necessary to repeat that the US shall remain a strong and committed partner to BiH in the implementation of reforms and fulfillment of conditions for progress in the area of Euro-Atlantic integration. (<https://www.klix.ba/vijesti/bih/predsjednistvo-razgovaralo-sa-zvanicnicima-sad-a-amerika-je-kljucna-za-stabilnost-bih/201120114>).

tative, who, if nothing else, brought a glimpse of hope with his message that “the International Community is working – and will continue to work – to end impunity for those in Bosnia and Herzegovina who are violent or powerful or both, and to strengthen the institutions that protect citizens.”<sup>22</sup>

Despite that, the persistent repetition by the international community of the message that the future of BiH primarily lays in the hands of its citizens, is an indicator that the messages on the readiness to help BiH should not be understood literally. This could have been clearly read from the statements by Bill Clinton<sup>23</sup>, NATO Secretary General<sup>24</sup>, as well as other European and US officials made on the occasion of the 25th anniversary of the Dayton Agreement. It is most visible and clearly notable from the messages of the High Representative of the European Union for Foreign Affairs and Security Policy. Specifically, the statements that preceded his visit to Sarajevo and the ones made during his meeting at the BiH Presidency. Namely, in the text prepared in the eve of his visit to BiH, Borrell stated that it was evident “what unites the people of Bosnia and Herzegovina is far stronger than what divides them” – and that therefore “because of the past, but most of all, for the future of this beautiful country and its people, using inflammatory rhetoric, historical revisionism and glorifying war criminals is unacceptable.”<sup>25</sup> After the meeting in the BiH Presidency, Borrell underlined that while he had no intention to give lessons to anyone or on anything, it would be encouraging for all Bosnians and Herzegovinians if the 25th anniversary would be used as a moment for reflection on what had happened in the past- not because of the history, which is important, but because of the necessity to turn to the future – as well as “to commemorate the victims, and to pay tribute to the many who have worked and continue to work hard on reconciliation.”<sup>26</sup>

22 <https://www.klix.ba/vijesti/bih/inzko-dejtonski-sporazum-je-odrazio-mir-ali-gradjani-u-bih-zele-dostojanstven-zivot/201121044>

23 “Therefore, on the occasion of this anniversary, remember that BiH has many friends around the world, that your country has many friends particularly in the US, and that we all strongly cheer for you to resolve the challenges and seize the opportunities of today. We want you to succeed and will stand by you as long as you continue to work hard to leave the conflicts from the past behind, with an increasingly strong commitment to inclusion, cooperation and decision making, individual and minority rights, and the rule of law.” (<http://ba.n1info.com/Vijesti/a494820/Clinton-Bosna-i-Hercegovina-ima-mnogo-prijateljia-sirom-svijeta-posebno-u-SAD.html>)

24 In the statement issued on the occasion of the 25th anniversary of the Dayton Peace Agreement, he emphasized, *inter alia*, the following: “The future is in your own hands. With unity, determination and compromise, great things can be achieved.” (<https://vijesti.ba/clanak/515506/stoltenberg-o-godisnjici-dejtona-nato-ostaje-uz-bih>)

25 <https://www.klix.ba/vijesti/bih/borell-postignut-je-napredak-u-izgradnji-demokratske-bih-ali-jos-nije-kraj-puta/201120087>.

26 “Joint commemoration of the victims would be essential” for the future of BiH,” said *Borrell* (<https://www.klix.ba/vijesti/bih/josep-borrell-u-sarajevu-nemam-lekcije-i-primjedbe-sve-je-na-domacim-vlastima/201121021>)



## CRITICISMS OF THE DAYTON AGREEMENT COMING FROM BIH AND THE REGION

The Dayton peace agreement is atypical in many aspects. It is, primarily, the first international agreement in history that incorporates the future constitutional organization of a country. BiH Constitution is given in one of the annexes of the General Framework Agreement for Peace in BiH.

In addition, the ethnic groups, which had fought against each other during the armed conflict, have radically changed their relation to the agreement over time. For example, the ones for whom a quarter of the century ago the signed document was equal to national betrayal are its biggest advocates today. They now see the genuine Dayton agreement, without any subsequent modifications and interventions, as the only option for the survival of BiH as a state.<sup>27</sup> On the other hand, those who at the time when it was signed celebrated it as an act of the victory of the idea of BiH, now see the BiH Constitution and the Agreement on refugees and displaced persons as the root cause and the “culprit” for all the postwar anomalies, including all the attacks to which BiH is nowadays exposed from the inside. And of course, there is also the relation to the Dayton peace agreement of the third party – the one that had reservations towards the agreement at the time when it was created, and which nowadays see it as the reason for the inequality of the peoples in BiH. Krešimir Zubak, then President of the Federation of BiH, which was established by the Washington Agreement on 18 March 1994, refused to sign the peace agreement in Dayton. On several occasions after the war Zubak explained his reasons for doing so. He stipulated that the most fundamental provision of the Washington Agreement, for which the US gave promises and guaranteed to ensure its practical implementation, was “the provision according to which the territory of the Federation of BiH includes the areas of BiH in which Croats and Bosniaks, as constituent peoples, form a majority according to the 1991 census.” In other words, this means that Bosanska Posavina was to remain a part of the Federation of BiH. According to Zubak “the Dayton peace agreement was a drastic violation of the Washington agreement,” which the US, contrary to the promise it had made at the signing of the Agreement, did not protect in Dayton. Hence, he could not accept the Dayton agreement because of the po-

27 Such stances can be heard on almost daily basis from the SNSD leader and the current Chair of the BiH Presidency, and he is just one from a long list of BiH Serbs from Republic of Srpska that support them. As a reminder, 21 November is marked as a national holiday in Republic of Srpska.

sition that he held at the time, as acceptance would constitute a violation of the FBiH Constitution, as well as because he believed that it was not a humane thing to do.<sup>28</sup>

Today, the relations towards the Dayton peace agreement within BiH reflect the whole complexity of BiH's ethnic and political clashes -those occurring within Bosnia and Herzegovina as well as those "spilling over" to BiH from its western and eastern neighbors.

As for the BiH actors, they often accentuate several fundamental flaws of the Dayton agreement. One, it was a mistake to allow BiH to come out of the war in a way that includes "existence of two militaries." They assert that an ever worse mistake was "the adoption of the constitution in Dayton". "The Dayton agreement is a peace agreement (...) a cease fire agreement, and should have remained as such. The goal was not to allow continuation of the conflict. This implies that the functioning and the structure of the state should have been addressed over the following years that is in two or three years, and regulated in a way in which it is done in some other countries in the world. Finally, a mistake was made also with respect to the return of refugees and persons exiled during the war. Namely, a strong stance should have been taken that all must return to their prewar places of residence by a certain date, just as had been done back in 1945, when it was agreed that all should return to their prewar homes by 1 May 1946."<sup>29</sup>

With the exception of such predominantly analytical approaches, the differences in the stances of political actors in BiH are more than obvious. Specifically, some refer to the spirit of the Dayton agreement, primarily the spirit of Annex 4, and advocate reforms which, in the conditions of the existing social and political ambience, objectively further destruct BiH- both as a state and a society. It is worth reminding, for example, the request for return of all the competencies that have been transferred after the signing of the Dayton agreement by decisions of national institutions, from the entities to the state level back to the entities- or, the requests coming from the same address to have the right to self-determination, including secession, included in the fundamental constitutional documents.

It is also worth reminding the requests for a constitutional and le-

28 <http://balkans.aljazeera.net/vijesti/zasto-nisam-potpisao-daytonski-sporazum>

29 <http://ba.n1info.com/Vijesti/a489301/Somun-za-NI-Ako-Komsic-dodje-u-Zagreb-hoce-li-ga-uhapsiti.html>

gal reform which, on the basis of the requirement of ethnic equality, would materialize the ambitions regarding organization of the state as a union of three ethnic entities.<sup>30</sup> However, in this context, it also needs to be noted that such requests end at the boundary line of one entity- the Federation of BiH. At the same time, there is no ambition to initiate a debate on a constitutional reform that would guarantee to all the collectives' equal rights on the whole territory of the state- as it is prescribed by the constitution.

Others advocate a constitutional and legal reform which, in their opinion, would create space for the European system of values and enable the state of BiH to join the European civilization circle. However, within this political group, there are two mutually incompatible orientations. One is truly European, and in line with European civic values, as well as BiH specificities. It strives to find and offer a balance between the civic and ethnic aspect as the BiH *modus vivendi*. The other one is *ethno-nationalist*, but is partly supported also by political philosophies that nominate themselves as civic and even of political left wing orientation -whereas it is less relevant whether the support is wittingly or unwittingly provided.<sup>31</sup> The latter is trying to use the European orientation as a cover for imposing the interest of one specific ethnic group as the general BiH interest.

The BiH neighborhood has direct effect on internal political developments in the country. Truth be told, the first impression may be that there are significant differences in the pressures coming from the East and the West of BiH. As a rule, in the public discourse, the Serbian leadership repeats that it respects the territorial integrity of BiH and supports its organization agreed in Dayton. However, in its daily politics, it is rather obvious that the references about the respect of the Dayton structure are an instrument in the pursuit of a long term goal,

30 At the round table of the Security Council, the HDZ leader resolutely denied such ambitions. However, his in-the-form-of-an-ultimatum insisting on the reform of the election law, which would indirectly introduce the three-entity division of the country, brings into question his distancing from the idea of a third entity.

31 Everything became increasingly evident after the 2018 elections and recognizable in the rare comments by the leader of the Democratic Front and member of the BiH Presidency from the Croat people in relation to the /Croat/ ethnic issue, particularly the aspect of constituent-character as a constitutional category. It is worth reminding the reactions to the meeting between the member of the BiH Presidency from the Serb people and the President of the Republic of Croatia, when he reflected on the constituent character and stated: "As for respect and disrespect of the famous constituent character, I can say that this is a Soviet concept of solution of the ethnic (national) issue, which has been completely dismissed in the EU as retrograde. Hence, they are fighting for something that has been overcome long time ago. In the EU all states are civic states and do not recognize any constituent-character. Bosnia and Herzegovina aspires to join the EU, that is to abolish this constituent-character /as a concept/, and I support that, despite the resistance of Zagreb." (<https://www.oslobodjenje.ba/vijesti/bih/komsic-bih-tezi-ka-eu-koja-ne-poznaje-nikakvu-konstitutivnost-ni-milavicevu-ni-dodikovu-590457>)

which is defined in the instructions from the SANU (Serbian Academy of Sciences and Art) Memorandum 2, related to the destruction of BiH and annexation of at least half its territory to some future enlarged Serb state. This has been a constant in the Serbian policy over the last seven to eight years at least, since the arrival of Aleksandar Vučić, President of the Republic of Serbia to the helm of the Serbia government considered as the position of the number one man in Serbia.

However, the relation of the Republic of Croatia towards BiH is also becoming increasingly aggressive. It is not a relation that reflects the one from the first half of the nineties of the XX century, according to which BiH has no historical foundation and should be divided into interest areas of Croatia and Serbia. Nevertheless, it is a relation in which under the cloak of concern for BiH Croats, Croatia is less and less hiding its ambitions to directly interfere in internal relations in BiH. A testimony of that is the topical session of the National Security Council of the Republic of Croatia of 23 November 2020, at which, according to media reports, a consensus was achieved on the issue of strengthening “the position of Croats as a constituent people in BiH.” On that occasion the president of the Croatian government elaborated that it was evident that the position of Croats in BiH “in specific situations is different from the letter and spirit of the Dayton-Paris peace agreement”. It was also underscored that a point of special concern is the election of a member of the BiH Presidency “who should be a legitimate representative of the Croat people” while in real life, according to the practice established in 2006, that has not been the case.

In the context of this article, there is no intent to elaborate in detail the constitutional and legal provisions, including those related to election of members of the BiH Presidency. However, it is not possible to avoid the assessment that underlined conclusion of the National Security Council, let alone the messages conveyed by the head of the Croatian diplomacy in the eve of the session of the Council and the increasingly frequent messages of the President of the Republic of Croatia,<sup>32</sup> are not at all in line with the constitutional and legal solution adopted in BiH with the support of the HDZ votes as well. Furthermore, they constitute an attempt by a European Union member country to directly

32 On this occasion, Grljić Radman stated for TV Herzeg-Bosnia that Komšić “cannot be received /in Zagreb/ as a representative of the Croats in BiH, because he is not,” bearing in mind that “he had not been elected by the votes of the Croats... the will of the Croat people in BiH”, “he pursues an ‘anti-Croat’ policy” and was against the construction of the Pelješac bridge”, and, finally, has acted “against the vital interests of the Republic of Croatia”. (<https://www.jutarnji.hr/vijesti/hrvatska/grlic-radman-komsic-nije-izabran-voljom-hrvatskog-naroda-u-bih-nego-probosnjackim-strankama-15032831>).

interfere in internal affairs of another state. Not to mention that this European Union member country should assist that respective state, in this specific case Bosnia and Herzegovina, in the promotion of European standards.

### **SOLUTION TO THE BIH GORDIAN KNOT**

The above question will yield several different answers in BiH. Of course, the answers will correspond to the respective approaches of the predominant political philosophies in BiH to the issue. Specifically, approaches of those who offer solutions in the name of their respective ethnic interests and those who offer solutions in the name of the interests of BiH citizens. But, they all have one “detail” in common - the requirement for modification of the BiH Constituent and relevant legislation, primarily the BiH Election Law. Nevertheless, the solutions on which different parties insist are diametrically opposed.

The exponents of ethno-national concepts, primarily Croat and Serb, see a solution in the reform of the Constitution and the Election Law. In their opinion, it should guarantee equality of the three peoples and prevent majorization. At the same time, it is possible to identify a lot of overlapping between the two major concepts. However they do not speak about the details on which, under the assumption that they are truly acting in the interest of the two respective peoples, the Croats and the Serbs, their mutually contradicting interests-as well as public stances- would be manifested.

For example, not once did they express in their public statements any disagreement with respect to the constitutional determinant of equality of the three peoples on the whole territory of BiH, because such a determinant would imply engagement in a debate about the territory of Republic of Srpska, as a part of BiH in which equality of non-Serbs is not ensured – despite the modifications of the Constitution of Republic of Srpska according to which in this entity members of all the three BiH peoples are constituent and have equal rights. On the contrary, all requests for equality of Croats end at the boundary line of the entity of the Federation of BiH and in no way affect the territory of Republic of Srpska.

In fact, even the explicit statement by the Alliance of Independent Social Democrats (SNSD) leader and member of the BiH Presidency

did not trigger any debate in this respect. He supports territorial re-composition of BiH and constitutional and legislative reforms that will provide for constituent character and equality of Croats, but in no way can Republic of Srpska be a subject of political negotiations, let alone of an agreement on the reform of the BiH Constitution. At the same time, Serb political circles, personified in the SNSD leader, assign attributes of a state to this part of BiH, while they treat BiH as a state union and depriving it of such attributes/identity.<sup>33</sup>

The impression is that the cries from the Croat ranks in Bosnia and Herzegovina do not resonate with those who claim to have the exclusive right to act on behalf of the Croats nor do they instigate them to request equality for the Croats on the whole territory of the state. Anyway, every here and there, the Bishops' Conference of Bosnia and Herzegovina issues a statement, just as it did on the occasion of the 25th anniversary of the Dayton peace agreement, when it stated that the Agreement "had stopped a multi-year war, but did not create a stable and just peace," and in real life did not provide for "equality of members of all three peoples and ethnic minorities on the whole territory of the state, or guaranteed sustainable return of many exiled persons and refugees." The statement also underlined that over the past years, it was "used more as a justification and alibi for preservation and legalization of various previous and new injustices, and much less for building a true and enduring peace, based on justice and equal rights for all," as a result of what "almost the entire Catholic population in one half of the country- the entity of Republic of Srpska-has been eradicated," etc.

Finally, such a position of the HDZ BiH gives no reason to the authorities of the Republic of Croatia to take a critical and explicitly negative stance on it. On the contrary, according to publicly available statements, the impression is that they support such a relation and policy of the HDZ BiH, and that a part of the Croat population in BiH, specifically the one that lived before the war or still lives on the territory of today's Republic of Srpska, has definitely been sacrificed- by those

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33 A testimony of this are the threats frequently made by Republic of Srpska that if it is deprived of the position of a state within the state, it will initiate the process of its session from BiH and annexation to "the mother land of Serbia." Anyway, the SNSD leader and Chair of the BiH Presidency had voiced the same threat at the round table organized by the Security Council - before the eyes of the entire world. Anyway, it is worth reminding also his statements that Inzko "has absolutely nothing to do with state property in BiH and is trying to stop the construction of hydropower plants and airports", that no Inzko's decision will be "officially published or respected in the RS", and that if Inzko continues with implementation of such and similar decisions he shall consider the option of "initiating the integration of the RS into its motherland of Serbia." (<https://www.oslobodjenje.ba/vijesti/bih/dodik-brutalno-izvrjedao-inzka-zaustavite-tog-monstruma-sveti-se-srbima-i-hrvatima-unistit-ce-bih-607318>)

who claim to act on their behalf in BiH and those from the neighboring country who claim to care for their right to live in their prewar homes in this part of BiH.

The modification of the Constitution and different laws, primarily the BiH Election Law, is also advocated by those who do that from the position of interests of all BiH citizens. But, as it has already been emphasized, that approach is also not unison. On the contrary, some advocate it with the aim of truly ensuring the European future of BiH as a civic state and society, as well as the right to preservation of collective identity, while others exploit the calls for a civic state as an instrument in pursuit of partial ethnic interests of the most numerous people.

### **DAYTON AGREEMENT- THE ONLY CULPRIT FOR THE CURRENT SITUATION IN BIH AS A STATE AND SOCIETY**

First of all, there are more than few stances that imply that the Dayton agreement is no impediment to a much faster progress of BiH. In fact, according to these stances, many opportunities that the Dayton agreement had created have not been used, although 25 years have passed since it was signed. However, while any serious analysis would counter such stances, the truth is that is rather difficult not to agree with the thesis that the Dayton agreement is “responsible” for many negative trends recorded in the post-war BiH because of the solutions incorporated in it. Particularly those from Annex IV, BiH Constitution, as well as some others. The question that gets imposed is – Why? In other words, what brought about the solutions defined by the Dayton agreement, and particularly those in the BiH Constitution?

Bearing in mind that the text of the Dayton agreement was drafted within a period of some twenty days, which probably led to an array of ambiguities and partial solutions that those who do not support an integrated and European BiH have used in the years and decades that followed, a part of the reason probably lays in the fact that the primary goal of the US mediators involved in the development of the overall Dayton package was to stop the war and mutual killings. However, judging by subsequent statements of the US chief negotiator Richard Holbrooke – but also noting that he had headed the Dayton negotiations together with Warren Christopher, Secretary of State in Clinton’s administration – the understanding was that the adopted solutions should literary be perceived as temporary. In other words, the

understanding was that when the guns become silenced and passions ebbed, these solutions will be reconsidered so that new, more optimal and longer-term solutions for BiH as a European state and society could be adopted. In a way, that is what on the occasion of the 25th anniversary of the Dayton agreement, in an interview with the Voice of America, the US Ambassador in BiH confirmed when he spoke about the requirement to reform the BiH Constitution.<sup>34</sup>

Nevertheless, this was actually the cause of many insufficiencies of the Dayton peace agreement as a whole. For example, the agreement does not include a single sentence dedicated to the causes and the character of war. It does not include a single word on “who is the aggressor and who is the victim and it does not recognize any side as being the winner or the loser” (Markešić, 2005). On the contrary, it turned out that, literally, all parties are winners- which significantly reduced the possibility to define principled solutions.

On the other side, Annex 4, BiH Constitution, starts with the “recognition of the factual situation and positions acquired by the war and war conquests”, the most blatant testimony of which is the fact that the “inter-entity boundary line practically goes along the line of military confrontation at the time of establishment of cease fire” (Trnka, 2009). Finally, the agreement also did not establish efficient mechanisms for its implementation, nor prescribed sanctions for those who do not comply with it. In fact, this created the possibility for selective application of the agreement. Specifically, the possibility to apply the parts of the Agreement that suit the respective belligerent parties and obstruct implementation of those that do not, such as the obligations “related to the return of exiled persons and cooperation with the war crimes tribunal” (Trnka, 2009).

Therefore, all the above had crucial impact on and influenced ambiguities in the BiH Constitution, as an integral part of the overall Dayton package. Specifically, the Constitution was constructed on the premise that the ethnic (national) principle, which was even territorialized, has priority over the individual/ civic rights principle.<sup>35</sup> All the viola-

34 According to Eric Nelson, the BiH Constitution can be considered as an initial constitution, because any constitution should be a living document that gets amended, whereas the process of adoption of amendments needs to be defined. Sooner or later any country realizes that it needs reforms, and it is obvious that the BiH constitution needs reforms. The Dayton peace agreement and the BiH Constitution need to be reformed. (<https://ba.voanews.com/a/ambasador-eric-nelson-glas-amerike-ustav-bih-dayton-treba-reformu-a-gradjani-da-krenu-naprijed/5546380.html>).

35 “Although the preamble of the BiH Constitution recognizes that in BiH there are not just ‘the Bosniaks, Croats and Serbs as the constituent peoples’ but also Others (ethnic minorities) and citizens, in the debates currently taking



tions of civic and human rights punishable by the Constitution stem from that fact, starting from the right to elect and be elected to all other rights,<sup>36</sup> as indicated in a number of judgements of the European Human Rights Court in Strasbourg. Primarily the judgments in the cases initiated by persons who are not affiliated with any predominant ethnic group, that is who are members of ethnic minorities or ethnically unaffiliated<sup>37</sup>, but also the judgments that confirm discrimination of members of the three predominant ethnicities- Croats, Serbs and Bosniaks- depending on the part of BiH in which they live.<sup>38</sup>

Despite everything, from today's perspective, the situation in which BiH is today has been caused more by the international centers of power and US mediators (who have recognized the nationalists (Serb, Croat and Bosniak) responsible for the war and the atrocities committed during the war- as the primary partners for the construction of the post-war BiH society and state), than by the solutions agreed in Dayton and incorporated in the General Framework Agreement for Peace in BiH and its eleven annexes. In fact, in such a way they gave them a "green light" to continue to pursue their unachieved war goals in conditions of peace, and now, frankly, with different means.

This particular fact was, much more than the solutions agreed in Dayton, the cause of all the postwar reeling of BiH, the disintegration processes that burden it and the lagging behind other countries in the region and Europe. This fact is the reason behind the absence of political will, which US diplomat *Palmer* mentioned in his statement on the occasion of the 25<sup>th</sup> anniversary of the Dayton peace agreement, over

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place in BiH (...) it is increasingly underscored that the daily practice shows that there are only three categories of people (Bosniaks, Croats and Serbs), whereas the Others (ethnic minorities) and the citizens do not exist, as well as that everything is 'ethnically colored and defined' to such an extent that a person can develop its identity only as a Bosniak, Croat or Serb." (Markešić, 2005)

- 36 The constitutional violation of fundamental civil and human rights is not in the focus of this analysis. However, we believe that nevertheless attention needs to be drawn to this constitutional deficit, as it deprives BiH citizens of the right to elect and be elected. For example, Croats and Bosniaks from Republic of Srpska, Serbs from the Federation of BiH, and members of ethnic minorities or the ethnically unaffiliated from the entire state are not able to be elected as members of the BiH Presidency or the House of Peoples of the BiH Parliamentary Assembly.
- 37 A testimony of such discrimination are the judgments in the *Sejdić-Finci v. BiH* case of 22 December 2009 ([http://www.mhrr.gov.ba/ured\\_zastupnika/novosti/default.aspx?id=1008&langTag=bs-BA](http://www.mhrr.gov.ba/ured_zastupnika/novosti/default.aspx?id=1008&langTag=bs-BA)) and *Zornić v. BiH* of 15 July 2014 (<http://www.mhrr.gov.ba/PDF/UredPDF/default.aspx?id=4745&langTag=bs-BA>).
- 38 There are two judgments of the European Human Rights Court in Strasbourg related to discrimination of such a group of BiH citizens. Specifically, the judgment in the *Pilav v. BiH* case of 9 June 2016, in which the Court ruled against BiH in the case initiated by citizen Pilav in which he "complained that as a politician residing in Republic of Srpska, who declares himself a Bosniak, he was not able to run at the elections for the BiH Presidency because of the limitations defined by the BiH Constitution." (<http://www.mhrr.gov.ba/PDF/UredPDF/default.aspx?id=6680&langTag=bs-BA>) and the judgment in the *Pudarić v. BiH* case of 8 December 2020, rendered in the lawsuit initiated by Svetozar Pudarić "because as a Serb from the Federation of BiH he was not able to run at the elections for the BiH Presidency, which the court has qualified as discrimination." (<http://ba.1info.com/Vijesti/a493420/Evropski-sud-za-ljudska-prava-utvrdio-BiH-je-diskriminisala-Svetozara-Pudarica.html>).

all the postwar years and particularly in the last fifteen or so, in which international centers of power “removed” BiH from the focus of their main attention.

History offers many examples from different parts of the world showing that the factor of political will has crucial significance- both in a positive context, as well as in the context of impediment of processes for which the legal framework is already in place. The experience of the former Soviet Union, which in 1936 adopted one of the most democratic constitutions in the world at the time, can serve as an example. However, such a legal framework did not prevent establishment of gulags, government agencies for management of the Soviet system of forced labor camps and sufferings of the people who had been convicted through simplified procedures in these camps. There is also a plethora of examples from all over the world of negative effects of a poor legal framework being amortized by a high level of political will and readiness to ensure quality life to the citizens of respective countries.

In other words, it is rather questionable how much the problematic legal framework, primarily the BiH Constitution, should be “blamed” for the negative processes that burden BiH. Truth be told, a poor legal framework can be a hindrance, just as a good legal framework can “give tailwind” to social processes with a positive prefix. However, even an ideal legal framework does not have the power to relativize the factor of political will – just like the worst possible legal framework cannot thwart development in conditions in which there is the political will that is stimulating for social development. After all, BiH has had the same legal framework in the first ten years after the signing of the Dayton peace agreement. However, at that time, regardless of the extent to which the Dayton constitution was treated as “a straitjacket”, BiH recorded major progress in its development.<sup>39</sup>

Hence, what happened in the meantime? Is the problem only or exclusively as is often asserted, in the legal framework which generates disintegrating energy and energy of conflict, or should the factor of

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39 In his statement on the occasion of the 25th anniversary of the Dayton peace agreement, the High Representative in BiH, also said “when I first came here as the Ambassador, 1995-1996, the country border police didn’t exist, there was no common flag or anthem, and Bosnia’s currency was very weak. Now we have one of the most stable currencies in Europe. And before we had three of everything – three types of license plates, three flags, three anthems. Dayton has changed all that, of course with the good will and a strong international community. I think that those first 10 years with this [Dayton] constitution were extremely successful.”(<https://www.slobodnaevropa.org/a/vanlentin-incko-za-negatore-genocida-nema-mjesta-u-eu/30967170.html>).

absence of political will be also taken in to account? We are pretty inclined to believe that the latter is true. After all, without the political will even the best possible legal framework is not omnipotent. As far as the prevailing political will in BiH today is concerned, there is no doubt that its prefix is extremely questionable. There are many experiences from the post-Dayton period, particularly the last fifteen years, which indicate so. They include, *inter alia*, the extremely unpleasant experience related to the 25th anniversary of the Dayton agreement. Specifically, the one related to the Round Table organized by the Security Council at the request of the Russian Ambassador to the United Nations organization.

The stances that the most prominent politicians and officials voiced about their country are living proof of the lack of political will to present one's own country in a positive light that is to promote it as a safe place and a country worth investing in. Unfortunately, everything was done to present it as if it is unable to survive on its own.<sup>40</sup> If that is what is done before the eyes of the entire world, it would be only logical to assume that their daily actions are programed to impede development of the country and society. Under such conditions, it is rather unlikely that any legal framework- any constitution, including the Dayton one as it is, or evens a constitution that would be perceived as an ideal solution- could be of any assistance.

In other words, the Dayton agreement is the way it is. It could have entailed more specific solutions that could be both better and worse than the existing ones. However, the entire responsibility for the post-war processes in BiH cannot be attributed to it. A testimony of that, *inter alia*, are also the first ten years of the implementation of the Dayton peace agreement. Completely contrary to the thesis about the absolute responsibility of the Dayton peace agreement, the dominant political wills are exclusively responsible for the current situation in BiH. Any ambition to give an impetus to or accelerate the positive processes in BiH should start from there- the dominant political wills. More specif-

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40 The HDZ BiH leader reminded the participants of the Round Table that the Report of the High Representative to the Security Council includes "illegal qualifications of the Croat people as a minority, which is contrary to the Constitution. In the report he did not reflect on the calls of the Bosniak parties for imposition of political Croat representatives. There is also the issue of illegitimate and illegal convocation of the Central Election Commission, and the ignoring of the illegitimacy of the member of the BiH Presidency from the Croat people." (<https://www.klix.ba/vijesti/bih/covic-kritikovao-inzka-njegovi-izvjestaji-su-povrsni-i-ne-prezentiraju-stvarnu-sliku-bih/201124147>). At the same Round Table, the SNSD leader and Chair of the BiH Presidency accused the High Representatives of not agreeing to yield to their requests. He labeled them as monsters and criminals, and accused the international community for putting its trust in them. (<https://www.klix.ba/vijesti/bih/skandalozno-obracanje-dodika-pred-un-om-izvrijedao-inzka-nazvao-ga-monstrumom/201124151>)

ically, it would be difficult to even imagine acceleration of integration processes in BiH without a change in the dominant political paradigm. The existing paradigm should be replaced by a new political paradigm, which would give priority not to the interests of ethnic collectivities, but to the people of BiH and their right to a normal life.

## CONCLUSION

The historical relevance of the Dayton peace agreement is not questionable at all. It ended the war, provided for establishment of peace and the return of hundreds of thousands of people to their homes. It is also unquestionable that the Dayton has been an impetus to many positive changes- such as the establishment of the Armed Forces of BiH, the emergence of awareness that what connects the people of BiH is far stronger than what divides them.

However, at the same time it is more than evident that a lot still needs to be done on the development of a more stable, prosperous and peaceful future for BiH and that many reforms are necessary, as well as the rule of law, which is a prerequisite for building normal life. It is abundantly evident that irrespective of all the readiness of the world to help and assist, that is a job for BiH citizens, because nobody will do it for them.

Truth be told, there is a lot of criticism of the Dayton peace agreement, both by centers of global power, as well as political actors in BiH. However, while the world sends motivating messages, such as that the Dayton agreement was not the end, but the beginning of the road that BiH has to travel to get to the family of European countries- on which it is progressing much slower than an average person would expect, the political actors in BiH point fingers at its provisions and solutions, particularly those in Annex IV, which have been an impediment to many processes over the past 25 years of peace building. Therefore, they request its reform so that the identified impediments could be removed.

While there is a consensus on the requirement to modify the Dayton constitution, the differences in the stances of the main stakeholders on the BiH political scene regarding the modifications are almost irreconcilable. Some propose reforms which, each one in its own way, cannot be a pledge of a more just or prosperous future. Others, however, who

advocate European civilization values, do not have the real political power to impose systemic reforms required for a more successful future. Unfortunately, the statements coming from the BiH neighbors, regardless of whether they are made in the name of European or some other values and interests, are also of no benefit to BiH.

The fundamental question is whether, regardless how much it could be criticized, and the Dayton agreement should be blamed for all the postwar troubles? Or would the situation be different had the agreement, and particularly its Annex IV, been constructed in any different way?

Truth be told, many share such an opinion. They also believe that today the ambience would be entirely different had the Dayton agreement clearly identified the aggressor and the victim, had the Constitution not recognized the factual state and achievements of war conquests, had efficient mechanisms for its implementation been established, had the Constitution not been constructed on the premise of the priority of ethnic over civic – which subsequently led to violations of civil and human rights, etc.

However, despite all the criticism and remarks against the Dayton agreement, and its Annex IV, it is difficult to believe in its omnipotence. This is because the implementation of the Dayton agreement depends on living people and we believe that they are a major part of the post-Dayton problems. Therefore, we are inclined to support the thesis that one of the biggest mistakes of the Dayton agreement is that the ones most responsible for all the atrocities committed during the war were recognized as the partners for construction of a different, European and free-of-nationalism BiH. In such a way, they were given a green light to continue to pursue their war goals in new, peacetime conditions. That is where the causes of all postwar disintegrative processes lay.

Finally, this means that acceleration of integrating processes in BiH cannot take place without a change in the dominant political paradigm in BiH. Specifically, a change by which the existing political paradigm would be replaced by one that will not focus on national collectivities and their interests, but on the interests of people and their right to a life worthy of a human being.

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