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## **GENERAL FRAMEWORK AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA**

### ***A condition for peace and stability in Bosnia and Herzegovina and the region***

#### **1. INTRODUCTION**

##### **1.1 Historical context of the General Framework Agreement for Peace in Bosnia and Herzegovina**

The General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: the Dayton Agreement), initialed on November 21, 1995, in Dayton, USA, and signed on December 14, 1995, in Paris, France, ended the war in Bosnia and Herzegovina. Created after the harmonization of the Geneva and New York Principles, the Dayton Agreement is the result of complex negotiations conducted between the parties — the Republic of Srpska and the Federation of Bosnia and Herzegovina — with active mediation by international actors such as the USA, the EU and Russia. The establishment of peace was also enabled thanks to the support of the Republic of Serbia and the Republic of Croatia, both signatories of the Agreement.

##### **1.2 Constitutional and political structure of BiH**

The Dayton Agreement enabled the initiation of a reconciliation and stabilization process in the region through the establishment of a complex constitutional and legal structure of Bosnia and Herzegovina, based on the equality of two highly autonomous entities – Republic of Srpska and the Federation of Bosnia and Herzegovina, as well as the equality of the three constituent peoples - Serbs, Bosniaks and Croats. Republic of Srpska and the Federation of Bosnia and Herzegovina are internationally recognized as state-legal entities with broad competencies, which have both retained and partially transferred their sovereignty to the newly created Bosnia and Herzegovina.

##### **1.3 International legal status of the Agreement**

The Dayton Agreement is a unique legal act that serves both as an international peace treaty and the constitutional basis for the existence of Bosnia and Herzegovina. The Agreement was verified by UN Security Council Resolution 1031, making it binding for all domestic and international institutions and subjects of international law. The Republic of Serbia and the Republic of Croatia, as signatories of the Agreement, have undertaken the obligation to support its implementation and ensure compliance with the agreed provisions.

##### **1.4 Application of the *pacta sunt servanda* principle**

Unilateral amendments or violations of the Agreement (such as actions by the Constitutional Court of Bosnia and Herzegovina and the High Representative) represent a significant breach of the contract (Article 60 of the Vienna Convention). This principle obligates all contracting parties, including Republic of Srpska, the Federation of Bosnia and Herzegovina, Serbia and Croatia to act in accordance with undertaken obligations.

The principle of *pacta sunt servanda* ("agreements must be kept") represents the foundation of international law. According to Article 26 of the Vienna Convention on the Law of Treaties, every valid treaty is binding upon the parties and must be executed in good faith. This includes:

- The prohibition of unilateral modifications without the consent of the contracting parties.
- Respecting the original text of the treaty, including all annexes.
- The obligation of all actors, domestic and international, to act in accordance with the agreed terms.

Violating this principle, such as through unilateral interventions or the imposition of decisions contrary to the Agreement, constitutes a direct breach of international law.

##### **1.5 Status of the Agreement annexes**

All annexes in the Agreement, including Annex IV (the Constitution of Bosnia and Herzegovina) and Annex X (the role of the High Representative), also have the status of an international treaty. The extent of autonomy, rights and competencies of the entities are guaranteed by international treaty, which implies that they cannot be unilaterally altered.

## 2. DAYTON AGREEMENT AS INTERNATIONAL TREATY WITH BINDING FORCE

The Dayton Agreement and all its annexes hold the unique status of an international treaty that is binding for all contracting parties. The agreement was also verified by the UN Security Council with the adoption of Resolution 1031, thereby not only affirming the significance of the Agreement but also proclaiming the international obligation to respect the Dayton Agreement. The contracting parties, Republic of Srpska and the Federation of Bosnia and Herzegovina, retain special rights and obligations regarding the interpretation and implementation of the Agreement. The Republic of Serbia and the Republic of Croatia, as signatories, have also taken on the obligation to ensure its full implementation.

### 2.1 The role of the contracting parties: Republic of Srpska and Federation of BiH

As parties that were established earlier (Republic of Srpska before the conflict - January 9, 1992; Federation of Bosnia and Herzegovina by the Washington Agreement - March 18, 1994) and negotiated and agreed upon the text of the Agreement, Republic of Srpska and the Federation of Bosnia and Herzegovina retain the right to authentically interpret it in accordance with the original provisions. Their negotiating status grants them legitimacy in the interpretation of the Agreement, and at the same time, it enables them to demand its consistent application.

### 2.2 Status of Agreement annexes as international agreements

All annexes of the Agreement, including Annex IV and Annex X, have the same legal force as the Agreement itself, which implies that:

- The autonomy and competencies of the entities cannot be unilaterally altered.
- The equality of the three constituent peoples cannot and must not be questioned, as it represents a fundamental condition for stability in Bosnia and Herzegovina.

### 2.3 The principle of constituent peoples

The constituent status of the three peoples in Bosnia and Herzegovina represents not only a constitutional but also an international legal principle, incorporated into Annex IV. Violating this principle would directly jeopardize the entire legal order established by the Agreement. Any action that disregards or negates this principle constitutes a violation of international law.

### 2.4 Mechanisms of protection in cases of Agreement violations

In the event of systematic violations of the Agreement, the contracting parties have the right to:

- Report to the United Nations Security Council and subjects of international law.
- Use diplomatic activities to alert international actors to the obligation of respecting international treaties.
- Seek protection before international courts.
- Initiate arbitration in accordance with the Vienna Convention.
- Exercise the right to self-determination in accordance with Article 1, Paragraph 2, and Article 55 of the United Nations Charter; as well as Annex I to Annex IV, Points 7 and 8, through which the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are incorporated into the legal system of Bosnia and Herzegovina and directly applied.

### 2.5 Conclusion

The Dayton Agreement has a dual nature. First, it holds the status of international law, as do its annexes, because it is an international treaty. Second, the Dayton Agreement serves as a source of domestic law and the foundation of the constitutional order of the newly created Bosnia and Herzegovina, composed of two entities and three constituent peoples. The model of consociational democracy is embedded in the foundations of Bosnia and Herzegovina, representing one of the conditions for regional stability. Establishing mechanisms of protection, including the consistent application of the principle of *pacta sunt servanda*, is vital for preserving the rights of the contracting parties and ensuring the long-term stability of the region.

### 3. THE REPUBLIC OF SRPSKA AS A SIGNATORY AND GUARANTOR OF THE DAYTON PEACE AGREEMENT

Unlike the Federation of Bosnia and Herzegovina, the Republic of Srpska is both formally and substantively a guarantor of the Dayton Agreement, as its institutions continuously work to protect and implement the original Dayton Agreement. The Republic of Srpska is entitled to this role because it holds the status of a contracting party to the Dayton Agreement, a status it also held during the negotiation process preceding the Agreement.

#### 3.1 Republic of Srpska as key negotiator and contracting party

The Republic of Srpska, along with the Federation of Bosnia and Herzegovina, was one of the two parties in the negotiations that led to the signing of the Agreement. The delegation of the Republic of Srpska actively participated in formulating the final provisions of the Agreement and all its annexes. The Republic of Srpska authorized the Federal Republic of Yugoslavia to sign the Dayton Agreement on its behalf and in its interest.

- No provision of the Agreement, including those comprising Annex IV (the Constitution of Bosnia and Herzegovina), could have been adopted without the consent of the representatives of the Republic of Srpska.
- As a contracting party, the Republic of Srpska retains the right and obligation to interpret, implement and protect the Dayton Agreement.

#### 3.2 Right and obligation to interpret and protect the Agreement

- As one of the contracting parties, the Republic of Srpska has the obligation to:
  - Interpret and protect the Dayton Agreement, as well as all its annexes, ensuring respect for their original text to which all parties have consented.
  - Protect the autonomy and competencies of the entities guaranteed by the Agreement and the Constitution of Bosnia and Herzegovina.
  - Initiate legal mechanisms in cases of violations of the Agreement, including international arbitration.
  - In the event of a fundamental breach of the Agreement and due to newly arising circumstances, consider the possibility of withdrawing from the Agreement in accordance with the Vienna Convention if the rights guaranteed by the treaty can no longer be protected within the institutions of Bosnia and Herzegovina.

#### 3.3 Entities as key contracting parties of the Agreement

The entities, the Republic of Srpska and the Federation of Bosnia and Herzegovina, are signatories to all annexes of the Dayton Agreement and, at the same time, state-legal entities responsible for implementing the Agreement and preserving peace and stability in Bosnia and Herzegovina and the region.

- Annex IV, which has a dual character as both an international treaty and the Constitution of Bosnia and Herzegovina, guarantees the autonomy of the entities as well as the presumption of competencies in favor of the entities. The entities have incorporated their sovereignty into the Dayton Bosnia and Herzegovina and partially transferred it to the level of Bosnia and Herzegovina.
- No change in the competencies of the entities or the constitutional structure of Bosnia and Herzegovina is possible without their consent, as it would constitute a severe breach of the treaty.

#### 3.4 Limitations of the High Representative's mandate

The mandate of the High Representative, defined by Annex X, is limited to implementing the civilian aspects of the Agreement.

- There are no Bonn powers. The Bonn powers were adopted without the consent of the signatory parties, at a meeting of an informal group called the Peace Implementation Council, which is not a Dayton category, nor is it foreseen by the relevant UN Security Council resolution.
- According to Article 78 of the United Nations Charter, which prohibits trusteeship over a UN member state, as well as the provisions of the Dayton Agreement, UN Security Council Resolution 1031, and international law, the High Representative has no right to act as a trustee, guardian or administrator over Bosnia and Herzegovina, nor can he change laws or violate the constitutional structure of Bosnia and Herzegovina.

#### 3.5 Article 39 of the Vienna conventions: Changes in the international agreements

According to Article 39 of the Vienna Convention on the Law of Treaties:

- Amendments to international treaties can only be made with the consent of ALL CONTRACTING PARTIES.
- The Republic of Srpska, as a party that negotiated and signed all annexes of the Dayton Agreement, has the right to approve or reject any amendments.

#### 3.6 Conclusion

The Republic of Srpska, as a key negotiator and party to the Dayton Peace Agreement, has the right and obligation to interpret, implement and defend the Agreement. Its status as the guardian of the Agreement is based on international legal principles, including the Vienna Convention and the principle of *pacta sunt servanda*.



## 4. THE RESPONSIBILITY OF THE INTERNATIONAL ACTORS

Based on the legal order defined by the Dayton Agreement and its annexes, the responsibility of international actors in the implementation and interpretation of this international treaty is clearly limited by the rules of international law and the mandate of the United Nations Security Council.

### 4.1 Violations of the international law

The mandate of the High Representative is established by Annex X and UN Security Council Resolution 1031; therefore, any act, behavior, action or procedure that is not in accordance with Annex X constitutes a gross violation of international law.

- The UN Security Council is the only legitimate body authorized to oversee the implementation of the Agreement.
- No international organization, institution (e.g., the Venice Commission, the European Commission, the European Court of Human Rights), or state can act contrary to the mandate of the Security Council.

### 4.2 International acts and the authority of the UN Security Council

- Resolution 1031 of the UN Security Council verified the Dayton Agreement, as well as all its annexes, including Annexes IV and X, which define, among other things, the role and limitations of all actors in Bosnia and Herzegovina, including the High Representative.
- Any action by international actors that is not in accordance with UN Security Council Resolution 1031 constitutes a violation of international law.

### 4.3 Legal responsibility of actors

Any subject of international law acting contrary to the Agreement may be held accountable before international courts.

### 4.4 Role of the High Representative

- Annex X clearly limits the role of the High Representative to the implementation of the civil part of the Agreement.
- This role does not presume or prejudice legislative and executive powers, nor the possibility of changing the constitutional order of Bosnia and Herzegovina.
- The Bonn powers, which are not part of the Agreement nor supported by a UN Security Council resolution, are legally null and void.

### 4.5 Responsibility of the Federal Republic of Germany

Christian Schmidt, who acts as an illegitimate and unelected High Representative without a mandate from the Security Council, directly violates the Agreement.

- Germany, which supports Schmidt, bears responsibility for violating international law.
- Germany's support can be interpreted as an act of intervention that violates Bosnia and Herzegovina's sovereignty and threatens regional stability.

### 4.6 Conclusion

The actions of international subjects must be in accordance with the universally accepted rules of international law, of which the Dayton Agreement and UN Security Council Resolution 1031 are an integral part. Any deviation from this behavior represents a violation of international law and undermines peace in Bosnia and Herzegovina. The Republic of Srpska has the right and obligation to demand respect for the Agreement and to initiate legal measures in the case of its violation.

## 5. FEDERAL REPUBLIC OF GERMANY AND ACTIONS OF ITS DIPLOMAT CHRISTIAN SCHMIDT

The Republic of Srpska, as a contracting party to the Dayton Agreement, legitimately questions the legitimacy and actions of Christian Schmidt, who acts as High Representative without the confirmation of the United Nations Security Council and contrary to the explicit will of the Republic of Srpska as a signatory party to Annex X, which was formally expressed in the Conclusions of the National Assembly of the Republic of Srpska on March 10, 2021. The role of the Federal Republic of Germany in supporting such illegitimate actions also requires careful analysis in light of violations of international law.

### 5.1 The lack of legitimacy of Christian Schmidt

- Christian Schmidt was not appointed by a UN Security Council resolution, which is the required procedure by which his predecessors were confirmed.
- The absence of a resolution indicates a lack of consensus in the Security Council, meaning that Schmidt has no legal basis to perform the function of High Representative.
- His actions without a formal mandate constitute a severe violation of Annex X of the Agreement and Resolution 1031 of the Security Council.

### 5.2 Support of the Federal Republic of Germany

- Germany supports Schmidt solely based on his diplomatic status, thereby knowingly ignoring the fact that he was not appointed in accordance with the procedure established by the Agreement.
- Germany's support constitutes complicity in the violation of international law and the jeopardizing of Bosnia and Herzegovina's sovereignty and constitutional order.
- Such actions are direct interference in the internal affairs of Bosnia and Herzegovina, which is contrary to the UN Charter and the principles of state sovereignty.

### 5.3 Acting contrary to the international law

- The actions of Christian Schmidt and the support of Germany represent multiple violations of international law, including:
  - Violation of Annexes IV and X, which have the status of international treaties.
  - Undermining the peace and stability and constitutional order of Bosnia and Herzegovina, which could lead to regional destabilization and slow down the European integration process of the countries in the region.
  - Illegitimate assumption of powers not provided by the Agreement (e.g. assuming and usurping constitutional and legislative functions; political persecution of "undesirable" individuals...).

### 5.4 Illegitimate actions as a form of intervention

- The support for Schmidt by Germany calls into question the sovereignty and integrity of Bosnia and Herzegovina.
- This action can be interpreted as a form of neocolonial or administrative intervention, as it violates the rights of the signatory parties to the Agreement and the constitutional order of Bosnia and Herzegovina.

### 5.5 Conclusion

The violation of international law by Christian Schmidt and the Federal Republic of Germany represents a serious threat to the stability of Bosnia and Herzegovina and the region. The Republic of Srpska has the right to seek accountability from these actors before international institutions, including the UN Security Council, the International Court of Justice, and other relevant bodies.

## 6. RIGHTS AND OBLIGATIONS DERIVED FROM THE DAYTON AGREEMENT

### 6.1 Immutability of the Agreement without the consent of the contracting parties

- No part of the Dayton Agreement, including Annex IV (Constitution of BiH) and Annex X (Mandate of the High Representative), can be unilaterally amended, interpreted or rejected by any domestic or international subject.
- The principle of *pacta sunt servanda* requires that all subjects, including all constituent elements, as well as individuals, must respect the obligations arising from international treaties.
- Any violation of the Agreement constitutes a serious breach of international law and threatens the stability of Bosnia and Herzegovina.

### 6.2 Rights and obligations of the Serbian constituent people and citizens of the Republic of Srpska and BiH

- The constituent peoples and individuals are obliged to adhere to the laws and rules that are in accordance with the Agreement, as any attempt to circumvent or disregard the Agreement undermines the international order and legal certainty.
- Every individual has the right and duty to oppose, by democratic means, any unilateral attempts to amend the Agreement, as such actions undermine legal and political stability.
- Violation of the rights of peoples and individuals through the breach of the Agreement directly threatens fundamental human rights guaranteed by the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966).

### 6.3 Responsibility of domestic actors

#### Responsibility of the common institutions of BiH

The institutions of BiH are obligated to respect the agreed constitutional structure, organization and distribution of competencies between BiH and the entities. The joint institutions must act in good faith and in accordance with international law and the original text of the Agreement.

- **The Constitutional Court:** The Constitutional Court, as defined by Annex IV of the Dayton Peace Agreement, holds the authority to apply and interpret the Constitution (Annex IV) in full compliance with the Vienna Convention on the Law of Treaties. This obligation ensures that the principles of international law, particularly the original provisions of the Agreement, are upheld in good faith. In accordance with its mandate, the Constitutional Court is tasked with protecting and interpreting the Annex IV/Constitution of Bosnia and Herzegovina in a manner that respects the principles established by the Agreement, including the autonomy and competencies of the entities. Any actions or decisions that exceed this mandate, or that undermine the constitutional autonomy of the entities, represent a direct violation of the Dayton Peace Agreement and the principle of *pacta sunt servanda*, which requires that agreements be honored and applied in their original form.

- **The Court and Prosecutor's Office of BiH:** Although not Dayton categories, the Court and Prosecutor's Office of BiH must act in accordance with the constitutional framework defined by the Agreement. Politically motivated actions directed against representatives of the institutions of the Republic of Srpska directly violate the rights that the Republic of Srpska holds as a contracting party.

- **Entities' Institutions:** The institutions of the Republic of Srpska and the Federation of BiH, as well as the constituent peoples, have the obligation to protect their rights and autonomy defined by the Agreement. Their actions must be in accordance with the original text of the Agreement, including resistance to imposed decisions that are contrary to its provisions.

- Domestic actors, including institutions or individuals, who violate the Agreement are responsible for breaching international law and undermining the legal order.
- Any action contrary to the Agreement, whether at the level of BiH institutions or entities, must be subject to accountability in accordance with international law.
- The Republic of Srpska is obligated to oppose any actions that threaten the rights of the Serbian constituent people and its citizens or that threaten the autonomy of the entity.

## 7. THE CONSEQUENCES OF THE SYSTEMIC COLLAPSE OF THE DAYTON AGREEMENT

### 7.1 Legal options in case of a violation of the Agreement

- Republic of Srpska, as one of the contracting parties to the Agreement, has specific rights and obligations defined by the Agreement and international law.
- In the event of exhausting all institutional and political mechanisms within Bosnia and Herzegovina, the Republic of Srpska may consider legal and political steps, including:
  - Addressing international organizations, such as the United Nations or the International Court of Justice.
  - Raising the issue of redefining or withdrawing from the Agreement in accordance with Articles 60 and 62 of the Vienna Convention on the Law of Treaties.

### 7.2 Legal basis in the Vienna conventions on the Law of Treaties

#### 1. Article 60 – Significant breach of a treaty

- If one party breaches the provisions of the treaty, the other parties have the right to seek:
  - Temporary suspension of their obligations.
  - Revision or withdrawal from the agreement if the breach is significant and prevents the realization of the fundamental purpose of the Agreement.
- Systematic violation of the Agreement, particularly Annexes IV and X, by the institutions of BiH, the High Representative, and other international actors, constitutes a "significant breach" of the agreement.

#### 2. Article 62 – Principle of rebus sic stantibus (fundamental change of circumstances)

- If the circumstances that were essential for the conclusion of the treaty have significantly changed, a party may seek the termination of the treaty.
- If the entities are unable to exercise the rights guaranteed by the Agreement due to systematic violations, the Republic of Srpska may determine that a fundamental change in circumstances has occurred, justifying the revision or termination of the Agreement.

### 7.3 Responsibility of the Serbian constituent people and citizens of the Republic of Srpska Citizens of the Republic of Srpska have an obligation:

- To respect the Agreement in its original form: The Agreement and its annexes represent the foundation of the constitutional order of BiH, and their disregard threatens the rights and stability of the Republic of Srpska.
- To demand the protection of their own rights (collective for the Serbian constituent people and individual rights).
- To support the institutions of the Republic of Srpska in protecting rights: Citizens are free and obliged to democratically support legal and political initiatives aimed at protecting their rights and the rights of the Republic of Srpska in accordance with the Agreement.



## 8. CONCLUSION

The Republic of Srpska, as a contracting party and signatory of all annexes of the Dayton Agreement, has the obligation and the right to protect its competencies, as well as the rights of its citizens guaranteed by the Agreement, despite the terror and pressure. If the protection of its rights is not ensured through mechanisms at the level of Bosnia and Herzegovina, the Republic of Srpska retains the legitimate right to take appropriate legal and political steps in accordance with international law, including the withdrawal from the Agreement, in order to safeguard the rights of its citizens, the stability of its territory and peace in the region.

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