

THE EXHAUSTION

of Bosnia and Herzegovina's Dysfunctional
Constitutional Regime

- By Jasmin Mujanović

Graphic By: Nicolas Raymond // CC BY 2.0

The footage is grainy. The cacophony of noise pours from the idling helicopters and the columns of police cars, motorcycles, and armored personnel carriers with their engines and blaring sirens.^[56] But the scenes are remarkable all the same. They show the city of Banja Luka, the second largest metropolitan area in Bosnia and Herzegovina (BiH), on May 12, 1992. They depict a city under occupation by a regime in the process of orchestrating the first genocide in Europe since the Holocaust.

By the time the Serb Democratic Party (SDS) leadership in BiH — proxies of the then-regime of Slobodan Milošević regime in Belgrade — had organized this show of force in Banja Luka, much of northern and eastern Bosnia was already in flame. Serb nationalist militias from BiH and neighboring Serbia, backed by elements of the Yugoslav Peoples' Army (JNA) and Serbian intelligence operatives, assisted in the systematic extermination, expulsion, and detention of ethnic Bosniaks and Croats — with animus reserved for the former — as they sacked towns and villages all along BiH's Drina River valley.

In the summer of 1991, the Milošević regime had directed the JNA and Serbian security agencies to

assist SDS leaders throughout BiH in creating so-called organizational "cells." Those cells, in turn, would become the primary loci for the delivery and distribution of weapons and munitions to local Serb nationalists, who would form the brunt of what would eventually become the "Army of the Republika Srpska" (VRS), the military wing of the self-declared Republika Srpska (RS) on the territory of BiH.



Mass grave in Bosnia // 1993 | Image Source: Britannica.

The formation of the RS and its sister "republic" in occupied Croatia, the Republika Srpska Krajina (RSK), were the realization of a political project by Serbia's nationalist establishment that had been initially concocted as early as 1990 by elements within the country's intelligence and military brass. By 1991, the plan had been fully authorized and finalized by Milošević and his inner circle. It was

known as the "RAM plan" (meaning "framework") and "it outlined plans to achieve a Yugoslavia without Slovenia, and to conquer the territories of Croatia and Bosnia and Herzegovina."^[57] It was, in short, a blueprint for the creation of "Greater Serbia," the polity which Milošević and his underlings Radovan Karadžić, Ratko Mladić, Goran Hadžić, and others, wanted to create out of the wreckage of the Socialist Federal Republic of Yugoslavia (SFRJ). The primary purpose of this Greater Serbia initiative was to create a homogenous ethnic space from which all non-Serbs were to be eliminated in one form or another.

Milošević ultimately failed. BiH and Croatia preserved their sovereignty and territorial integrity, as did the rest of the former Yugoslav republics. This included Kosovo, which declared its independence from Serbia in 2008. Two years prior, Montenegro too declared its sovereignty.

Even so, in BiH, the conclusion of the Bosnian War (1992-1995), which had been the focal point of the violence during this decade of bloodshed, was hardly neat. One hundred thousand people were killed in BiH alone — nearly three-quarters of all those killed during the entire Yugoslav dissolution. Of those killed, the majority were Bosniaks, the primary targets of what has since become known as the Bosnian Genocide.^[58] Indeed, just under half of all persons killed during the Yugoslav Wars were ethnic Bosniaks of BiH. Aside from this massive disparity of violence, the United States-brokered Dayton Peace Accords in 1995 left BiH internally fragmented. BiH's postwar constitutional regime is both the most complex and possibly the most decentralized in the world. While BiH has 14 separate governments for a territory approximately the size of West Virginia and a population of barely 3 million, it has no state-level ministry of education, healthcare, labor, or energy.



Dayton Peace Accords at the Wright-Patterson Air Force Base on 21 November 1995 // Photo Ny: U.S. Air Force/Staff Sgt. Brian Schlumbohm.

The cardinal error of the Dayton Accords, however, was the preservation of the RS as an administrative region — an entity, according to the constitution — within BiH, or, at least, the preservation of the RS on the political-ideological basis on which the entity was founded, namely genocide. Famed American diplomat Richard Holbrooke, the chief architect of the Dayton Accords, wrote the following in his memoir about the period: “I regret that we did not make a stronger effort to drop the name Republika Srpska. We underestimated the value to Pale [i.e. the Serb nationalist leadership in BiH] of retaining their blood-soaked name... In retrospect...I think we should have pushed Milošević harder to change the name of the Bosnian Serb entity. Even if the effort failed” it would have been worth trying.”^[59]

Holbrooke was, if anything, too conservative in his regrets. BiH currently finds itself embroiled in its worst political crisis since the conclusion of the war. Milorad Dodik, the man who has essentially inherited the mantle of hetman of the Serb nationalist camp in BiH from the genocidaire Karadžić, has orchestrated a secession crisis that is eerily reminiscent of the SDS's activities in 1991-1992. However, Dodik is not a member of the SDS, but the leader of the “Alliance of Independence Social Democrats” (SNSD), a party that enjoyed significant American and European backing in the late 1990s and early 2000s, as it was perceived as a moderate, reformist movement. Dodik himself lived up to the promise, for a moment, referring to the events in Srebrenica as genocide, labeling Karadžić and Mladić as war criminals, and signing off on nearly every major reform initiative then on the table, including moving BiH toward NATO membership.

In time, however, Dodik and his party's politics began to shift. As the United States withdrew from BiH and the Western Balkans, and the EU enlargement process emerged as the primary international framework for the region, Dodik began leaning into familiar nationalist themes. By the start of the 2010s, he was openly referring to BiH as a failed state whose collapse was imminent and inevitable. After the return to power of the hardline nationalist camp in Serbia in 2012, headed by now-President Aleksandar Vučić, and the onset of the Russian occupation of Ukraine in 2014, Dodik's rhetoric became still more radical. He began threatening the secession of the RS entity on a nearly weekly basis and actively building a parallel security apparatus — with Russian and Serbian help — to realize those aims.

These long-term efforts culminated this summer, when the chief international diplomat in BiH, High Representative Valentine Inzko, imposed an anti-genocide denial law. Dodik and the SNSD responded with fury. Bosnian Genocide denial and secessionist threats had become a staple feature of his politics, and the regime had even launched supposed “commissions” to negate the established facts of the killings in Srebrenica, the Siege of Sarajevo, and essentially the entire conduct of the war and genocide by Serb nationalist forces under the command of the convicted genocidaire Karadžić and Mladić.^[60]

Inzko opted to impose the law through his internationally mandated “Bonn Powers” because Dodik and his coalition partners in the Croat nationalist Croatian Democratic Union (HDZ) had for years obstructed the adoption of a similar law by the Bosnian parliament. Inzko's successor, the former German parliamentarian Christian Schmidt, urged Dodik and all political actors in

BiH to work within the parliamentary process to produce an appropriate domestic law that could supplant Inzko's executive decision. Instead, Dodik began a systematic assault on BiH's constitutional order. He has launched what he refers to as a unilateral "pull out" from the country's Armed Forces, intelligence agency, and tax collection agency.^[61] His party has also threatened to broaden these activities to include the state anti-corruption police, customs and border control, and even the BiH's Constitutional Court. In short, these measures signal secession in all but name, modeled almost wholly on the fashion in which Milošević and Karadžić originally created the RS entity.



"Milorad Dodik at the final convention in Belgrade" by Choice for a better life // CC BY 2.0.

Owing to Dayton's extreme decentralization, Dodik and his associates maintain a vice grip on many of the same institutions they are trying to dismantle, including much of the country's judiciary and law enforcement communities, who should be responding to their anti-constitutional activities. As Dodik's effective state capture of these institutions has made such responses difficult to date, pro-BiH actors have looked to the international community to assist in checking Dodik's machinations. To date, only the United States and United Kingdom have responded to these calls with any substance.^[62] In January of this year, the United States expanded its sanctions regime versus Dodik — the initial round of which was imposed in 2017 — while imposing similar measures against Milan Tegeltija, his personal advisor, and *Alternativna Televizija*, a regime-aligned television broadcaster. In April, the United Kingdom also sanctioned Dodik, as well as the President of the RS entity, Željka Cvijanović. In early June, the United States added to its sanctions list the SNSD the RS entity Minister of Health and Social Welfare, as well as

the President of the Federation entity, Marinko Čavara, a leading member of the HDZ.

However, given the scale of Dodik's systematic assault on the BiH state, these measures are unlikely to be a sufficient deterrent. Dodik not only benefits from the patronage of Russia and Serbia but also increasingly illiberal EU states like Hungary.^[63] The United States must either significantly deepen and broaden its sanctions against his regime to effectively cut him off from global financial markets or rely on at least some European states joining its existing efforts. The United Kingdom sanctions have accomplished that to an extent, but the EU's non-compliance with these measures — and the refusal of individual members to join the Anglo-American initiative — remains a major concern.

In the meantime, BiH inches toward its third decade since the end of the Bosnian War, with its existing constitutional and political system all but exhausted. The revanchist politics of Dodik and his enablers have kept the country entombed in dysfunction and chaos. Ironically, the highwater mark of American post-Cold War diplomacy, the Dayton Accords, has become the very catalyst for BiH's renewed drift toward the precipice of conflict. Until American and European policy decisively shifts toward supporting the creation of a rational, liberal, and democratic constitutional framework in BiH, Dodik and those like him will feel empowered to attempt to complete what Milošević and Karadžić started in 1992. And eventually, they might even succeed — at the expense of untold future victims.

[56] Unknown, "Парада Полиције Републике Српске - Бања Лука 1992," Youtube, March 19, 2019, Private Recording, Accessed April 6, 2022. https://www.youtube.com/watch?v=Wbjre_KxQKw&t.

[57] Edina Becirevic, *Genocide on the Drina River*, (New Haven and London: Yale University Press, 2014), 61.

[58] Jasmin Mujanović, "Bosnian Genocide," *The Palgrave Encyclopedia of Peace and Conflict Studies*, Palgrave Macmillan, Cham, Accessed June 8, 2022 https://link.springer.com/referenceworkentry/10.1007/978-3-030-11795-5_211-1.

[59] Richard Holbrooke, *To End a War*, (New York: The Modern Library, 1998), 135.

[60] Menachem Z. Rosensaft, "Deceptive Report Escalates Srebrenica Genocide Denial Campaign," *Just Security*, July 29, 2021, Accessed June 8, 2022 <https://www.justsecurity.org/77628/deceptive-report-escalates-srebrenica-genocide-denial-campaign/>.

[61] Julian Borger, "Bosnia is in danger of breaking up, warns top international official," *The Guardian*, November 2, 2021, Accessed June 8 2022 <https://www.theguardian.com/world/2021/nov/02/bosnia-is-in-danger-of-breaking-up-warns-eus-top-official-in-the-state>.

[62] Kurt Bassuener, "The EU's Humiliating Failure in Bosnia," *Carnegie Europe*, November 4, 2021, accessed June 8, 2022 <https://carnegieeurope.eu/strategieurope/85705>.

[63] Jasmin Mujanović, "Hungary's Orban: Investing in the Destruction of Bosnia," *Balkan Insight*, January 5, 2022, Accessed June 8, 2022 <https://balkaninsight.com/2022/01/05/hungarys-orban-investing-in-the-destruction-of-bosnia/>.