43rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations

27 October 2012 – 20 April 2013

Summary

This report covers the period from 27 October 2012 to 20 April 2013. The previous report detailed how, following an encouraging start to 2012, with politicians engaging in dialogue and reaching agreement on a Council of Ministers, budget and key EU legislation, progress had stalled and reverted to the prevailing negative trends of the previous six years. Unfortunately this dynamic has continued during the current reporting period, with little real progress achieved by the country's leadership towards the country's self-proclaimed goals of European and Euro-Atlantic integration.[1] At the same time, the political crisis in the Federation and direct challenges to the Peace Agreement – including to the sovereignty and territorial integrity of Bosnia and Herzegovina – continued. These combined factors, against the backdrop of real economic and social hardship for large parts of the population, have caused understandable concern within the international community.

Not all the news has been bad, however. The state-level Council of Ministers, which underwent a party reshuffle in November, has met regularly. The state budget for 2013 was adopted on time, the first time in two years. In general, however, the state-level coalition has so far been unable to deliver much needed progress on the legislative front.

Developments at the state level have been overshadowed by a protracted power struggle at the Federation and cantonal levels that began in June of last year, as described in my previous report. In recent months this has led to near gridlock of many institutions at these levels and contributed to a delay in disbursing much-needed international financial assistance for the country as a whole. Moreover, in their haste to restructure authorities at the Federation level, representatives of some parties have at times ignored or violated the applicable rules and procedures governing the work and decision-making of relevant bodies. By contrast, the institutions of Republika Srpska have functioned more efficiently than those of the Federation during the reporting period.

Of more fundamental concern, however, some representatives of Republika Srpska (RS) continued the policy of the last several years of open and direct challenges to the fundamentals of the Peace Agreement and the territorial integrity of Bosnia and Herzegovina. In my last report I signaled that the issue of growing advocacy for the dissolution of Bosnia and Herzegovina by RS officials deserves the special attention of the international community. Statements made and actions taken during the reporting period have in my view represented a continuation of this worrisome policy. They continue to raise doubts about the commitment of the current RS leadership to the most fundamental aspect of Dayton – the constitutional order of Bosnia and Herzegovina (BiH) as set forth in Annex 4 to the General Framework Agreement for Peace (GFAP), including in particular the sovereignty and territorial integrity of BiH.

Citizens in the town of Mostar have still been unable to vote to elect local authorities, as the rest of the country did on 7 October 2012, due to the ongoing failure of politicians to implement a 2010 ruling of the BiH Constitutional Court on the city's electoral system. Their requirement to do so emanates directly from Annex 4 to the GFAP where it is explicitly stated that rulings of the state Constitutional Court are final and binding. As previously reported, my Office is facilitating discussions between political parties to assist in implementing the Court's decision and enable elections to be held in Mostar as soon as possible. Despite gestures toward compromise by the majority of the parties participating in this facilitation process, the continuing inflexibility of two of the largest parties in Mostar – the HDZ BiH and the SDA – has so far prevented a resolution of this Dayton violation.

During this reporting period, the authorities in BiH have done little to implement the outstanding requirements of the five objectives and two conditions necessary for the closure of the Office of the High Representative (OHR).[2]

On the economic front, despite some notable exceptions of certain private companies, the country is faced with a deteriorating fiscal situation, poor growth prospects, high unemployment and accompanying social problems.

Through their continued presence, the European Union and NATO military missions in Bosnia and Herzegovina have both continued to reassure citizens that the country remains safe and secure despite the difficult political situation. Both in my view need to remain as they continue to fulfill a vital function and their presence is essential to support ongoing international community efforts and my ability to fulfill my Dayton mandate.

I. Introduction

1. This is my ninth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina. It provides a narrative description of progress made towards attaining the goals outlined in previous reports, registers factual developments, logs relevant citations relating to the reporting period, and provides my assessment of the implementation of key areas falling under my mandate. I have focused my efforts on facilitating progress in these areas, in line with my primary responsibility to uphold the civilian aspects of the General Framework Agreement for Peace (GFAP), while also encouraging progress on the five objectives and two conditions for the closure of OHR and working to preserve steps that have previously been undertaken to implement the GFAP.

2. Adherence to the rule of law is a central component of the GFAP and is essential for reconciliation and rebuilding a stable post-conflict society. For these reasons it must remain one of the guiding principles of the international community's engagement in BiH. I have reported in this and previous reports of numerous cases in which political leaders, parties, and institutions sidestep, ignore or in some cases directly violate requirements set out in constitutions and laws for the sake of political expediency. In addition, challenges to state-level institutions established to safeguard the rule of law have continued and the non-enforcement of decisions of the BiH Constitutional Court has become a pattern. Because I am convinced that observance of the rule of law is a prerequisite for long-term peace and stability, I have recently reported in extensive detail to the Steering Board of the Peace Implementation Council on this worrisome trend in this field.

3. While I am focusing my energies on executing my mandate as defined under Annex 10 of the GFAP and relevant Resolutions of the United Nations Security Council, my office fully supports the efforts of the European Union and NATO to help BiH move along the path toward closer integration with the EU and NATO. My Office and that of the European Union Special Representative work closely to create synergies wherever possible, in accordance with our respective mandates.

II. Political update

A. General Political Environment

4. The reporting period was dominated by one major ongoing political crisis, and one long-running negative trend. The ongoing political crisis has its origin in the Social Democratic Party's (SDP) politically legitimate attempt – with the support of the Party for a Better Future (SBB), and the two Croatian Democratic Union parties (HDZ BiH and HDZ 1990) – to expel the Party for Democratic Action (SDA) and its allies from governing coalitions at the Federation and cantonal levels, and the refusal of the latter to step aside. This resulted in a constitutional crisis and gridlock in the Federation that continues to this day. The continuing negative trend was the ongoing campaign by some representatives of the Republika Srpska to predict and advocate for the dissolution of BiH and the independence of the RS. This has been accompanied by challenges to state judicial institutions and other responsibilities of the state provided for under the Constitution of BiH, as set forth in Annex IV of the GFAP. In this respect, the decree adopted by the RS Government on 2 April, which seeks to unilaterally regulate citizen identification numbers, is of genuine concern, as this is a matter otherwise regulated by state-level legislation.[3]

5. As previously reported, the SDP and its coalition partners at the state-level achieved their goal of removing the SDA ministers from the state-level government in late October 2012. SDP, SBB and the two HDZ parties have also managed to reconstruct authorities in four cantons and a few municipalities. However, these parties have not yet managed to reconstruct the Federation-level government, despite having a significant majority in the Federation Parliament, which voted no-confidence in the government in both chambers of the Parliament. The SDA-dominated Bosniak caucus has blocked implementation of the no-confidence measure by invoking Vital National Interest (VNI) in the House of Peoples of the parliament. The VNI case cannot be ruled on, however, due to the failure to appoint missing judges to the Federation Constitutional Court and its VNI panel.

6. This dispute has predictably had an effect on the Federation Government which has become divided into two camps: one, which includes the Prime Minister and seven Ministers from SDP which is supported by the new

parliamentary majority, and a second camp consisting of the SDA and its partners, who currently hold a majority of nine ministers in the government. As the two blocks have fought for dominance, the work of the Federation government came to a standstill in March. At this point, I engaged both camps to remind them of the necessity to ensure the functioning of the government, while also bringing together competent officials in an attempt to break the deadlock on the appointment of the missing judges to the Federation Constitutional Court. The Ambassadors of the PIC Steering Board shared my concern about the situation and also made their views clear through two public statements.

7. These disturbing developments in the Federation have deflected attention from the continuing statements calling into question the GFAP that have been heard from the most senior politicians and party officials in Republika Srpska, as well as state-level officials from the RS. Dominating this rhetoric are open predictions and advocacy of state dissolution and RS independence, as well as statements seeking to link the future of Republika Srpska to developments in other European states in 2014. This issue is covered in greater detail in the section entitled “Challenges to the General Framework Agreement for Peace and Rollback of Reform”.

8. In the Federation of Bosnia and Herzegovina (FBiH), the two leading Croat parties, HDZ BiH and HDZ 1990, continue to call for the creation of a Croat-majority federal territorial unit. On 6 April 2013, these parties used the platform of the Congress of the Croat National Assembly (an informal grouping of Croat parties) to repeat such calls and to announce mechanisms for compelling elected Croat representatives to implement the decisions of this grouping of parties.

9. The Central Election Commission (CEC) confirmed the results of the 7 October 2012 municipal elections on 6 November 2012. In addition to problems regarding Srebrenica and Mostar that will be mentioned separately in this report, problems arose in a limited number of municipalities with regard to implementing constitutional and legal provisions guaranteeing representation of constituent peoples and Others in municipal authorities.

B. Decisions of the High Representative during the Reporting Period

10. During the reporting period, I generally refrained from employing my executive powers in line with the PIC Steering Board’s policy of emphasizing “local ownership” over international decision-making. I used my executive powers on only one occasion, to lift a ban on an individual previous removed from public office by one of my predecessors.

C. Five Objectives and Two Conditions for Closure of the OHR

Progress on Objectives

11. During the reporting period the BiH authorities did not make concrete progress on the outstanding objectives set by the Steering Board of the Peace Implementation Council as prerequisites for closure of the OHR.

State and Defence Property

12. As previously reported, in July 2012, the BiH Constitutional Court held that the *Law on the Status of State Property Situated in the Territory of Republika Srpska and under the Disposal Ban* (RS State Property Law), which transfers to the RS property over which BiH is now the title owner, falls outside the competence of the entity legislature and is therefore unconstitutional. Pursuant to the court’s decision, the RS State Property Law ceased to be in force on 19 September 2012. In this far-reaching decision, the Court also held that the competence to regulate such property falls within the exclusive responsibility of the BiH Parliamentary Assembly. The decision of the Court has implications for the political leaders’ agreement of 9 March 2012 on these issues, which must now be re-evaluated to ensure that its implementation is consistent with the BiH Constitution, as interpreted by the decision of the Court.

13. On 7 February, NATO Secretary General Anders Fogh Rasmussen held a working visit with senior leaders in BiH, emphasizing NATO’s continued support for BiH’s NATO integration efforts, but also the expectation of NATO Allies that BiH undertake the reforms necessary for Euro-Atlantic integration. The party leaders expressed their commitment to the 9 March 2012 agreement on defence and state property and committed to implement the defence property element of the agreement quickly and to create a detailed road map for the resolution of state property. In late March, the BiH Minister of Defence signaled his intention to engage directly on the issue with the Council of Minister’s working group and with the BiH Public Attorney.

14. On 16 February, the six political party leaders of the state-level governing coalition met and reaffirmed their commitment to the 9 March 2012 framework, yet failed to explain how the agreement would be implemented in line with BiH Constitutional Court Decision. On 18 February, the BiH Council of Ministers established a *Working Group for Resolving State and Defence Property Issues* (Ministerial Working Group) and appointed the Minister of Justice, Minister of Civil Affairs, and Minister of Transport and Communications as members to propose "a method of resolving the issues of defense and state property in line with previously established principles for distribution of the state and defense property". The Working Group met twice, but has not made public any conclusions. The State Property Commission, which the BiH Council of Ministers (CoM) previously tasked with proposing solutions on state and defense property, met only once since the formation of the Ministerial Working Group and concluded that it lacked sufficient direction from the Council of Ministers on its role in relation to the new working group.

Brcko District

15. Following the 31 August 2012 closure of the Brcko Office and issuing of a Supervisory Order Regulating the Status of Legal Acts, the Supervisor no longer intervenes in the day-to-day affairs of the District, although he has retained full authority to resume – at his own discretion – the exercise of his authorities should circumstances warrant.

16. Political parties in the Brcko District formed a Government without outside intervention in late 2012. The economic situation, however, continues to deteriorate while systemic corruption and nepotism remain serious problems. In a significant development, the previous mayor was indicted on corruption charges on 12 March 2013. The District Assembly adopted a 2013 Budget on 28 March 2013.

D. Challenges to the General Framework Agreement for Peace

17. The General Framework Agreement for Peace and its implementation have ensured peace and security in Bosnia and Herzegovina over the last 17 years, however attempts at undermining the Peace Agreement's foundations and rolling back reforms undertaken to implement it require the international community's serious attention.

Challenges to the Sovereignty and Territorial Integrity of Bosnia and Herzegovina

18. The reporting period saw continued provocative rhetoric from some Republika Srpska officials at the highest levels that disputed and questioned the existence of the state of Bosnia and Herzegovina, predicted and advocated for the state's dissolution, and challenged the functionality of the state and its responsibilities under the Constitution of BiH. The RS President continues to be the most frequent and vocal – although certainly not the sole – exponent of state dissolution. His statements during the reporting period have touched on self-determination as well as seeking to make links between Republika Srpska and developments elsewhere in Europe.[4]

19. In April, the RS President said that BiH "has absolutely no possibility to survive". He called BiH "a premature baby that was created and thrown on the territory of the Balkans to cover up earlier decisions about illegal recognition… In any case, it is an inevitable process. BiH will not survive! When will it fall apart? We shall see… That means that, hypothetically speaking, inasmuch as the demolishment of the Dayton Agreement continues, the RS can peacefully walk into Parliament and take a decision on its independence or to say let's have a binding referendum. I am convinced the RS will one day measure its strength, its moment, its capacity, and will go for a referendum and be independent".[5]

20. Despite the absence of any provision anywhere in the GFAP permitting or foreseeing dissolution or self-determination, the RS public campaign for dissolution has also sought to emphasize the RS's alleged right to self-determination. The RS President recently visited Belgrade, where he addressed Serbia's Parliament and sought to advocate "self-determination" for Serbs as a "constituent people".[6] He also noted in February that "[t]he right of the RS to self-determination is a right from the UN Convention… I keep no option closed."[7] He repeatedly threatened to hold an independence referendum,[8] asserted that the RS wants to participate in EU integration only insofar as it reinforces the entity,[9] and has stated that the RS will "proclaim confederation" and eventually secede.[10]

21. I am also concerned by continued assertions from senior RS leaders — contrary to the Constitution of BiH — that the entities are states. The Serb member of the BiH State Presidency stated that "the Dayton Peace Agreement formed two little countries".[11] The RS President has asserted that the RS was "an independent

state",[12] and proclaimed "in the end, Bosnia and Herzegovina is not a state, but a state union".[13] The RS Vice-President stated that "The stance of the West that it will not allow creating of a new RS in Kosovo means admitting that the RS is a state".[14] Numerous similar statements were made during the reporting period by RS officials and officials of the ruling RS SNSD party.[15] In addition, Serbia's President has referred to Republika Srpska as a "state",[16] although he later corrected his statement in a highly-publicized and widely acclaimed interview where also commendably stated: "I'm bowing down. And I seek forgiveness for Serbia for the crime that was committed in Srebrenica… I apologize for all the crimes that were committed by any individual of our people in the name of our state and our people".

Challenges to the Competencies of BiH Institutions

22. The RS President has also continued his verbal attacks against key state institutions that were established to exercise responsibilities of the state under the Constitution of BiH and to safeguard the rule of law, sovereignty, territorial integrity and constitutional order of BiH (BiH Constitutional Court, State Court and Prosecutor's Office, High Judicial and Prosecutorial Council, and the BiH Central Election Commission).[17] These statements have served to undermine these vital institutions at a time when they need to be supported to become ever more effective, not least to fight corruption which is a major problem in the country. Not surprisingly this is also placing tremendous political pressure on the employees of these institutions.

23. An issue that exposed the shortcomings of the political process in Bosnia and Herzegovina, but also the ongoing readiness of the RS authorities to take action challenging the GFAP is the dispute concerning the 13-digit single citizen identification number. The state law regulating issuance of this number was adopted in 2001, but needs to be changed due to rulings of the BiH Constitutional Court in 2011 and early 2013 striking down one provision of the law. Since 2012, three separate proposals to implement the Court's rulings have been rejected by the BiH Parliamentary Assembly due to disputes over geographical registration areas associated with the number. The failure of the BiH Parliamentary Assembly to adopt amendments has since March created serious complications for ordinary citizens with newborn children and naturalized citizens unable to obtain a number. This has consequences for access to numerous services such as health care and travel documents.

24. Rather than negotiating a solution within the Parliamentary Assembly of BiH, on 2 April, the SNSD party went through the RS Government to pass a decree seeking to regulate the matter of citizen identification numbers at entity level, while simultaneously announcing that it would ask representatives elected from Republika Srpska in the state parliament to submit a new proposal to amend the state law. Such a proposal has at the time of writing not been submitted into parliamentary procedure. Given the fact that the single identification number is regulated at state level, the adoption of the RS decree is highly problematic insofar as it represents the unilateral assumption of a constitutional responsibility of the state by an entity. The RS President has made his views on this matter clear stating publicly that "We have said that even under the condition of intervention by the international community, this decree will remain in force and be implemented."[18]

Non-enforcement of Decisions of the BiH Constitutional Court

25. An overarching pattern of non-enforcement of decisions of the Constitutional Court of Bosnia and Herzegovina is another issue of concern, including from the perspective of challenges to the GFAP. On 15 March, in a written reply to a question posed by a representative in the BiH Parliamentary Assembly, the court reported that it had delivered 80 rulings on non-enforcement of its previous decisions to the Prosecutor's Office of BiH, covering a period from 2005 to 2013.[19] The Constitution of BiH explicitly provides that the "[d]ecisions of the Constitutional Court are final and binding," and that "[t]he Entities and any subdivisions thereof are required to comply fully with this Constitution (…), and with the decisions of the institutions of Bosnia and Herzegovina". This pattern of non-enforcement of Constitutional Court decisions is also of concern given that the role of the Court as final arbiter in constitutional disputes will become even more pronounced after the termination of the mandate of the High Representative.

26. Abiding by the Dayton Agreement and in particular the constitutional framework and the rule of law is a prerequisite for long-term stability. Conversely, given Bosnia and Herzegovina's troubled recent history, challenges to the fundamentals of the Peace Agreement and the BiH Constitution directly undermine the stability of the country and all well intentioned efforts to re-integrate the country and to move it forward.

III. State-level Institutions of Bosnia and Herzegovina

BiH Presidency

27. The BiH Presidency held seven regular and four urgent sessions during the reporting period, adopting budgetary, defence and foreign policy decisions. On 29 November 2012, the Presidency adopted the state budget for 2013 and forwarded it to the Parliament, which passed it on 7 December 2012, the first time in two years that the budget was adopted in a timely fashion and without serious breaches of statutory deadlines.

28. The BiH Presidency made decisions on destruction of defective ammunition and mine ordnance, and extended the BiH Armed Forces' participation in international peace operations in Afghanistan and Congo. The Presidency hosted a joint visit by US Secretary of State Hilary Clinton and EU High Representative for Foreign Affairs and Security Policy Catherine Ashton on 29/30 October 2012, and a stopover by NATO Secretary General Anders Fogh Rasmussen on 7 February 2013. Other visiting dignitaries included Slovakia's President Ivan Gasparovic and Serbia's Prime Minister Ivica Dacic. Presidency members also traveled to Turkey, Serbia, Romania, and Austria. Baroness Ashton met the Presidency members again on 18 April.

29. During the reporting period, the Presidency was chaired by Serb member Nebojsa Radmanovic, who assumed his eight-month rotating chairmanship on 10 November 2012. Chair Radmanovic has made a number of constructive regional visits and moves during his tenure. It is also a welcome development that although the members of the Presidency have in the past played out their disputes in the public, they have had no major public disputes during the reporting period. Also of note, the Bosniak and Croat members of the Presidency launched separate appeals to the BiH Constitutional Court contesting RS legislation on holidays and entity constitutional provisions regulating the election of entity presidents and vice-presidents.

BiH Council of Ministers

30. As part of the SDP-led government restructuring, two new ministers and a deputy minister were confirmed to the Council of Ministers (CoM) by the BiH House of Representatives on 22 November 2012. The CoM continued to meet regularly, holding 24 sessions during the reporting period: it passed one amendment to the Constitution of BiH,[20] six new laws,[21] and 13 sets of amendments to existing laws. In addition, it adopted the Budget Frame Document for 2013-2015, established the previously mentioned Working Group on state and defence property, and approved its own ambitious Work Plan for 2013.[22] The CoM made several appointments and adopted various by-laws as well as dozens of decisions, including proposals for bilateral agreements and decisions on ratification of international treaties.

31. The CoM adopted a proposal for amendments to the Census Law at its 23 January session to postpone the census for six months to between 1 and 15 October 2013. On another contentious issue – the request for an authentic interpretation of the Election Law in relation to mandates of the Mostar City Council – the Council of Ministers was less forthcoming. On 30 January, it adopted a conclusion drafted by the BiH Justice Ministry that it could not provide an opinion concerning the mandates of Mostar City Councilors, as the disputable provision had not been specified in the request for an authentic interpretation (see below for more details on Mostar).

32. Economic and other challenges posed by the Republic of Croatia's accession to the EU have understandably continued to be an important point on the Council of Ministers agenda. A thematic session on this topic was held on 7 February.

BiH Parliamentary Assembly

33. A failure to reach political agreements, including by those political parties gathered in the state-level coalition, continues to underlay the work of the BiH Parliamentary Assembly, with parliamentary discourse often less than constructive, and sometimes referring to state dissolution.[23] During the reporting period, only two new laws were passed: the *2013 Budget Law*, and the *Law on Political Party Financing*. Minor amendments to fifteen existing laws were also adopted. During the same period, the BiH Parliamentary Assembly rejected eight laws, of which five failed to pass due to use of the entity voting mechanism by delegates elected from the Republika Srpska. Most of these draft laws were submitted to the BiH Parliamentary Assembly by the Council of Ministers and had passed the appropriate parliamentary committees, only to be rejected in the final round of voting.

34. During the reporting period, the trend continued of delegates elected from the RS rejecting the annual work

reports of state-level institutions targeted by the RS for abolishment. For example, on 17 January the BiH House of Peoples rejected the 2011 Report of the High Judicial and Prosecutorial Council, and BiH Radio-Television.

35. These trends have continued despite the fact that a new parliamentary majority was formed at the beginning of the reporting period when the SBB replaced SDA as part of the ruling six-party state-level coalition. At this time, the party presidents of the SDP and SNSD concluded a cooperation agreement, which proposed numerous changes in the fields of the judiciary, electoral system, conflict of interest, the economy, and public administration. Some of the proposals have raised concerns within the international community, though only one of these laws has been adopted by the BiH Parliamentary Assembly.

Implementation of Local Election Results

36. The implementation of the October 2012 local election results proceeded without major incident. However, the formation of the Sarajevo City Council and the election of a new mayor of Sarajevo were delayed as they became hotly contested by the SDP and SDA-led coalitions. The City Council was fully established on 12 March while a new mayor was not elected until 27 March. Ivo Komsic is Sarajevo's first non-Bosniak mayor since the signing of the GFAP and I hope this will contribute to efforts to advance multi-ethnicity.

State Constitutional Reform

37. Bosnia and Herzegovina's political leaders continued their long running failure to reach an agreement on constitutional amendments to implement the European court of Human Rights ruling in the Sejdic-Finci case. Despite generous support provided by the EU from the middle of February, political party leaders were unable to meet the 11 April deadline set by the EU for them to reach a political agreement. As is the case with so many other challenges facing Bosnia and Herzegovina, the time has come for political leaders to stop putting party interests before those of the country and its citizens, the overwhelming majority of whom support Euro-Atlantic integration.

IV. Federation of Bosnia and Herzegovina

Federation Government Crisis

38. The leading Federation institutions – including the Government and the Constitutional Court – were generally hamstrung by an ongoing constitutional crisis in the entity. Efforts by the SDP, SBB and the two HDZ parties to reconstruct the Federation Government dominated the political scene during the reporting period. These parties formed a majority in both Houses of the Federation Parliament, but were unable to achieve their goals of removing both the Federation President and the current majority of ministers (belonging to SDA/NSRzB/HSP) from the Federation Government. This situation has been exacerbated by the longstanding failure of the competent institutions to ensure a functioning constitutional system by appointing missing judges to the Constitutional Court of the Federation as well as to its Panel for Protection of Vital National Interests (Vital National Interest Panel), despite clear and repeated calls from the international community for this to be done.

39. The ongoing disputes in the Federation first intensified in November, when a session of Government broke down following a walk out of ministers from the SDA, HSP and NSRzB over a contested decision related to the management of the Federation Development Bank. As a consequence, the government was left without a quorum for decision making, including on the 2013 Federation Budget, the adoption of which prior to the end of the year was among the requirements for the disbursement of International Monetary Fund (IMF) funds. In response, the Federation Prime Minister proposed that the Federation President remove these Ministers from government in December, while the parliamentary caucuses of the SDA, HSP, and NSRzB sent a joint request for the President to instead remove the Prime Minister over alleged irregularities in the submission of the 2013 Budget to the Federation Parliament and in relation to the management of the Federation Development Bank.

40. In early February, the new majority in both houses of the Federation parliament voted no-confidence in the government. At the 12 February session where the House of Representatives adopted the no-confidence motion, the house also adopted controversial conclusions which sought to unilaterally restrict the activities of the Government.[24] The House of Peoples voted no-confidence on 15 February, but the Bosniak caucus of the House of Peoples invoked the vital national interest (VNI) procedure over the decision regarding the vote of no-confidence.

41. Until the VNI procedure is fully completed, the decision on the vote of no confidence cannot be deemed

adopted or in force. The Federation Parliament has formed a Joint Commission to harmonize the decision of no-confidence in the government, a necessary procedural step prior to the VNI request being forwarded to the Federation Constitutional Court's VNI Panel. However, the panel will not be able to decide on the admissibility or merits of the case until the full component of judges is appointed to the court's VNI Panel. This means that the no confidence vote is effectively blocked until the issue of appointing judges is resolved.

42. In the meantime, the Federation Prime Minister wrote to me, claiming that the Federation Government was unable to function properly. On 19 March, the Deputy Federation Prime Minister proposed changes to the government's rules of procedure enabling the deputy Prime Ministers to convene and chair sessions, and to sign acts adopted by the government in cases where the Prime Minister failed to do so within short deadlines. A majority of the government voted for the proposed changes. Following the vote, the Prime Minister and SDP ministers walked out of the session, which continued under the leadership of one of the Deputy Prime Ministers. On 25 March, the Prime Minister informed the Secretary of the Government that following the adoption of the 19 March Decision, he did not intend to convene further Government sessions until the constitutionality and legality of the mentioned Decision, which he subsequently challenged before the court, is resolved.

43. On 26 March, the PIC Steering Board Ambassadors (PIC SBA) "noted that neither group of parties in the Federation is without blame for the current situation and warned all those involved that they must refrain from taking any further steps that could destabilize the situation." The PIC SBA reiterated that the relevant authorities needed to fill the vacancies on the Federation Constitutional Court and VNI panel without further delay to ensure the court's capacity to fulfill its constitutional role. In the statement the PIC SBA went on to warn that "[u]ntil the deadlock in the Federation is resolved, both the Government and the Parliament must respect their respective constitutional roles. Parties must work together to ensure the functionality of both institutions in a way that is unambiguously consistent with the rule of law, even if it means that more far-reaching initiatives cannot be undertaken right away. Ensuring the functioning of institutions is not a choice, it is an obligation."

44. I have been using my good offices to bring the parties together in an effort to unblock the impasse related to the appointment of the judges and also to encourage them to continue to work together to ensure that the government and parliament function on essential issues and that the political situation does not deteriorate further, until such time as the ongoing disputes in the Federation are resolved. Most recently the parties came together on 10 April to hold a session of government where 23 agenda items were discussed, including an important piece of legislation, adopted at the session, necessary for disbursement of funds under the country's Standby Arrangement with the International Monetary Fund.

Ongoing Failure to Appoint Judges to the Federation Constitutional Court and Its Vital National Interest Panel

45. A key underlying structural factor preventing the Federation from resolving its current crisis is the incomplete Federation Constitutional Court, with at present only five of the nine justices in office. The five judges just meet the minimum requirement for a quorum, but since decisions of the court must be taken by a majority of all nine justices, decisions of the present Court essentially require consensus among all five sitting members. The situation is even more critical with the Court's Vital National Interest Panel, which is currently missing four of the seven judges needed to function, and which has been incapacitated for over three years. This affects not only the protection of constituent peoples' interests in the Federation, but also decision-making processes within the Federation and Cantonal legislatures, and certain city-level assemblies. As a result, certain acts have been blocked indefinitely pending a VNI decision.[25] Currently, there is a backlog of eighteen (18) VNI cases before the FBiH Constitutional Court, all related to requests submitted by the Cantonal legislatures. At least three VNI cases are expected to be submitted to the Court from the Federation legislature in the upcoming period. The present situation highlights the serious consequences of the ongoing four-and a half year failure of Federation authorities to appoint the missing judges.[26]

46. My office and I have been meeting with the competent institutions responsible for ensuring the appointment of the missing judges, in an effort to facilitate an agreement allowing for appointments to be made. Thus far, agreement has been reached on appointment of one of the judges, and efforts are ongoing to help the parties reach agreement on the remaining three.

Federation Constitutional Reform

47. The ongoing crisis in the Federation has not surprisingly increased demands for this entity to be reformed. An initiative to improve the effectiveness of the Federation of Bosnia and Herzegovina, including through changes to

this entity's Constitution, was set in motion by the US Embassy's formation of an expert group to examine the issue. This is a timely initiative, which has my support and which I hope will deliver homegrown solutions to the Federation's problems.

Croat National Assembly

48. The Croat National Assembly (*Hrvatski narodni sabor*) an umbrella organisation comprising most political parties with a Croat prefix and dominated by the two HDZ parties, met in Mostar on 6 April and continued to dispute the legitimacy of the current Federation authorities. The Assembly unanimously adopted a seven-point declaration demanding institutional and administrative-territorial equality for all three constituent peoples in Bosnia and Herzegovina; endorsing institutional boycotts and civil disobedience as mechanisms to deal with Croats who sought to usurp Croat positions; advocating a new territorial organisation of Bosnia and Herzegovina as a country of three or more federal units; and announcing mechanisms to ensure Croat representatives follow Croat National Assembly policy.

HDZ BiH Views on Entity Constitutional Reform

49. The HDZ BiH has also been setting out its views on constitutional reform for the country as a whole while setting out the party's positions on Federation restructuring. The party's president spoke at 13 venues throughout Bosnia and Herzegovina during February, setting out views which included the suggestion that Bosnia and Herzegovina is not a state because it contains two differently organized territorial units (Federation and Republika Srpska), that the Croat question needs to be resolved if the BiH state is to survive, and calling for territorial equality with Bosniaks and Serbs through a new division into four federal units.

Association of Serb Municipalities in the Federation

50. Serb officials from three Federation municipalities in Canton 10 where Serbs constitute a majority of the population – Bosansko Grahovo, Drvar and Glamoc – created the Association of Serb Municipalities as a vehicle for lobbying on Federation reforms. The Association promotes the creation of a Serb-majority Canton consisting of Bosanski Petrovac (a Serb-majority municipality in the neighboring Una-Sana Canton), Bosansko Grahovo, Drvar and Glamoc.

V. Republika Srpska

51. During the reporting period, the institutions of Republika Srpska functioned far more efficiently than those of the Federation. On 12 March, following protracted discussions within the ruling SNSD about how to tackle the worsening economic and budget crisis, the RS National Assembly appointed a new Government, led by Prime Minister Zeljka Cvijanovic, former RS Minister of Economic Relations and Regional Cooperation. The change of the government went smoothly in sharp contrast with the shambolic situation surrounding the Federation government. Prime Minister Cvijanovic heralded further reductions in the RS Budget, while calling for the financing of BiH institutions to be redefined. The RS Government reshuffle coincided with a growing economic crisis and strikes in the RS public sector. In contrast with the Federation government, the RS government has continued to meet regularly as it seeks to tackle the many economic and social challenges it is facing, and continues to declare its support for EU integration.

52. However, some RS authorities continue to pursue a policy that is – as the RS President has frequently acknowledged in public – aimed at rolling back previously agreed steps that have been taken to implement the Peace Agreement, at challenging and undermining state responsibilities under the Constitution of BiH and at transferring state responsibilities to entity institutions. During the reporting period, the RS President and others have continued statements against state level competencies in the judiciary.[27]

Srebrenica

53. The municipal election results in Srebrenica were the last municipal election results to be confirmed in BiH, following court challenges, which were ultimately resolved. Some RS-based parties claimed that Bosniak voters had registered residence in Srebrenica without the intention of living there, thereby enabling a Bosniak candidate to be elected mayor. On 11 December 2012, the Appellate Court of BiH rejected an appeal by the SNSD and the Coalition of the RS, freeing the way for the Central Election Commission (CEC) to certify election results. The Bosniak independent candidate was confirmed as mayor. Sarajevo-based and RS-based parties each won 11 seats

in the Municipal Assembly, with one seat going to a national minority, whose allegiance is with the Sarajevo-based parties. After constructive discussions, *the formation of municipal authorities was completed* on 17 January.

54. The contentious issue of a Serbian Orthodox Church being constructed in close proximity to an exhumed mass grave and also not far from the Potocari memorial center, the resting place of thousands of the victims of the Srebrenica genocide, has come to the fore again. The construction of the church began without the required legal permits two years ago. On 21 January 2013, the RS Ministry of Urbanism granted a permit, overturning an earlier denial of permit by the municipality. The mayor subsequently wrote to the Council of Europe/Congress of Local and Regional Authorities, arguing that the RS Ministry, in overturning an earlier decision by the municipality, had violated the principles of local-self government. While the construction of a church in itself not contentious, the choice of this particular site has been seen as a provocation. Therefore efforts heretofore aimed at finding a solution more conducive to reconciliation have focused on finding a more appropriate site in the municipality for the church to be built. Regrettably, construction works on the church close to the Potocari memorial resumed on 16 April. The Organizational Board for the annual commemoration of the Srebrenica genocide has written to the PIC Steering Board, warning of their intention to postpone planned 11 July commemorations if construction on the church is not halted, citing security concerns among other factors.

55. I remain concerned by the continuing rhetoric of senior RS officials that genocide was not committed in Srebrenica in 1995, despite rulings by both the ICJ and ICTY confirming this. The RS President has been particularly vocal in this regard.[28]

56. By contrast, and as reported above, Serbia's President Tomislav Nikolic has made a highly publicized apology for any crimes committed by any individual in the name of the Serbian state or the Serbian people, including crimes committed Srebrenica. For the record, I wish to state that I wholeheartedly commend and welcome President Nikolic's courageous and historic statement and its undeniable contribution to reconciliation in the region.

Special Parallel Relations

57. I have noted that the RS Government has made public a number of legal acts between Serbia and Republika Srpska under the Special Parallel Relations Agreement after a longstanding request by my Office to do so. This is welcome development and I will continue to encourage the RS authorities to work closely with the state-level authorities when addressing issues under the Special Parallel Relations Agreement and to ensure that the constitutional mechanisms to ensure that these Agreements comply with the Constitution of Bosnia and Herzegovina can be used effectively.

VI. OHR Facilitates Mostar Process

58. The failure so far of local institutions to implement the November 2010 BiH Constitutional Court decision on Mostar 's electoral system represents a violation of the Dayton peace accords, whose Annex 4 explicitly states that "[d]ecisions of the Constitutional Court shall be final and binding." Earlier local efforts – including within the Parliamentary Assembly and in the Mostar City Council – to implement the Court's decision failed. As a result, the CEC was unable to call elections in Mostar last October, depriving Mostarians of the right to participate in the democratic process alongside their compatriots in other municipalities throughout BiH.

59. In the legal vacuum that has resulted, local politicians have pursued legally controversial measures that they have justified by reference to the exceptional situation in Mostar. Simultaneously, domestic institutions with responsibility in these areas have assiduously avoided making rulings that would provide legal clarity. For instance, in an unprecedented move, the Mostar City Council adopted a decision on 3 November 2012 – the day before expiry of the four-year terms set out in the BiH Election Law – extending councilors' mandates "until such time as new councilors of the City Council and the Mayor of the City of Mostar are elected or unless a higher competent authority establishes a different situation and position of local authorities in the City of Mostar". In response, I wrote to all councilors highlighting potentially problematic issues arising from their move and asking them to refrain from taking any decisions until the issue of their mandates was resolved by the relevant institutions. Since then, a rump City Council without a single Croat councilor has twice adopted a decision on temporary financing for the first three months in 2013, decisions which the caretaker Mayor, a Croat from HDZ BiH, has challenged, setting in train a legal process at the Federation Constitutional Court. Subsequently, the acting Mayor controversially proclaimed a budget despite procedural irregularities on 8 April in a move that has been legally challenged. The lack of a budget has generated great hardship for many, including the most vulnerable, whose services the City

has been unable to finance. It has also had negative ripple impact on the wider economy as people have been obliged to reduce spending. I have been especially concerned about the implications for frontline services such as fire-fighting and provision of food in soup kitchens that feed many of the city's poverty stricken citizens.

60. Neither the BiH Central Election Commission nor the BiH Court has been able to make a definitive ruling on the mandates of Mostar's councilors. Meanwhile, the BiH Parliamentary Assembly has to date failed to provide a definitive response to a 12 December 2012 request from the Mostar City Council Secretary for an authentic interpretation of the BiH Election Law in relation to councilors' mandates.

61. The political and legal vacuum in Mostar is contributing to rising tensions. Statements from politicians and public figures and the reporting of politically controlled media are exacerbating the situation, rather than defusing it, and there have been a number of troubling security incidents.

62. My Office launched on October 16 a multi-party facilitation process to seek agreement on a way to implement the BiH Constitutional Court ruling[29] on Mostar that ensures respect for the rule of law and enables local elections to take place. To date, we have held more than 100 separate meetings and two plenary sessions with the parties. Most of the parties in the process – all of which are represented in the BiH Parliamentary Assembly where amendments to the BiH Election Law will be adopted – have demonstrated the desire to compromise. However, the two parties that have dominated Mostar politics for the past 20 years – the HDZ BiH and SDA – have refused to budge from their mutually exclusive positions, positions which do not appear to have the capacity to win the necessary support in the institutions of Bosnia and Herzegovina. I have kept the PIC Steering Board fully informed of developments in these negotiations, and the Steering Board and I continue to believe that there are reasonable compromises available if local politicians – especially the HDZ and SDA – show the political wisdom and courage to accept them. Otherwise, these two parties will continue to bear the lion's share of the responsibility for the crisis in the City and for the continuing Dayton violation.

VII. Entrenching the Rule of Law

63. The Structured Dialogue on Justice launched by the European Union with the authorities in BiH, which I have welcomed strongly, continues to offer domestic politicians a forum in which to discuss their concerns about the judiciary in BiH. My office continues to follow developments in the judicial field, including the issue of division of competencies between the state and the Entities, given the prominence of this core component of GFAP.

64. Several issues are of special importance for implementing civilian aspects of the peace settlement and the division of competencies between the state of BiH and its entities under the BiH Constitution. These are legal discussions about the competencies of the state of Bosnia and Herzegovina in criminal matters; changes in functioning of the Court of Bosnia and Herzegovina and a legal framework for establishment of the Appellate Court of BiH; amendments to the *Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina*; international co-operation on war crimes prosecution; and implementation of the War Crimes Prosecution Strategy.

Justice Sector Reform Strategy

65. The current *Justice Sector Reform Strategy in Bosnia and Herzegovina*, which initially was planned for the period of 2008 – 2012, was extended through 2013 and on 5 February the 9th Conference of all ministers of justice adopted *the Fourth Revised Action Plan for Implementation of the Justice Sector Reform Strategy*. The extension gives authorities more time to develop a new strategy, expectedly for the next four-year period of 2014 – 2018.

War Crimes Prosecution Strategy

66. The Steering Board for the Implementation of the National War Crimes Prosecution Strategy met on a regular basis and reports regularly to the Council of Ministers. The aims laid out in the Strategy — to have the most complex cases dealt with by 2015, and the less complex by 2023 — are unlikely to be met. While there is satisfaction with the rate of transfer of war crimes cases from state to entity jurisdictions, there needs to be an improvement in the processing of these cases by the entity jurisdictions. Internationally funded projects started in March 2013, to work with entity level courts and prosecutors' offices to enhance their capacity to deal with these cases.

67. On 31 December 2012, the presence of international judges, prosecutors and investigators at the Court and Prosecutor's Office of BiH ended. I would like to pay tribute to their efforts and contributions to the development of

the judiciary in BiH. There were some concerns that their departure would hinder the continuity in war crimes trials and investigations, especially those concerning the Srebrenica area. I have communicated those concerns to the Prosecutor's Office of BiH and will continue to follow this issue closely.

68. On 31 January, a Protocol between the War Crimes Prosecutor's office of Serbia and the Prosecutor's Office of BiH on the exchange of evidence and information in war crime cases was signed in Brussels. The Prosecutor's Office of BiH is currently conducting discussions with the State Attorney's Office of Croatia, to try and conclude a similar Protocol.

VIII. Public Security and Law Enforcement

69. I remain concerned about the readiness of some cantonal authorities to consider action that would rollback the hard won progress that has been made to ensure operational policing that is free from political interference. On 14 December 2012, the Tuzla Canton Government adopted amendments to the Law on Internal Affairs prescribing, *inter alia*, the removal of the entire Independent Board (IB), a body responsible for overseeing the work of the Tuzla Canton Police Commissioner. The internal affairs legislation in the canton does not foresee this possibility. On 21 December 2012, the Tuzla Canton Government withdrew the proposed amendments from the agenda of the Tuzla Canton Assembly following the involvement of my office, the EUSR, and the US Department of Justice-ICITAP program.

70. On 23 January, the Directors of the state-level police agencies received draft amendments to the BiH Law on Police Officials prepared by a multi-agency working group with the participation of my office and US Department of Justice-ICITAP. At the beginning of April, a BiH Ministry of Security-led working group finalized the proposed amendments and forwarded the package to the BiH Minister of Security. The working group proposal did not appear to affect BiH compliance with the 2007 UNSC Presidential letter on persons denied certification by IPTF. OHR, EUSR, and US Department of Justice/ICITAP representatives attended the meeting.

X. Cooperation with the ICTY

71. During the reporting period, cooperation with the International Tribunal for the Former Yugoslavia (ICTY) remained satisfactory. In his latest report to the UNSC, Chief Prosecutor of the ICTY Serge Brammertz expressed his concerns about delays in processing war crimes at the BiH level. Cautiously positive about the transfer of cases from the state level to the entity level jurisdictions, it was noted that the entity levels already deal with a backlog of cases, and that in parallel to the transfer, measures must be taken to improve the capacity of the entity jurisdictions to deal with the improved caseload.

72. The 12 November 2012 ICTY Appeals Chamber's reversal of convictions and acquittal of Ante Gotovina and Mladen Markac for crimes against humanity in Croatia provoked negative reactions in Republika Srpska. On 1 December, the SDS Main Board called upon the RS National Assembly to adopt a resolution condemning the ICTY as an anti-Serb institution and asked RS President Dodik and the RS Government to provide assistance to ICTY indictees Radovan Karadzic, Ratko Mladic and other Serbs, in the same manner as Croatia has done for their ICTY indictees. On 9 April, President Dodik appeared as a witness for the defense in the Karadzic case. In his testimony he asserted that "Mr Karadzic never insisted on the commission of any crimes… but actually… tried to find a way to resolve the conflict peacefully". This runs counter to earlier statements Dodik made in 2001, when he stated that "it must be openly said that crimes were committed under SDS leadership". When confronted with this earlier statement by the prosecutor, Dodik dismissed it as campaign rhetoric.

73. The ICTY rendered other verdicts during the reporting period. These included: the 12 December 2012 conviction of Zdravko Tolimir, who was found guilty of genocide, conspiracy to commit genocide and crimes against humanity, and sentenced to life imprisonment; the 28 February 2013 acquittal of Momcilo Perisic for crimes against humanity in Sarajevo, Srebrenica and Zagreb, for which he was sentenced in a first instance trial to 27 years; and the 27 March conviction of Mico Stanisic and Stojan Zupljanin to 22 years imprisonment for crimes against humanity and war crimes committed in Bosnia and Herzegovina between April and December 1992.

X. Economy

74. The BiH Council of Ministers' Directorate for Economic Planning noted a continued weakening of the BiH economy in 2012.[30] Accordingly, there was a decrease in exports, imports and industrial production, and an increase in the foreign trade deficit and unemployment. On the positive side, foreign direct investments saw a

slight recovery from 2011, with a 0.5 per cent increase.[31] A number of private companies are, however, fighting successfully against the prevailing trends.

75. The *Law on Budget of BiH Institutions and International Obligations of BiH for 2013* was adopted on 6 December 2012 in the amount of 1.73 billion KM.[32] The opposition argued that deadlines and procedures in the course of the budget adoption had been violated, with some parties also expressing concern that the budget was insufficient to ensure the full functioning of state-level institutions.

76. The *Budget of Republika Srpska for 2013* was adopted on 4 December 2012 in the amount of 1.945 billion KM, an overall 7 per cent increase over the 2012 rebalanced budget. The *Budget of the Federation of BiH for 2013* was also adopted on 4 December 2012 and it amounts to 2.214 billion KM, an overall increase of 11.1 per cent over the 2012 rebalanced budget. Although both Entity budgets displayed some restraint, fiscal pressures remain. Domestic revenues are currently either at or below 2012 levels and disbursements by international financial institutions, such as the International Monetary Fund (IMF), have been delayed, primarily due to disputes over the adoption of a new Federation Law on Privileged Pensions, which was finally accomplished on 18 April.[33]

XI. Return of Refugees and Displaced Persons

77. In January 2013, the BiH Council of Ministers, with the assistance of UNHCR, secured a loan of 60 million Euros from the Council of Europe Development Bank to fund durable housing solutions for the remaining 8,600 collective centre residents in the country. Implementation of the Regional Housing Project (RHP) commenced in early 2013. In line with the *Revised Strategy of BiH for the Implementation of Annex VII of the Dayton Peace Agreement*, the RHP and the CEB loan project will facilitate housing for some 21,000 refugees, returning refugees, and internally displaced persons. The State Commission for Refugees, the main Annex VII coordination body in-country has started meeting again during the reporting period, after 18 months in which no sessions were called. I welcome this long overdue return to work because Annex VII has not yet been fully implemented. It is hoped that the RHP and the CEB program will serve as a catalyst for national actors to address the needs of displaced persons in BiH in a more coordinated way. On 18 April, a new State-level law on refugees and displaced persons, which has been many months in the drafting, was rejected by the BiH House of Representatives due to opposition from the RS-based parties and the SDA.

XII. Media Development

78. Progress previously made in the media sector is being rolled back on a number of fronts. Amendments to the *State-level Law on Communications* adopted in December 2012, aimed at addressing the long overdue appointment of the governing body of the Communications Regulatory Agency (CRA), but so far has neither unblocked the process nor made it transparent. On 18 April all members of the six person ad hoc committee were finally adopted opening the way for appointments to the CRA's governing body to be made.

79. On 11 January, the BiH Council of Ministers adopted proposed amendments to the *Law on Public RTV System of BiH* that did not have the support of the competent minister. The amendments seek to introduce a Croat channel as a fourth channel within the public broadcasting system. To date these amendments have not been considered by the BiH Parliamentary Assembly. Overall, the implementation of the PBS has been stagnant for some time with financing a major problem. Not least because of this, the issue of how or why such a national-language channel should be established at public expense when all public broadcasters within the system are obliged to broadcast programs equally in all three official BiH languages is clearly a concern.

80. On 19 March 2013, *Radio Televizija Republike Srpske* (RTRS) began an experimental digital-terrestrial broadcast without the prior approval of the State-level Communications Regulatory Agency (CRA), which allocates broadcast frequencies. Despite several requests by the CRA, RTRS did not stop its illegal broadcast until 17 April. The readiness of RTRS to take unilateral action of this kind outside the established regulatory framework for a second time is of real concern.

XIII. Defence Matters

81. I am pleased to report that the RS President's October entity-based initiative to abolish the BiH Armed Forces (see my previous UN report) has failed to gain serious political traction. It has instead been the issue of pensions for retired soldiers that has continued to cause the most tensions, in this case in the Federation (See "Economy" section for more details).

82. In late March, the RS National Assembly adopted the *Law on Exercising the Right to Old Age Pension by Professional Military Personnel of the Armed Forces of BiH coming from the RS*, which allows AFBiH officers and non-commissioned officers recruited from the territory of the RS who have also served in the former VRS, to receive a pension from the RS budget immediately upon retirement from military service, provided that they have 30 years of qualifying service, until such time as they qualify for old age pension provisions under the RS Pension and Disability Fund. The Law will not cover discharged soldiers released at the age of 35 and failing to attain promotion past a certain rank. With the Law in place a number of Bosnian Serbs may seek retirement from the BiH Armed Forces as many of them have been waiting for this development.

83. The new Chief of the BiH Armed Forces Joint Staff is Lieutenant General Ante Jelec, was appointed on 28 February. This is the first time a Bosnian Croat has been appointed to this position, following the previous appointments of a Bosniak and a Serb.

XIV. Intelligence Reform

84. On 21 March, the BiH Minister of Defence and the Director General of BiH Intelligence-Security Agency (OSA) signed an Agreement on cooperation in the area of military intelligence. The Agreement envisaged by the 2005 BiH Law on Defence replaces the existing agreement signed in January 2006. The new agreement should significantly advance cooperation between the BiH Ministry of Defence and OSA, particularly in the area of preparations for and participation in Peace Support Operations, as well as improving the protection of defence installations in BiH. This in turn should remove purported justifications for the return of some competencies to the BiH Ministry of Defence that were placed by law under OSA in 2004. The Agreement was prepared by a working group chaired by my Office and included representatives from the BiH Ministry of Defence, the BiH Armed Forces and OSA assisted by advisers from NATO, OSCE, and the Norwegian Institute of International Affairs.

XV. European Union Military Force

85. On 14 November 2012, the UN Security Council passed Resolution 2074 extending the executive mandate of European Union military mission in Bosnia and Herzegovina (EUFOR) for another year. The Force now stands at 600 personnel mainly based in Sarajevo, but including liaison and observation teams present in other parts of the country.

86. EUFOR continues to play a key role in maintaining a safe and secure environment and is assisting the BiH authorities in improving the country’s management and disposal of surplus arms and ammunition. As such, EUFOR remains a vital factor of stability in BiH. Given the negative trends described earlier in this report, I consider it imperative to retain an executive military mandate operating under Annexes 1a and 2 of the GFAP and to provide critical reassurance to citizens.

XVI. Future of the Office of the High Representative

87. The Peace Implementation Council Steering Board met at the level of political directors on 29 and 30 November 2012, again expressing its concern about the situation in the country and the ongoing failure to address the remaining objectives and conditions for the closure of the Office of the High Representative. The next meeting of the PIC Steering Board is scheduled for 22 and 23 May 2013.

89. As in previous years, my office continues its responsible efforts to cut overhead costs as a response to the global fiscal crisis and the impact felt by our contributing States. Our efforts will be reflected as savings in our budget proposal for 2013-2014. Since the beginning of my mandate the OHR’s budget has been reduced by almost 40% and my staff by more than 49%. It now, more than ever, remains essential that I be equipped with the budget and staff required to carry out my mandate effectively.

XVII. Reporting Schedule

90. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Security Council resolution 1031 (1995), I herewith present my ninth regular report. Should the Secretary-General or any Security Council member require information at any other time, I would be pleased to provide an additional written update. The next regular report to the Secretary-General is scheduled for November2013.

Notes:

[1] Most recently, local leaders recorded a damaging failure to meet the latest deadline set by the EU for a political agreement to implement the European Court of Human Rights "Sejdic-Finci" ruling. This latest setback by the country's leaders in addressing the requirements of European and Euro-Atlantic integration again contrasts with other countries of the region that have made notable progress in this regard.

[2] As a reminder, at its meeting on 26-27 February 2008, the Steering Board of the Peace Implementation Council (PIC SB) set five objectives and two conditions for closure of the OHR. The five objectives were: an acceptable and sustainable resolution of the issue of apportionment of property between state and other levels of government; acceptable and sustainable resolution of defense property; completion of the Brcko Final Award; fiscal sustainability; and entrenchment of the rule of law. The two conditions were: the signing of the SAA and "a positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Peace Agreement".

[3] BIH Constitutional Court Ruling Case No. U 3/11 of 27 May 2011 concluded *inter alia* that "the challenged law regulates issues pertaining to the personal identification number of citizens, therefore, issues which fall under jurisdiction of Bosnia and Herzegovina. The resulting conclusion is that the challenged law does not regulate the issues which fall under jurisdiction of the Entities' constitutions, such as the territorial organization of the Entities and neither does it determine the names of towns and municipalities in the Entities."

[4] "Ten years from now on, the RS will be mighty and strong, beloved also here in Serbia, more than it is now. And I expect it to be on its own". Milorad Dodik, *TV Prva*, 30 November 2012; "BiH is not in the interest of the Serb people and it is possible there will not be a BiH in ten to fifteen years. Serbs have never truly accepted BiH. After the breakup of Yugoslavia, BiH is not the political or historical interest of the Serb people". Milorad Dodik, *Tanjug*, 8 January 2013; "Today we are waging the same battle we had already waged a hundred years ago…I think that the ultimate goal of this new plan should be the integration of the Serb people in the region". Milorad Dodik, *Nedeljnik*, 13 February 2013; "Recognition of Kosovo opens up space not only for us; look, I think you are following what is happening in Catalonia, in Scotland and in other parts of Europe and that this could be stimulating for many processes". Milorad Dodik, *ATV* on 4 April 2013.

[5] Milorad Dodik, *ATV* on 4 April 2013. During an interview with *RTRS's Pressing* on 15 April the RS President made similar remarks: "BiH is nowhere. A sufferer on its last breath, into whom the international community is still throwing capsules of oxygen claiming that it has to survive."

[6] "Is everything finished, has perhaps the time come for a reaffirmation of the right of self-determination? How is it that some others have the right to self-determination and we don't? Has the time perhaps come for the reaffirmation of the right of self-determination? Are Serbs a constituent people? They are. Why do they not have the right to self-determination? That is for a time which is coming." Milorad Dodik, Address to the Parliament of the Republic of Serbia in Belgrade, 14 February 2013.

[7] Milorad Dodik, interview to *Face TV*, 16 February 2013.

[8] "A referendum for independence of the RS is always an option. We never gave up the referendum idea and I can assure that it is always an option. We just want to give a chance to an agreement if it is possible but if not there will be nothing left to do. Milorad Dodik, *BNTV*, 8 November 2012; "Mentioning the possibility of a referendum was a forbidden topic some time ago. Now we have organized the legal procedure for that and I am not excluding the possibility of a referendum in the RS in future, and to vote in the way that is done in any other democratic country…If BiH keeps on ignoring the status of the RS and keeps creating further problems, then a referendum would be an option." Milorad Dodik, *Al Jazeera*, 7 January 2013.

[9] "Euro-integration will be used to strengthen the autonomy and status of the RS and to bring the entity to a higher level of independence". Milorad Dodik, *Vecernje Novosti*, 9 January 2013. "The RS is dedicated to European integration but we want to strengthen our position through that process, not weaken it". Milorad Dodik, *Dnevni avaz*, 4 January 2013.

[10] "The RS must proclaim itself as a confederate unit. Confederation is when a self-standing state joins with another one, and can dissolve at will. It must be well prepared, and allies found for it.…Eventually the RS will have no other option but to secede from BiH. A civic state cannot be created by force." Milorad Dodik, *Blic*, 29 November 2012.

[11] Nebojsa Radmanovic, *RTRS*, 21 November 2012.

[12] "The initial idea was that the RS should be independent. Namely, the RS used to be independent for several years. Following the Dayton Agreement, the RS joined BiH with the capacity of a sovereign state," Milorad Dodik, *FTV*, 9 January 2013.

[13] Milorad Dodik, interview to *RTRS* on 17 October 2012.

[14] Emil Vlajki, *Nezavisne novine*, 15 March 2013.

[15] "My opinion and the opinion of SNSD is that the RS is a state, whether Mesic and those who think like him like it or not. I do not want to refer to the RS as an entity, I refer to the RS as a state," Radovan Viskovic, *TV1*, 17 March 2013; "BiH does not present a political and historic interest of Serbs, and it is possible that BiH will not even exist within 10 or 15 years, because there is no will of two constituent peoples for that." Milorad Dodik, *Vecernje Novosti*, 9 January 2013; "I deem that the RS is a state, it has no international capacity, but it is a state in line with everything that definition of state means. The Constitution of BiH was created on basis of the Constitution of the USA, which is treating America as a state made of states. The RS owns everything that any of the US states has." Milorad Dodik, *Vecernje Novosti*, 9 January 2013; "The RS will definitely turn to independence in case of a failure to regain the competencies it had in early post-war years. The RS and BiH should share competencies in accordance with the original Dayton Peace Agreement and the RS will surely seek independence in case this does not happen," Milorad Dodik, *BNTV*, 9 January 2013. "What else would the RS be, but a state?" Milorad Dodik, *TV Prva*, 30 November 2012.

[16] "We have met today as the most responsible people of the two Serbian states... We are also working on economic development of both states". Tomislav Nikolic, Press conference in Belgrade, 7 April 2013.

[17] "The Constitutional Court attempts to create the Constitution, but the Constitution does not read that property belongs to BiH, but to the entities. Former High Representative Paddy Ashdown has enacted three laws banning the disposal of property, for the RS, for the FBiH and for the Brcko District. This here is the issue of unblocking the property, while the Constitutional Court only needs to establish if something is in line with the constitution or not. In this case it is not competent. The Constitutional Court takes inputs from foreigners. It is a monster serving daily political needs. There are three foreigners at the Court, and two Bosniaks, and they can rule whatever they wish. The Constitutional Court is a place of political rape". Milorad Dodik, *Face TV*, 16 February 2013; "The Prosecutor's Office and the Court of BiH do not exist according to the Constitution of BiH. I do not want to legalize something imposed by the High Representative by being silent about it." Milorad Dodik, *Al Jazeera*, 7 January 2013; "The HJPC is an informal center of power without legitimacy." Milorad Dodik, *TV1*, 28 December 2012; "The HJPC is a gravedigger of justice and judiciary in this area". Milorad Dodik, Ha*yat*, 28 December 2012; "The Central Election Commission decision on Srebrenica is clearly politically motivated and it was the product of Bosniak members of the CEC. It has nothing to do with reality. It is evident that elections in Srebrenica were speculative." Milorad Dodik, *SRNA*, 28 November 2012; "The BiH Constitutional Court is a criminal place in charge of conducting constitutional rearrangement of BiH under the influence of foreigners." Milorad Dodik, *AA (Anadolu)*, 16 November 2012; "Foreigners still sit and try to maintain the monopoly over the judicial institutions of BiH." Milorad Dodik, *RTRS*, 2 November 2012; "Courts and Prosecutor's Offices nowadays are the places of the biggest corruption." Milorad Dodik, *RTRS*, 2 November 2012.

[18] Milorad Dodik, *ATV* on 4 April 2013.

[19] The Criminal Code of BiH prescribes a criminal offence and envisions punishment of up to five years imprisonment for an official who refuses or in any way prevents the enforcement of a BiH Constitutional Court decision. This has not constituted an effective deterrent, and to date, no-one has been convicted on that basis.

[20] The CoM adopted Amendment II to the BiH Constitution, which changes Article IX, paragraph 2, to allow for compensation cuts to office holders in BiH institutions during their mandates.

[21] New laws adopted by the CoM and forward into parliamentary procedure: Law on Refugees, Displaced Persons and Returnees in BiH; Law on Budget of Institutions and International Obligations of BiH for 2013; Law on Managing Property Seized on a Temporary and Permanent Basis in Criminal Proceedings Before the BiH Court; Law on Responsibility for Nuclear Damage; Law on the Implementation of the Convention on Banning the Development, Production, Accumulation and Use of Chemical Weapons and their Destruction; and Law on the Witness Protection

Program.

[22] The 2013 Work Plan was adopted on 17 January and it lists 65 pieces of legislation to be adopted during the year (29 of them "new" laws, while the remaining 36 are amendments to existing legislation).

[23]For example, at the 14 February House of Representatives session – during the impromptu debate on equality of peoples in BiH – the Deputy Speaker (SNSD) invoked the case of dissolution of Czechoslovakia – whose peoples, in his opinion, had perfectly regulated their positions but simply did not want to live together any longer – and stated that "the critical issue is not whether we in BiH have equal positions, but whether we have the will to preserve this country".

[24] They state that: 1) the Federation Government "shall continue to operate with reduced powers, which include the restriction of Government operation only to a necessary minimum of activities" regarding "international obligations" and "necessary functioning"; 2) the Government "cannot issue decisions and other acts that create additional financial burdens" nor is it to adopt spending programs or make appointments, without Parliamentary permission; 3) the House of Representatives instructed the Prime Minister to provide a list of positions in the management of public companies, agencies, institutions and institutes, whose mandate has expired, so that the House of Representative could conduct these appointments on an acting basis; 4) the Speaker of the House of Representatives and Federation Prime Minister are charged to monitor the implementation of said conclusions, reporting to the House; and 5) "publicly urging the Federation President to enable the implementation of the procedure for the appointment of the new Federation Government".

[25] Under the Constitution of the Federation, "a Vital Interest Panel of the Constitutional Court of the Federation of BiH shall decide by a two-third majority within one week on the admissibility of such cases and within one month on the merits of cases held to be admissible".

[26] Once the judges are appointed to the Court, both Houses of the Federation Parliament must elect the four missing members to the Constitutional Court's Council for Protection of Vital National Interest.

[27] The RS is dedicated to respecting the original Dayton Peace Accords and competencies granted to BiH by that agreement. Everything outside of it, which was a result of pressures or which was imposed by the High Representatives, will never get our permanent support through constant intentions to change the Constitution and confirm those competencies. No. Let it be like this and we will return those competencies onto the RS the first chance we get". Milorad Dodik, RTRS, 14 April 2013. See also footnote 17 for further examples specifically related to the state-level judiciary.

[28] "We, who live here, must not forget and accept lightly, neither the qualification of genocide in Srebrenica, nor genocide at all, nor any story about a joint criminal enterprise, and we should carry on the struggle". Milorad Dodik, *SRNA*, 14 April 2013."Neither RS nor BiH are on trial in The Hague, nor can verdicts in those trials have any outcome. They can have only a speculative outcome. Just like there has been an attempt to impose the talk about genocide on the RS and the Serb people, which did not occur and we say that publicly and we do not want to accept it." Milorad Dodik, *B92 TV*, 15 October 2012. "There are ongoing efforts to portrait the RS as genocidal. In order for it to be proclaimed as genocidal, there should be those from our side who would confirm it. Luckily, there is no (former RS President) Dragan Cavic anymore to say he is ready to sign shameful report, forged report, on 8,000 killed persons in Srebrenica. Cavic should apologize to Serb people for signing such a report". Milorad Dodik, *RTRS 15 April 2013*.

[29] The BiH Constitutional Court ruled in November 2010 that certain provisions of the BiH *Election Law* pertaining to the Mostar electoral system were unconstitutional in response to a challenge by the Croat Caucus in the BiH House of Peoples. The Court's ruling addressed two areas: 1) the large differences in the number of voters required to elect councilors to the City Council between Mostar's six City Areas; and 2) the discriminatory treatment of voters in Mostar's Central Zone who, unlike voters elsewhere in Mostar, only elect councilors from a city-wide list and not from a geographical voting district. The BiH Constitutional Court gave the BiH Parliamentary Assembly six months to correct the relevant provisions in the Election Law of BiH. After the deadline passed without action, the BiH Constitutional Court issued a supplementary ruling on 18 January 2012 repealing the provisions of the BiH *Election Law* that it had previously deemed unconstitutional. As a result of these deletions, the BiH *Election Law* currently only provides for the election of 17 councilors in citywide elections whereas the Mostar City Statute foresees 35 councilors.

[30] Source: BiH Directorate for Economic Planning, February 2013 Report on Macroeconomic Indicators for the Period January-December 2012.

[31] Revised data of the BiH Ministry of Foreign Trade and Economic Relations, BiH Directorate for Economic Planning, February 2013 Report on Macroeconomic Indicators for the Period January-December

[32] The amount foreseen for financing state-level institutions is 950 million KM, of which 750 million KM will come from indirect tax revenue. Both amounts are at the 2012 level and, pursuant to the 15 June 2012 BiH Fiscal Council's agreement on the Global Framework of Fiscal Balance and Policies in Bosnia and Herzegovina for the Period 2013-2015, will not increase until 2015. At the same time, there is a 77 per cent increase in the amount envisaged for servicing the foreign debt in 2013.

[33] Following the 26 September 2012 approval by the IMF Executive Board of a 24-month Stand-By Arrangement for BiH in the total amount of ca. 400 million EURO and the initial disbursement of 60.8 million EURO, the IMF Executive Board completed the 1st review of BiH's performance under the Stand-By Arrangement on 19 December 2012 and allowed for the disbursement of additional 58.9 million EURO. The Board's decision is a result of the timely adoption of 2013 budgets at the state and entity levels. The next disbursements under the Stand-By Arrangement are conditional on further reforms, the key requirement for the next disbursement being the adoption of a single, comprehensive and fiscally more sustainable law on favorable retirement of war veterans in the Federation of BiH. After being withdrawn from the parliamentary procedure on 28 March due to disputes over substantive and procedural matters and following additional consultations, the contentious Law was revised and again adopted by the FBiH Government on 10 April and then adopted by Parliament on 18 April.