

42nd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations

21 April 2012 - 26 October 2012

Summary

This report covers the period from 21 April 2012 to 26 October 2012. In contrast to the promising trends seen during the last reporting period, the political dynamic in Bosnia and Herzegovina (BiH) during this reporting period stagnated and reverted to the prevailing trends of the last six years. Not only was there little progress towards Euro-Atlantic integration, but direct challenges to the Peace Agreement, including to the sovereignty and territorial integrity of Bosnia and Herzegovina, intensified significantly.

Bosnia and Herzegovina began 2012 with politicians engaging in political dialogue and reaching agreements necessary for progress. This was reflected in a number of encouraging developments, including the formation of a state Council of Ministers in February rhetorically dedicated to progress on the EU path, some 15 months after the general elections. I was pleased to reflect cautious optimism regarding these developments in my May 2012 report to the UN Security Council.

Unfortunately, the promising developments of early 2012 have stalled.^[1] Having finally formed a state government in February and adopted a 2012 state budget in May, the ruling parties did not get to work, but immediately commenced a protracted series of power struggles and attempts at government reshuffling at state and Federation levels, and in some cantons. Occurring against the backdrop of campaigning for local elections, these political maneuverings have taken precedence over the pressing needs of citizens and the country as a whole. Moreover, in their haste to restructure authorities at the Federation level, representatives of some parties have ignored or violated applicable legal acts, rules and procedures. While the reshuffling of governments occurs across the globe in parliamentary systems, such initiatives take on a different character when this is done without respect for the constitutional framework and the rule of law.

Of more fundamental and growing concern, the leadership of the Republika Srpska (RS) has intensified its six-year policy of open and direct challenges to the fundamentals of the Peace Agreement. Statements uttered by senior RS figures, as well as actions initiated by them to erode the competencies of the state, raise profound doubts about the commitment of the current RS leadership to the most fundamental aspect of Dayton – the sovereignty and territorial integrity of BiH.

This issue of open and growing advocacy for the dissolution of Bosnia and Herzegovina by officials from the Republika Srpska, first and foremost by the entity's President Milorad Dodik, is one which I believe deserves the special attention of the international community.

Citizens of Bosnia and Herzegovina participated in the country's fifth local elections since the war on 7 October. Despite a relatively high number of invalid ballots, and some controversy surrounding the voter registration and counting in Srebrenica and other municipalities, the process was administered completely by domestic authorities, and election observers acknowledged that the electoral process was conducted generally in line with democratic standards. Citizens of Mostar were unable to vote on 7 October, due to the ongoing failure of authorities to implement a 2010 ruling of the BiH Constitutional Court on the city's electoral system. My office is facilitating discussions between political parties to enable elections to be held in Mostar as soon as possible.

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] The suspension of the Supervision of Brcko District did, however, constitute an important step toward fulfilling that objective, while a landmark ruling by the BiH Constitutional Court provided a legal precedent and outlined guiding principles for the resolution of the state and defence property objectives.

On the economic front, 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.

I. Introduction

1. This is my eighth 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, including the objectives and conditions which must be met before the Office of the High Representative can close. 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 reforms undertaken to implement the GFAP.

2. While I am focusing my energies solely on my mandate under Annex 10 of the GFAP and relevant United Nations Security Council Resolutions, my Office fully supports the efforts of the European Union to help BiH move along the path toward closer integration with the EU. My Office and that of the European Union Special Representative are working in close cooperation on the ground to create new synergies wherever possible, in accordance with our respective mandates.

II. Political update

General Political Environment

3. The reporting period was influenced by two major political developments and one worsening trend. The first set of developments revolved around the efforts by the Social Democratic Party (SDP) to expel the Party for Democratic Action (SDA) from governing coalitions at the cantonal, Federation and state levels, which created significant gridlock and contention. The second was the critical reaction of officials coming from the RS to the vote in the UN General Assembly on Syria by BiH's Permanent Representative to the UN. The worsening trend was RS representatives' increasing pro-dissolution, pro-independence rhetoric, accompanied by challenges to state judicial institutions, the BiH Armed Forces, and other responsibilities of the state under the Constitution of BiH, which is also Annex IV of the GFAP.

4. The SDA vote against the adoption of the state budget on 31 May triggered a move by the SDP to expel SDA from all levels of government and to establish new majority coalitions in alliance with the Party for a Better Future of BiH (SBB BH) and the two largest predominantly Croat parties (HDZ BiH and HDZ 1990). Although the SDP was able to remove the SDA from government in four cantons and a few municipalities, it lacked the parliamentary votes to do so entirely at either the state or Federation levels for most of the reporting period. As the SDP and SDA fought for dominance, the work of the parliaments came to a standstill and little legislation was passed. The stagnation deepened as all parties competed for votes in the run-up to the October local elections. In its rush to eject the SDA and the Croatian Party of Rights (HSP) from the positions of Speaker and one of the Deputy Speakers of the House of Representatives of the Federation Parliament, the SDP-led majority convened and held a session of parliament in a manner which disregarded the rules of procedure and the constitution. This was subsequently confirmed in a ruling of the Federation Constitutional Court.

5. The SDP's efforts to remove the SDA from the state-level Council of Ministers ultimately came to fruition on 22 October, with the BiH Parliamentary Assembly voting to remove two SDA Ministers and one Deputy Minister from the BiH Council of Ministers. According to the Law on Council of Ministers, deputies are to temporarily take over these ministerial posts, until replacements can be appointed.

6. In parallel to these developments, parties from the RS sought to remove the BiH Minister of Foreign Affairs (who is also the president of the SDP party) from his position, following a controversial vote in support of the UN General Assembly resolution on Syria on 4 August. Following the vote, the RS President and the Serb Member of the BiH Presidency claimed that the Minister of Foreign Affairs had acted unconstitutionally by instructing the BiH representative in the General Assembly to vote in favour of the resolution, without proper prior consultation within the three-member BiH Presidency. Although the BiH Presidency Chair had in fact authorized the vote, RS officials

primarily focused their criticism on the Foreign Minister and initiated his removal through the BiH Parliamentary Assembly.

7. These events have played out against a backdrop of increasingly vitriolic and nationalist rhetoric 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. 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, upon occasion called for the creation of a Croat-majority federal territorial unit.[3]

Decisions of the High Representative during the Reporting Period

9. During the reporting period, I refrained from the direct use of my executive powers, except in order to lift two bans previously imposed by the High Representative.

Five Objectives and Two Conditions for Closure of the OHR

Progress on Objectives

10. Bosnia and Herzegovina’s authorities took no concrete steps to meet any of the objectives for closure of OHR during the reporting period. At the time of writing, none of the legal acts foreseen in the 9 March multiparty *Agreed Principles of Distribution of Property* had been adopted. A recent state property ruling by the BiH Constitutional Court has laid out guiding principles for the resolution of the state property issue.

11. I closed the Brcko Final Award Office on 31 August in parallel with the decision by the Brcko Supervisor to suspend the exercise of his supervisory functions, a move that was endorsed by the Peace Implementation Council in its Communiqué of 23 May.

State Property

12. On 13 July, the BiH Constitutional Court adopted a landmark ruling in a case regarding the review of the constitutionality of the *Law on the Status of State Property Situated in the Territory of Republika Srpska and under the Disposal Ban* (Republika Srpska State Property Law). Pursuant to the Court’s Decision, the Republika Srpska State Property Law ceased to be in force on 19 September 2012.

13. As previously reported, the National Assembly of Republika Srpska (RSNA) adopted the Republika Srpska State Property Law in September 2010, unilaterally imposing the principal of division of public property between the different levels of government on a purely territorial basis and, as such, jeopardized the possibility of a negotiated settlement. In order to protect the ownership interests of BiH and other levels of government from the application of legal acts by which new rights of ownership might be established over state property, and to preserve the chance of a negotiated settlement of the issue, on 6 January 2011, I issued the *Order Suspending Application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban*,[4] which remained in effect until a final decision of the Constitutional Court of BiH entered into force.

14. The decision by the Constitutional Court is far reaching. The Court held that the Republika Srpska State Property Law, which transfers property to the RS over which BiH is titleholder, falls outside the competence of the entity legislature and is therefore unconstitutional. It explains that according to the BiH Constitution, BiH is the titleholder of the state property subject to the disputed RS law, i.e. public property of the former Socialist Republic of BiH and property covered by the Socialist Federal Republic of Yugoslavia Succession Agreement. The decision also rules that the competence to regulate such property is the exclusive responsibility of the BiH Parliamentary Assembly, which nevertheless must take into consideration the interests and needs of the entities. The Court also clarified that state property encompasses broad categories,[5] and acknowledged the BiH Council of Ministers’ formation of the State Property Commission as a positive mechanism by which “both the Entities and the Brcko District of BiH may articulate their respective interests” regarding State Property. The Court also acknowledged my role in helping this process by banning the temporary disposal of said property. As the state property issue remains unresolved, the Court concluded that there is a “true necessity and positive obligation of BiH to resolve this issue as soon as possible”.

15. The decision of the Court has implications for the political leaders' agreement of 9 March 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.

Defence Property

16. The BiH Constitutional Court decision on state property described in the previous section will have a bearing on the ongoing efforts to resolve the issue of immovable prospective defence property. While the decision itself did not implement the PIC Steering Board's objective of an *acceptable and sustainable resolution of defence property*, or indeed NATO's condition for the activation of the Membership Action Plan, it will undoubtedly have an impact on the issue both legally and politically. Despite the ruling of the BiH Constitutional Court, and the ongoing work being done to finish the accompanying technical aspects of defence property, the fundamental political disagreement between the parties over whether the state of BiH can own property at all remains an obstacle to resolving this issue. My Office stands ready to assist all relevant parties in finding a sustainable solution to implement an agreement on immovable prospective defence property in line with the BiH Constitutional Court's decision.

17. On 18 July, the RS Government adopted a conclusion that sought to amend the 2008 movable defence property agreement transferring the ownership of all arms, weapons and explosives in the possession of the BiH Armed Forces from the entities to the state. The proposed amendment would allow surplus arms, weapons and explosives to be sold, destroyed or donated by entity rather than state-level authorities. This would constitute a significant challenge to the defence reform process (including the BiH *Law on Defence*), and would call into question the already-completed objective of an acceptable and sustainable resolution to this part of the defence property.[6] On a related note, according to official BiH figures, only 360 tons of surplus arms, weapons and explosives had been destroyed by early September, while 14,156 tons of surplus arms, weapons and explosives remained un-destroyed.

Brcko District

18. Having discussed the issue intensively over the last year, the Peace Implementation Council Steering Board, as reflected in its Communiqué of 23 May, endorsed my decision to close the Brcko Final Award Office by 31 August, in parallel with the Supervisor's decision to suspend the exercise of his supervisory functions as of the same date. The Steering Board also recognized the intent of the Supervisor to exercise his functions under paragraphs 13 and 67 of the Final Award when the conditions set out in those provisions have been met. As of 31 August, the Brcko Office was closed concurrent with the issuing of a Supervisory Order Regulating the Status of Legal Acts issued by Brcko Supervisors. The decisions explicitly set forth in the 23 May PIC Communiqué have therefore been carried out. Having taken these steps, the Supervisor who resides in Sarajevo, no longer intends to intervene in the day-to-day affairs of the District, although the Supervisor has retained full authority to resume, at his own discretion, exercising his authorities if circumstances warrant.

19. On 16 May, the Federation Parliament adopted a *Declaration on Non-Acceptance of Termination of the Supervision for Brcko District of Bosnia and Herzegovina*, claiming that conditions have not been met to end the supervisory regime and that the RS has not met its obligations under the Final Arbitral Award, the Brcko District Statute and Amendment I to the Constitution of BiH. On 15 June, the Federation Government sent a note to the Brcko Arbitral Tribunal declaring its non-acceptance of the end of Brcko Supervision and requesting an opinion on whether the PIC Steering Board would be in compliance with the Final Award were it to take a decision to close Supervision before the conditions for closure of the Tribunal are met.

20. The ongoing RS predictions of the dissolution of BiH bear particular attention in respect to Brcko, given the District's strategic position. For instance, a recent statement by the RS President implied that Brcko would accompany the RS in separating from BiH: "We send the message that there will be no abolishing of the RS. BiH should be abolished. What do we need it for when we have no use out of it? RS and Brcko can manage on their own".[7] Such rhetoric, when considered in light of the continued use of maps by RS authorities showing Brcko to be part of the RS and other ambiguous signals from Banja Luka regarding Brcko, will continue to require close scrutiny by the international community.

21. As safeguards against potentially destabilizing moves related to Brcko, the jurisdiction of the Arbitral Tribunal has been retained and will remain open until it has been notified of the fulfilment of conditions of paragraphs 13 and 67 of the Final Award. In addition to the Arbitral Tribunal, the High Representative retains the mandate and authority, and all necessary instruments, to uphold the civilian aspects of the Dayton Peace Agreement throughout BiH, including in Brcko District. In addition, the BiH Constitutional Court (as well as the Supervisor himself) have the

authority to protect the progress achieved in Brcko if necessary.

Challenges to the General Framework Agreement for Peace

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

23. The reporting period saw intensified and provocative rhetoric from the RS, disputing and questioning the existence of the state of Bosnia and Herzegovina, advocating the state's dissolution, and challenging the functionality of the state and its responsibilities under the Constitution of BiH. RS President Milorad Dodik has been the most frequent – although certainly not the sole – proponent of state dissolution. Among many problematic statements, for instance, he recently said that, "BiH is a rotten state that does not deserve to exist. BiH constantly confirms its inability to exist... BiH is definitely falling apart and it will happen sooner or later. As far as I am concerned, I hope to God it dissolves as soon as possible".^[8]

24. The rhetorical campaign for secession has included repeated advocacy for the RS's right to self-determination, and frequent statements predicting the dissolution of BiH and the independence of the RS.^[9] Senior RS officials have publicly acknowledged deliberate obstruction of Dayton institutions,^[10] asked for RS to have its own path towards the EU,^[11] and asserted that it is up to the RS to decide whether or not Bosnia and Herzegovina exists.^[12]

25. I am also concerned by continued assertions — contrary to the Constitution of BiH — that the entities are in fact states.^[13] Republika Srpska's leading politicians have on numerous occasions referred incorrectly to BiH as a "state union" in the context of advocating for its dissolution. ^[14]

26. A new element in the rhetorical campaign for secession has been the fact that the number of officials mentioning future dissolution has broadened not only to include more senior RS officials, but also state-level officials from the RS, including BiH Minister of Finance Nikola Spiric and Serb Member of the BiH Presidency Nebojsa Radmanovic.

27. As has been the case in the past, the rhetorical campaign has also included regular political attacks against the state institutions that were established to exercise responsibilities of the state under the Constitution of BiH and/or to safeguard the Rule of Law, sovereignty, territorial integrity and constitutional order of BiH (BiH Constitutional Court, State Court and Prosecutors Office, High Judicial and Prosecutorial Council, and SIPA).^[15] These constant attacks have weakened these increasingly fragile, yet vital institutions.

28. Abiding by the Dayton Agreement and in particular the constitutional framework and the rule of law is a prerequisite and an instrument 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 take it forward. Given the seriousness of these efforts to negate or undermine vital aspects of the Peace Agreement, I believe this matter deserves the special attention of the Security Council.

State-level Institutions of Bosnia and Herzegovina

BiH Presidency

29. The BiH Presidency held five sessions during the reporting period and adopted decisions related to the budget, defence and foreign policy, despite disputes within the Presidency related to Kosovo, Brcko, and the vote on Syria in the UN General Assembly.

BiH Parliamentary Assembly

30. During the reporting period, the legislative work of the BiH Parliamentary Assembly was brought to a virtual standstill by inter-party conflicts that began in May with SDP-led efforts to expel the SDA from state government. Additional complicating factors included subsequent SDS moves to eject the Deputy Speaker of the BiH House of Representatives and SNSD calls for the removal of the BiH Minister of Foreign Affairs. The run-up to the 7 October municipal elections also saw a hardening of positions on national issues, which became a central part of the parties' municipal election campaigns. As a result, the BiH Parliamentary Assembly adopted only two new laws^[16]

and six sets of amendments to existing legislation during the reporting period. Since January of this year, the parliament has adopted just four new laws.

31. On 22 October, some five months after the SDP first initiated government reshuffling efforts at state level, the BiH House of Peoples ultimately confirmed the decision to remove the SDA Ministers of Security and Defence, as well as the Deputy Minister of Finance from government. Until such time as new Ministers are appointed, the law prescribes that their duties should be performed by their respective deputies.

32. On 23 October, the SNSD withdrew its request for the removal of the BiH Foreign Minister from the agenda of the BiH House of Representatives, ostensibly on the grounds that there was not a clear majority in favour of this move. On the same day, the BiH House of Representatives also voted to remove the SDP Deputy Speaker, with plans to appoint a new speaker on 6 November. The SDA alleged that political or financial deals, many at the expense of the state, motivated the reconciliation between the leaders of the SNSD and the SDP.

33. Deputies in the BiH Parliamentary Assembly from the RS challenged the independence and existence of the BiH Court and Prosecutor's office on a number of occasions in parliament, repeatedly rejecting the *Information on the Work of the Prosecutor's Office of BiH* on the basis of relatively minor issues and proposing a law – which did not pass – that would have done away with both institutions.

BiH Council of Ministers

34. In spite of the protracted political crisis, the BiH Council of Ministers continued to meet regularly, holding 18 sessions during the reporting period. The Council of Ministers passed only four new laws for parliament to consider,[17] along with seven sets of amendments to existing laws. The BiH Council of Ministers made several appointments and adopted various bylaws as well as dozens of decisions, including proposals for bilateral agreements and decisions on ratification of international treaties.[18]

35. Economic and other challenges posed by the Republic of Croatia's accession to the EU have increasingly been the focus of the Council of Ministers agenda. Thematic sessions of the Council of Ministers on 26 July and 16 October focused on fulfilling BiH's obligations to the EU for 2012.

The Electoral Process

36. On 7 May, the Central Election Commission (CEC) announced countrywide local elections for 7 October. The CEC also decided to postpone the election for the Mostar City Council.

37. The working group tasked with preparing amendments to three important state-level laws related to the electoral process submitted proposed amendments to the *Law on Conflict of Interest* and the *Law on Political Party Financing* to the BiH Parliamentary Assembly on 15 May. The group could not agree on changes to the *Election Law* related to the Mostar City Council. The proposed changes to the *Law on Conflict of Interest* would have softened sanctions prescribed by the existing law, but were rejected by the parliament. Proposed changes to the *Law on Political Party Financing* clarified provisions on prohibited activities and financial audits, but weakened sanctions for violations. They were adopted by the House of Representatives in July and await adoption in the House of Peoples.

Constitutional Reform

38. During the reporting period, there has been no progress implementing the European Court of Human Rights (ECHR) Ruling in the *Sejdic-Finci vs. BiH* case. Parties failed to submit a joint proposal implementing the ruling by the 31 August deadline agreed to in the EU Road Map by political leaders[19] at a meeting in Brussels on 27 June with the European Commissioner for Enlargement and European Neighbourhood Policy. While the HDZ BiH/HDZ 1990, SNSD/SDS and SDA formally submitted separate proposals to the BiH Parliamentary Assembly in August, they failed to create a harmonized single proposal. The proposals differed over the method of selecting the BiH Presidency members and composition of the House of Peoples.

Republika Srpska

39. Republika Srpska authorities continue to pursue a policy that is – as the RS President has frequently expressed in public – aimed at rolling back previously agreed steps that have been taken to implement the Peace Agreement and at moving state responsibilities to entity institutions. The most recent and troubling of these is an initiative sent by the RS President to the RS National Assembly attempting to create conditions that would unilaterally force

the dissolution of the BiH Armed Forces.

40. The executive and legislative authorities of RS continued to meet regularly during the reporting period and the Republika Srpska National Assembly (RSNA) adopted 33 new pieces of legislation.

41. On 10 July, the RSNA abolished its *Law on Population, Household and Apartment Census 2011*, which foresaw a separate RS entity census, and adopted the *Law on Organization and Implementation of Population, Household and Apartments Census 2013*, following the adoption of the same law at the state level. I commend the RS authorities for having taken this step.

42. On 26 April, the RS Council of Peoples failed to adopt amendments to the RS Constitution attempting to regulate, inter alia, abolishment of the death penalty, harmonization of the RS Constitution with the European Convention on Human Rights, local self-governance and a transfer-of-competencies mechanism. The amendments were opposed by the Bosniak caucus in the absence of a compromise over guaranteed representation of Bosniaks and others in the city council of Banja Luka.

43. On 6 June, the RSNA appointed five new judges to the RS Constitutional Court, including the then sitting RS Minister of Justice (who was subsequently elected President of the court) and a former member of the SNSD Main Board. These appointments were criticized by the opposition as an effort to politicize the court.

Srebrenica

44. Events surrounding the conduct of the October 2012 municipal elections in Srebrenica were a major issue during the reporting period. Bosniak-majority parties had advocated the use of my executive mandate to extend the previous special election arrangement for Srebrenica, whereby all those who lived in Srebrenica in 1991, regardless of where they live today, would be able to vote in the Srebrenica local elections. They argued that the genocide perpetrated there justified such an exception. I raised this matter with the PIC SB on several occasions, and it was clear that there was virtually no support for such a move (with the exception of Turkey). I encouraged the parties to find a mutually acceptable solution that would contribute to reconciliation, while taking into account that genocide was perpetrated in and around Srebrenica, as adjudicated by international and domestic courts.

45. In May, a coalition of Bosniak civil groups organized a registration campaign to encourage former Srebrenica residents to register either as residents, or as absentee voters. By 24 August (the cut-off date for registration of regular voters for the October local elections) over 2,100 additional people registered their residence in Srebrenica. According to the campaign, an additional 2,500 displaced persons registered to vote in Srebrenica from their place of current domicile.

46. Complaints of irregularities marked the process leading up to the election. Serb parties claimed that people registered residence in Srebrenica who have no intention of living there, while Bosniak parties and organizations claimed the RS police discriminated against Bosniaks during the registration process and made it unduly complex for them. Bosniak parties also claimed that the electoral register in Srebrenica contains the names of a large number of Serbs who have long ago resettled in Serbia and other countries.

47. The elections themselves were conducted without major incident, although voting at one polling station had to be suspended briefly. The announced results (subject to appeal) suggest that the Bosniak candidate won the mayoral elections, while the seats in the Municipal Assembly are to be evenly distributed (11 to each ethnic caucus plus one reserved for the representative of minorities).

48. This year's 11 July commemoration of the genocide proceeded in an orderly fashion, as 520 recently exhumed victims were laid to rest.

Denial of Genocide in Srebrenica

49. I am concerned by the continuing contention of senior RS officials that genocide, which has been confirmed by rulings from the ICJ and ICTY and other courts, was not committed in Srebrenica in 1995. At an election rally in Srebrenica, RS President Dodik declared, "I claim that genocide was not committed here!"^[20] He also continued to repeat this rhetoric after the elections.^[21] I am also concerned by similar statements made by Serbia's new President, Tomislav Nikolic, who told the Italian daily *Corriere della Sera* on 8 October that "Genocide didn't happen in Srebrenica... Not a single Serb admits genocide in Srebrenica, and neither do I".^[22] I welcome those

voices, including from the US government and the highest levels of the EU in Brussels, who have joined me in condemning these statements and the damage they do to the reconciliation process inside Bosnia and Herzegovina and regionally.

Federation of Bosnia and Herzegovina

50. During the reporting period, the Federation Parliament adopted only 3 laws and 2 decisions, 4 of which were mandated by the IMF as a condition for opening a new stand-by arrangement.

SDP-Led Efforts to Reconstruct Federation Authorities

51. Sustained political deadlock dominated politics in the Federation during the reporting period. In parallel to the attempt to remove the SDA from the state-level Council of Ministers, the SDP undertook to remove their previous coalition partners (SDA and HSP) from the Federation authorities and bring the two predominantly Croat HDZ parties (HDZ BiH and HDZ 1990) and the primarily Bosniak SBB BiH into the ruling coalition. During the ensuing political disputes, a number of actions were taken that raised serious issues under the Federation constitution. On a number of occasions I had to remind the parties of their obligation to respect the rule of law and to leave the resolution of their disputes to the competent domestic authorities.

Federation Government Dispute

52. On 22 June, at the behest of the SDA, the Federation President (from the HSP party) issued a decision accepting the resignation of the Minister for Spatial Planning. The Minister, who had earlier switched allegiance from the SDA to the SDP, disputed the claim that he had in fact resigned. His switch to the SDP was significant as it enabled the SDP to secure a majority in the Federation Government. The initial controversy centred around whether the President had in fact accepted a blank resignation, which the Minister was reported to have signed at the behest of his party when he first took up office. This practice is reportedly common in Bosnia and Herzegovina.

53. At a government session held on the same day, with the participation of the Minister whose resignation the President had accepted, eight SDP Ministers and the Minister for Spatial Planning voted to launch personnel changes in a number of Federation public companies.^[23] SDA members in the Government insisted that the Government and Prime Minister must respect the Federation President's Decision on resignation, meaning that the previous Minister for Spatial Planning could not legally participate in the government's sessions. The SDP and the Minister in turn challenged the President's decision. The dispute resulted in a number of legal cases, including criminal charges against the Federation President, claiming illegalities in his acceptance of the Minister's resignation letter. It also resulted in requests to the Federation Constitutional Court to resolve disputes surrounding the validity of the resignation. I had to remind the political actors that in accordance with the rule of law, decisions of the Federation President must be respected unless and until they are overturned by a competent authority.

54. Regarding the complaints received in relation to the resignation controversy, the Constitutional Court of the Federation ruled first on 29 August, confirming that the court has exclusive jurisdiction to determine whether a Decision of the President of the Federation is in accordance with the entity constitution. The Court also ruled that decisions of the entity president are presumed to be constitutional and valid until such time as the Court should rule otherwise. On 9 October, the Court went on to rule that the entity president can decide on resignations submitted by a minister in the Federation Government without prior proposal from the Federation Prime Minister, but that a document designated as a "resignation" given to a political party, cannot have legal effect. The Court avoided any ruling on the validity of the specific disputed resignation, meaning that for the time being the Federation President's decision accepting the former Minister's resignation stands. At the same time, the Court noted that the former Minister could request that the court rule directly on the question of his resignation, after which the Minister submitted a specific request to the Court.

Federation House of Representatives Leadership Changes

55. The SDP-led coalition also took the initiative to make changes to the parliamentary leadership in the Federation. At a 26 June session convened and presided over by the Deputy Speaker, the Federation House of Representatives (FBiH HoR) voted to dismiss the House Speaker (SDA) and Deputy Speaker (HSP) and to replace them with members from the SBB BH and the SDP.^[24] On 28 August, the Constitutional Court of the Federation ruled that this session of the FBiH HoR had not been held in line with the Constitution of the Federation, thereby invalidating all decisions taken at that session. The SDA Speaker and HSP Deputy Speaker returned to their posts

and at an extraordinary session of the FBiH HoR on 6 September, the House voted again to remove them (this time following the constitution and the rules of procedure) and to appoint an SBB BiH member as Speaker and an SDP as Deputy Speaker of the House. The FBiH HoR then held an extraordinary session on 11 September and re-adopted all the agenda items that had been passed at the unconstitutional 24/25 July session.

56. Changes were also made in the Federation House of Peoples. On 3 July, the House met in extraordinary session and elected an HDZ BiH member as the new speaker after voting to remove the former speaker. These decisions were not legally challenged. The House also adopted conclusions calling for the resignations of the Federation President and one of the Vice Presidents from the SDA and requesting the Prime Minister to “propose the removal of ministers who obstruct the work of the Federation Government”.

Efforts to Remove the Federation President

57. On 18 July, Speakers of both Houses announced that the Federation House of Peoples alone would initiate a procedure to remove the Federation President before the Constitutional Court of the Federation. On 19 July, my Office reminded all involved that any initiative to remove the President of the Federation must be fully consistent with the procedure outlined in the Constitution of the Federation, which requires a two-thirds majority vote of each House.

58. During an extraordinary session of the House of Peoples held on 20 July, a petition against the President of the Federation was signed reportedly containing signatures of 39 delegates. At the continuation of this session held in Sarajevo on 24 July, the House of Peoples adopted a simple-majority decision to file a motion with the Constitutional Court of the Federation on dismissing Federation President. Such a motion would also appear to be inconsistent with the Federation constitution, however, despite the decision of the House of Peoples, it was never filed.

Cantonal Government Reconstruction

59. In June, SDP-led majorities removed SDA Ministers from the Sarajevo, Zenica, Una-Sana, and Tuzla cantons and formed new governing coalitions with the SBB BiH. SDA responded immediately, mustering a majority to expel SDP Ministers in Gorazde Canton. In September, an SDA-led majority in Sarajevo Canton passed a vote of no-confidence in the SDP-SBB Government and is still working on forming a governing coalition.

Federation Constitutional Court Judges

60. The Federation Constitutional Court may soon have only five of its nine judges. This follows the appointment of one of its six remaining judges to a post in the European Court of Human Rights on 2 October. While a total of five judges still meets the minimum requirement for a quorum, decisions of the court must be taken by a majority of all nine justices, present or not, meaning that the Court will now effectively need to reach consensus among all five sitting members in order to pass decisions. Furthermore, it will not be able to work or pass decisions if one judge is absent. The situation highlights the serious consequences of the ongoing three-year failure of the competent Federation authorities to appoint the three missing judges.^[25]

OHR Facilitates Mostar Process after BiH Authorities Fail to Agree Court-Mandated Electoral Changes

61. My Office is currently facilitating multi-party talks to find agreement on a way to implement the BiH Constitutional Court ruling^[26] in relation to the Mostar electoral system to ensure respect for the rule of law and to enable local elections to take place. Facilitation follows the failure of competent authorities to reach agreement since the November 2010 Court ruling, thereby denying Mostarians their right to vote on 7 October.

Canton 10 Government Finally Formed

62. A government was formed in Canton 10 on 31 July, thereby completing the implementation of the October 2010 general elections after nearly 22 months.

Court Ruling on Segregation in Schools not Implemented

63. A ground-breaking 27 April ruling of Mostar’s Municipal Court ordering the Herzegovina-Neretva Canton Education Ministry to end the practice of “two schools under one roof” in the municipalities of Capljina and Stolac by 1 September has not been implemented. As a result, pupils returned to the same segregated education system

at the start of the new school year.

III. Entrenching the Rule of Law

64. The Structured Dialogue on Justice launched by the European Union with the authorities in BiH established a forum where specific issues related to the functioning of rule of law are discussed. This forum, which I have welcomed strongly, continues to offer domestic politicians the opportunity to discuss their concerns about the judiciary in BiH. My office continues to follow developments in the judicial field, given the prominence of this theme in the Peace Agreement.

National Justice Sector Reform Strategy

65. The *Justice Sector Reform Strategy in Bosnia and Herzegovina for 2008 – 2012* will likely be extended for an additional year, giving the authorities more time to consider a possible new strategy. Implementation of the current strategy has been extremely limited.

66. At the 8th Ministerial Conference held in July 2012, conclusions were passed to concentrate in the upcoming period on recommendations from the *Opinion on Legal Certainty and the Independence of Judiciary in Bosnia and Herzegovina* issued in June by the European Commission for Democracy through Law. 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 law; 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.

War Crimes Prosecution Strategy

67. During the reporting period, the Steering Board for the Implementation of the National War Crimes Prosecution Strategy met on a regular basis and issued conclusions on the implementation rate of the Strategy. One conclusion was that so far the only strategic aim that has been met was the handover by the BiH Prosecutor's Office of data on war crimes cases that it had taken since 1 March 2003.[27] This data was necessary for the BiH Court to decide on possible transfer of less complex cases to entity jurisdictions. The Steering Board expressed satisfaction with the rate of transfer of cases from state to entity jurisdictions, but cautioned on the need to increase staffing and the material/technical preparedness of entity prosecutors' offices and courts dealing with war crimes cases.

68. On April 10, the European Court of Human Rights (ECHR) rejected the complaint of Boban Simsic against BiH.[28] This decision was significant as it found that the application of the BiH Criminal Code of 2003 to war crimes cases committed during the 1990s did not violate the plaintiff's human rights, that the lack of an appellate court administratively separate from the Court of BiH also did not violate his human rights, and that there was no issue with the division of jurisdiction between the State of BiH and Entity judiciaries for war crimes cases. However, a similar complaint before the ECHR (Maktouf and Damjanovic vs. BiH) was relinquished to the Grand Chamber in July this year for further consideration. I have followed these cases closely as they raise issues under High Representative's decisions.[29]

Public Security and Law Enforcement

69. On 24 August, the Sarajevo Canton Government adopted a draft cantonal *Law on Internal Affairs*. In coordination with U.S. and EU officials, my Office expressed concerns that the draft Law had not been subject to adequate consultation with the police, did not sufficiently safeguard the Sarajevo Canton police from improper political control, and would lead to disharmonized police legislation in the Federation. OHR and other international actors also advocated that a draft Federation *Law on Internal Affairs* that is already in procedure be adopted as a first measure in order to ensure harmonization with subsequent legislation in the cantons.

70. During the reporting period, there were numerous allegations that the Sarajevo Canton Minister of Interior exerted inappropriate political pressure over the police, including attempts to circumvent the managerial authority of Sarajevo Canton Police Commissioner and other intrusions into the administrative functioning of the police.

71. Following the reconstruction by SDP and SBB of the Tuzla Cantonal government, in July, the Tuzla Canton Assembly attempted to remove the entire Independent Board, which is responsible for overseeing the work of the

Tuzla Canton Police Commissioner. In a coordinated approach, on 17 July, the OHR, U.S., and EU communicated to relevant officials that this move raised concerns of inappropriate political control over the Independent Board. In a follow-up meeting with OHR and EUSR, Tuzla Cantonal Assembly officials agreed to withhold further action on removing the Independent Board.

IV. Cooperation with the ICTY

72. During the reporting period, cooperation with the International Tribunal for the Former Yugoslavia (ICTY) remained satisfactory. During meetings in May and October in Sarajevo, Chief Prosecutor of the ICTY Serge Brammertz expressed his concerns about the implementation of the National War Crimes Prosecution Strategy. He noted the difficult situation within the state judiciary due to constant political attacks against its institutions. A further concern was expressed over the transfer of cases from state to entity prosecutors' offices, as the entity-level judiciary has not demonstrated adequate capacity to deal with existing cases, let alone the increased caseload caused by the transfers. Before the transfer of cases from the state-level, the entity-level judiciary already had jurisdiction for 50 percent of the reported war crimes cases, many of which had shown no progress. A significant number of entity-level prosecutors' offices lack a specifically dedicated department or prosecutor for war crimes cases.

73. The long awaited trial of Ratko Mladic, former commander of the Army of Republika Srpska, started on 16 May. Mladic is accused of genocide, crimes against humanity and violations of the laws or customs of war.

74. On 28 June, the ICTY Trial Chamber accepted a motion for acquittal on one of the counts against Radovan Karadzic, related to charges of genocide in seven BiH municipalities (Bratunac, Foca, Kljuc, Prijedor, Sanski Most, Vlasenica and Zvornik). Charges of genocide in Srebrenica remain.

V. Economy

Economic Indicators

75. In its October 2012 Report on Macroeconomic Indicators for the Period January-August 2012, the BiH Council of Ministers' Directorate for Economic Planning noted continued weakening of the BiH economy in the second quarter of 2012.[30] The April 2012 edition of the International Monetary Fund (IMF) World Economic Outlook forecasts stagnation of BiH's economy, revising the September 2011 forecasts of BiH's economic growth in 2012 to zero.[31]

BiH's credit rating stabilized during the reporting period. After its 3 April decision to downgrade the country's credit rating from B2 to B3 and commence a review for further possible downgrade, Moody's Investors Service confirmed on 10 July the B3 sovereign rating for BiH, giving it a stable outlook.

Challenges to the Fiscal Sustainability of State Institutions

76. Having operated on restricted temporary financing for 17 months, the last five months of which were based on a 2011 budget, which was not adopted in line with Annex IV of the GFAP (BiH Constitution),[32] the institutions of BiH finally received a budget at the end of May. The *Law on Budget of BiH Institutions and International Obligations of BiH for 2012* was adopted by the BiH House of Representatives on 24 May and by the BiH House of Peoples on 31 May. The 2012 budget amounts to 1.39 billion KM, of which 950 million KM will go towards financing state institutions. While this represents a 45 million KM increase over the institutions' budget for 2011, based on the execution of restricted temporary financing throughout 2011, it is 78 million KM lower than the institutions' 2010 adopted budget, i.e., 27.8 million KM lower than the executed 2010 budget.

77. At the time of budget adoption, the BiH Parliamentary Assembly had still not adopted amendments to the *Law on Salaries and Remunerations in BiH Institutions*, which would provide legal grounds for the planned 4.5 per cent across-the-board salary cut at the state level, or an amendment to the BiH Constitution that would allow compensation cuts to office holders in BiH institutions during their mandate.[33]

78. While it is early to assess the full implications of restricted financing for the functioning of the BiH institutions, there are already worrying signs. I am saddened to report that restricted financing at the state level has affected cultural institutions of national significance, which are dependent on grants from the state budget. The National Museum of BiH closed its doors to visitors on 4 October, its 124th anniversary. The BiH Arts Gallery closed down already on 1 September 2011. The BiH Museum of Literature and Theatre is also in danger of closure. The

mentioned institutions are among seven pre-war institutions[34] of national significance whose legal status has not been resolved to date.

79. Financial difficulties of the state budget users and beneficiaries are likely to increase over time given the 15 June agreement of the BiH Fiscal Council on the Global Framework of Fiscal Balance and Policies in Bosnia and Herzegovina for the Period 2013-2015. The agreement does not appear to include all the parameters required by the *Law on Fiscal Council of BiH*, as it appears to relate only to the financing of state institutions and their share in indirect tax revenue during 2013-2015. It foresees locking state institutions into the current restricted financing levels until 2015. I fear this could potentially negatively affect the functionality of state-level institutions.

New IMF Stand-By Arrangement for BiH

80. On 15 June, the BiH Fiscal Council decided to initiate a new arrangement with the IMF. In line with the decision and the agreement reached with the IMF mission in July, authorities at all levels worked efficiently towards fulfilling the agreed conditions ("prior actions")[35] to ensure the approval of the Stand-By Arrangement. On 26 September, following verification of BiH's successful completion on the agreed "prior actions", the IMF Executive Board approved a 24-month 338.2 million SDR[36] Stand-By Arrangement to BiH. The Board's decision enabled the initial disbursement of 50.73 million SDR[37], with the remainder to be phased in over the arrangement duration, subject to successful completion of quarterly reviews.

81. As part of the "prior actions", on 31 August, the Governing Board of the Indirect Taxation Authority (ITA) unanimously adopted decisions on the settlement of indirect tax revenue allocation for 2010, 2011 and 2012. As a result of the total debt settlement, the Federation will reimburse the RS for 12.9 million KM via the Federation's share in indirect tax revenue between 3 September and 31 December 2012. Entity debt settlement for 2010 and 2011 is a long-standing sore point that had in the past triggered both lawsuits and challenges to the indirect taxation system and the ITA Governing Board's unanimous agreement on this matter represents a major breakthrough, as well as an indication of the serious fiscal difficulties faced by both entities.

82. In September, the Federation parliament adopted an entity budget rebalance for 2012 in the amount of 1.99 Billion KM as well as amendments to the *Law on Banking Agency* that delete provisions allowing for the dismissal of the Agency's Director, Deputy Director and Board members if the Parliament does not adopt the Agency's annual report within six months after the end of the reporting year.

83. The RS National Assembly also adopted an entity budget rebalance for 2012 in September in the amount of 1.81 billion KM.

VI. Return of Refugees and Displaced Persons

84. Sarajevo hosted a regional donors' conference on 24 April in support of the regional refugee return program, which collected 300 Million Euro from various donor countries. A further 81 million Euro have been put forward by the four countries in the region. The main priority in BiH — people currently living in collective centres — will not be completely addressed by this program and the authorities in BiH will need to redouble their efforts to resolve this pressing and long outstanding humanitarian issue.

VII. Media Development

85. Political influence over public media – especially television – in both entities continues to be problematic. During the reporting period, the RS government continued to allocate funds to entity print and electronic media. As part of the September budget rebalance, the RSNA more than doubled government grants to the media from 1.4 million KM to 3.6 million KM.

86. During the reporting period, both the BiH and Federation authorities focused efforts on changing procedures governing appointments to the Communications Regulatory Agency and public broadcasters, currently designed to prevent political influence in the appointment procedure. At the state level, the BiH Council of Ministers sought to address the long-overdue appointment of the governing body of the Communication Regulatory Agency by adopting amendments to the Law on Communications that entered parliamentary procedure in August. Regrettably the proposed amendments will neither enable the unblocking of the appointment procedure nor ensure its transparency. At the Federation-level, the Parliament published a vacancy for three members of the Board of Governors of the Public Broadcasting Service of the Federation despite the fact that the law envisages

appointment of one member only per year. This provision is meant to ensure institutional memory while at the same time preventing political influence. On 26 September, the OSCE Representative on Freedom of Media submitted recommendations to the relevant authorities in BiH outlining the way to address legal reforms necessary to ensure independence of the public broadcasting regulator and the broadcasters.

87. In the period from 1 January to 10 September, the Free Media Helpline registered 39 violations of media freedoms and journalists' fights, including an increase in cases of pressure and threats by politicians and other public figures against journalists compared to the previous year.

XIII. Defence Matters

88. On 18 September, a newly constituted BiH Commission for NATO Integration (CNI) met for the first time. The body replaced the previous NATO Co-ordination Team. The CNI brings together the BiH deputy ministers of foreign affairs, security and defence, as well as other higher ranking ministry and directorate officials to discuss issues related to BiH's NATO integration process.

89. On 8 October, the RS President sent an initiative to the Republika Srpska National Assembly (RSNA) to discuss the abolishment of the BiH Armed Forces. He called on the RSNA to "task the Government and the institutions of Republika Srpska, as well as the representatives from Republika Srpska in the joint Bodies of BiH to prepare proposals for amending the existing documents which regulate this area at the level of BiH."

90. In the Press Release announcing this initiative in the RS parliament, the RS President claimed "the competence for defence is not the competence of BiH and neither is the issue of the military, and regardless of the activities to date, this was not the subject of change of the BiH Constitution as Annex 4 of the International Dayton Peace Accords, and therefore there are no constitutional grounds for BiH competence over defence matters." He also cited financial grounds for abolishing the BiH Armed Forces.

91. By way of background, the two entities signed an agreement in 2005, whereby they agreed to transfer (pursuant to Article III (5) a) of the BiH Constitution) all responsibilities of the Entities in the field of defence to the Institutions of BiH, and recognised that all responsibilities transferred by the entities will be exercised fully and exclusively by the Institutions of BiH. As a result, the exclusive competence of Bosnia and Herzegovina for defence matters results from the Constitution of Bosnia and Herzegovina and from a transfer Agreement signed under it.

92. During the summer, the BiH Armed Forces provided invaluable support to the civil authorities in combating numerous wildfires across BiH. In mid-September, both the BiH Minister of Defence and his deputies made the point that the BiH Armed Forces had to be adequately funded if the civil authorities were to receive such support in the future. This is part of a wider challenge of shortfalls in funding for the BiH Armed Forces.

IX. European Union Military Force

93. In early April, the EU agreed to reduce the size of the European Union (EU) military mission in Bosnia and Herzegovina (EUFOR). By 1 September, the force had been halved to around 600 personnel. Its headquarters and peace-enforcement capability remain based in the Sarajevo area. A reduced number of liaison and observation teams continued to be present in parts of the country. EUFOR also continued to work closely with the BiH Armed Forces.

94. To counterbalance the reduction of forces in theatre and in an effort to continue to contribute to maintaining a safe and secure environment in Bosnia and Herzegovina, some member states of the European Union will allocate reserve forces to EUFOR from October 2012 onwards, out-of-theatre reserves, ready to deploy at short notice if required.

95. EUFOR plays a central role in BiH's efforts to maintain a safe and secure environment. This, in turn, assists my Office and other international organizations to fulfill their respective mandates. As such, EUFOR remains a vital factor of stability in BiH. Given the negative trends described earlier in this report, I consider it essential for EUFOR to retain an executive mandate to provide critical reassurance to citizens.

X. European Union Police Mission

96. The EU Police Mission in BiH (EUPM) – the first mission under the European Security and Defence Policy – completed its mandate on 30 June 2012. EU support to the rule of law in BiH will continue via the instrument for

pre-accession assistance and the Office of the EU Special Representative.

XI. Future of the Office of the High Representative

97. The Peace Implementation Council Steering Board met at the level of political directors on 22 and 23 May 2012, again expressing its concern over 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 29 and 30 November.

98. For the tenth consecutive year, my office continued the trend of fiscal responsibility resulting in further budget reductions. Including the closure of the Brcko office, we reduced our overall budget by more than 13% and the number of staff by 12% relative to the previous year. As set out in the Peace Agreement, it remains essential that I have the staff that are necessary for me to meet my mandate.

XII. Reporting Schedule

99. 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 eighth 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 April 2013.

Notes:

[1] This was also reflected in the European Commission's annual progress report on Bosnia and Herzegovina: "The political consensus that had emerged was lost and progress on the EU agenda stalled." The report also noted that, "[a] shared vision by the political representatives on the overall direction and future of the country and its institutional set up remains to be agreed as a matter of priority. In order for such a vision to materialize, the political representatives of Bosnia and Herzegovina need to anchor the EU agenda at the heart of the political process and translate political agreements into concrete action." Commission Staff Working Document, Bosnia and Herzegovina 2012 Progress Report.

[2] 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] The HDZ BiH President was, for example, quoted in a 26 September SRNA interview advocating the division of Bosnia and Herzegovina into four federal units and explaining that Croat territorial autonomy was a rational and sensible solution that would provide for the normal functioning of a European Bosnia and Herzegovina. In a 24 October interview on TV1, the HDZ 1990 President argued that a solution to the political crisis in Bosnia and Herzegovina will only be reached when Bosniaks accept the idea of a third entity with a Croat majority and allow Croats to decide what is best for themselves.

[4] "Official Gazette of Bosnia and Herzegovina" no. 1/11.

[5] This includes "movable and immovable objects in the hands of public authorities and can include furthermore a 'public good' (sea water and seabed, river water and river beds, lakes, mountains and other natural resources, public transport networks, traffic infrastructure, etc.) – property that, by its nature, serves all people in the country. Such property reflects the statehood, sovereignty and territorial integrity of BiH."

[6] Ownership of some portions of movable defense property was also impacted by the BiH Constitutional Court's decision on state property.

[7] RS President Milorad Dodik, campaign rally in Brcko, 27 September 2012.

[8] RTRS, 30 September 2012.

[9] "I am completely convinced that it [Republika Srpska] will one day arise as an independent country". Milorad Dodik, *Nezavisne Novine*, 4 October 2012. "BiH will fall apart before it goes bankrupt. What is bankruptcy in a constitutionally unfinished country other than collapse?" BiH Finance Minister Nikola Spiric, *Glas Srpske*, 21 August 2012. "Perhaps, this is the road which has been marked and it will be concluded at the end that a mouse and a cat cannot live together and that dissolution is the only solution for BiH." Nikola Spiric, *Nezavisne Novine*, 13 August 2012. "It is naive to believe that foreigners will keep BiH from disintegrating in years to come." Republika Srpska President, interview with Sarajevo based *OBN*, 29 April 2012. "We basically do not like any Bosnia, neither the one constructed by Bosniaks, nor the one by foreigners. BiH is like a transit station on our way." Republika Srpska President, interview with Belgrade based *Politika*, 9 June 2012. "Whatever may happen, the dissolution of BiH is inevitable... Given that the hour of BiH's disintegration is nearing, the positive and capable intuition of one person is no longer enough. It must be transformed into a scientifically and professionally developed system. Or to put it differently, a council (office, commission or similar) needs to be formed to manage the process of RS independence". RS Vice-President Emil Vlajki, *Nezavisne Novine*, 13 August 2012.

[10] "We let the Court of BiH and BiH Prosecutor office remain as they are this year because of some other priorities. However, in one of the following years we will block all funds for the work of the Court and Prosecutor office." Republika Srpska President, *BNTV*, 23 April 2012.

[11] "The RS is institutionally and politically the most organized structure in BiH which could implement EU requests. I am sure the EU will revisit BiH path towards the EU because I do not expect FBiH to catch up with the RS in the integration process..." RS Minister of Regional Cooperation Zeljka Cvijanovic, *EuroBlic*, 13 August; "We have a mechanism that enables us to make the first step towards the independence of the RS - the path to the EU!" SNSD Executive Secretary Rajko Vasic, *Press RS*, 24 July 2012.

[12] "The reality is the Republika Srpska. You will return what you had taken from us! Not today?! Tomorrow then! Not ever? Then there will be no Bosnia!" Republika Srpska President, *Vecernje Novosti*, 9 August 2012. "Hence, the way out is to return to the original Dayton, or to go separate ways. If there is good will of both the local politicians and the international community, both one and the other can be done peacefully, at the table." *Politika*, 1 October 2012.

[13] "Republika Srpska, according to its competencies, is indeed a state in the framework of the complex community of BiH". Aleksandra Pandurevic, SDS member of the BiH Parliamentary Assembly, *SRNA*, 15 August 2012.

[14] "BiH is a state union composed of two entities." Republika Srpska President, *BNTV*, 15 June. "BiH is not a state in spite of press releases. The question is if it is a state union. BiH is just a structure and this is the best explanation of the current shapeless condition of this internationally recognized area between Serbia and Croatia." SNSD Executive Secretary Rajko Vasic, *SRNA*, 28 July. "BiH is constantly demonstrating its chronic inability to exist and survive as a state and the question is not whether BiH exists but how we could dissolve in a peaceful way." Republika Srpska President, *TANJUG*, 2 September 2012.

[15] For example, the RS President said that "the Constitutional Court of BiH is a political court that has lost legitimacy for any fair decisions a long time ago." *Nezavisne Novine*, 1 October 2012. He also threatened that the RS will unilaterally ignore state judicial institutions: "the RS is ready to reject the Court of BiH and the Prosecutor's Office of BiH if the structured dialogue on justice fails." *Nezavisne Novine*, 18 September 2012.

[16] *Law on Customs Tariff* (adopted 19 July) and *Law on Budget of Institutions of BiH and International Obligations of BiH in 2012* (adopted 31 May).

[17] Proposal of the Law on Foundations, Proposal of the Law on Anti-Mine Actions in BiH, Proposal of the Law on Free Legal Aid and Proposal of the Law on Associations.

[18] The Council of Ministers adopted on 22 June an Information prepared by the Ministry of Foreign Affairs on the Individual Partnership Program of BiH for 2012 as a cooperation mechanism between BiH and NATO, as well as an Individual Partnership Program of BiH for 2012. It adopted on 12 July 2012, a long overdue Rule Book on Internal Organization of the Agency for Prevention of Corruption and Coordination in the Fight Against Corruption and the Code of Conduct for the staff of the Agency. The rulebook defines the organizational and staffing aspects of the

Agency. Its adoption will now allow the Agency to proceed with recruitment of new staff.

[19] These were the leaders of the HDZ 1990, HDZ BiH, SBB BiH, SDA, SDP, SDS, and SNSD.

[20] BNTV, 24 September 2012.

[21] In an interview to Belgrade based TV station B-92 on 15 October, RS President Milorad Dodik again denied that genocide took place in Srebrenica. "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 publically and we do not want to accept it."

[22] Nikolic's statement came on the heels of Dodik's denial of genocide at a campaign rally in Srebrenica itself on 24 September.

[23] Together with the Minister who had switched party allegiances, nine out of 17 members of the Government voted for the removal of supervisory boards, the other eight members (from HSP, NSRzB and SDA) having walked out. Without the presence of the disputed Minister, only seven ministers and the Prime Minister would have been present, which would not have constituted a quorum.

[24] At the controversial session, the 58 deputies present decided that the reason for the Speaker's absence was unknown (despite the fact that the Speaker had postponed the session) and therefore applied the rule that enables a Deputy Speaker to replace the Speaker. The 39 deputies from the SDA, SBiH, HSP and NSRZB did not attend the meeting.

[25] The absence of these judges has incapacitated the FBiH Constitutional Court's Vital National Interest Panel and negatively affected the protection of constituent peoples in the decision-making process of vital national interest regarding Federation, Cantonal and Mostar City legislation.

[26] 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 voter 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.

[27] The date when the new Criminal Code of BiH together with the Criminal Procedural Code of BiH entered into force.

[28] The applicant complained that crimes against humanity, of which he had been held guilty, had not constituted a criminal offence under national law during 1992-95, and that he had not been entitled to have his second-instance judgment reviewed by a higher criminal tribunal. Lastly, he complained the State Court took over his case, unlike some other cases, from the competent Entity court.

[29] Although the complaints are similar, there is an added complaint over an alleged breach of Article 6 § 1 of the Convention (hearing by an independent and impartial tribunal established by law) because the international judges were members of the adjudicating tribunal and they were appointed by the High Representative.

[30] In the first eight months of 2012, exports decreased by 4.5 per cent and while imports increased by 0.2 per cent over the same period last year. As a result, BiH's foreign trade deficit increased by 5.8 per cent. Industrial production registered a general 6 per cent decrease (a 7.9 per cent decrease in the RS and a 1.2 per cent increase in the Federation) over the same period in 2011. The average net salary in BiH in July amounted to 827 KM, an increase of 1.7 per cent compared to July of 2011, while average monthly pensions in August were 311.15 KM in the RS and 350.68 KM in the Federation. Monthly inflation for the period January-August was estimated at 2 per

cent. In July, 545,881 persons or 43.9 per cent of the workforce were registered as unemployed, an increase by 14,823 persons or 2.8 per cent from August 2011. Based on the revised data of the BiH Ministry of Foreign Trade and Economic Relations, the BiH Directorate for Economic Planning reports that foreign direct investment in the first half of 2012 amounted to 50.35 million KM, a decline by 73.8 per cent compared to the same period in 2011. Source: BiH Directorate for Economic Planning, BiH Labor and Employment Agency, Entity Pension and Disability Insurance Funds.

[31] <http://www.imf.org/external/pubs/ft/weo/2012/01/pdf/text.pdf>

[32] Annex IV of the Dayton Peace Agreement (the Constitution of Bosnia and Herzegovina) explicitly requires that the BiH Council of Ministers recommends a budget to the BiH Presidency, which then officially proposes it to the BiH Parliamentary Assembly (Article V, 3(f) and VIII1). The proposed budget then must be adopted by the Parliamentary Assembly (Article IV, 4(c) and VIII, 1). The Law on Budget may only enter into force after its publication in the Official Gazette of Bosnia and Herzegovina (Article IV,3,(h)). These constitutional provisions were not adhered to by the country's key state-level institutions in their effort to implement the 28 December 2011 political agreement of BiH's six main political parties on the 2011 budget, given that the Budget of BiH Institutions and International Obligations of BiH for 2011 did not receive the necessary parliamentary approval in accordance with the Constitution. This has undermined the constitutional roles of key state institutions and set a potentially problematic precedent by which important acts like the budget for the institutions of BiH can be adopted outside the procedure set forth by the Constitution.

[33] Article IX, paragraph 2, of the BiH Constitution reads: "Compensation for persons holding office in the institutions of Bosnia and Herzegovina may not be diminished during an officeholder's tenure". The proposed amendment deletes this provision. The amendment in question was proposed in 2005 and adopted in both readings in the BiH House of Representatives and in the first reading in the BiH House of Peoples, where its second reading has been pending to date.

[34] Library for Blind and Visually Impaired Persons of BiH, Historical Museum of BiH, National Film Archive of BiH, Museum of Literature and Theatre of BiH, National and University Library of BiH, Art Gallery of BiH, National Museum of BiH.

[35] These concern the adoption of rebalanced budgets in both Entities, the settlement of indirect tax revenue between the Entities, and the repeal of the disputed amendments to the Law on Banking Agency of the Federation.

[36] This is about 405.3 million Euro or about 520.6 million USD.

[37] This is about 60.8 million Euro or 78.1 million USD.