36th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations

Thirty-sixth report of the High Representative for Bosnia

and Herzegovina

1 May-31 October 2009

Summary

This report covers the period from 1 May to 31 October 2009. During the past

six months Bosnia and Herzegovina has made little progress towards implementing

its reform agenda. Of particular note are the ongoing attacks against State

institutions, competencies and laws, mainly by the Government of the Republika

Srpska, as well as continued challenges to the authority of the High Representative

and the Steering Board of the Peace Implementation Council. Nationalist,

anti-Dayton rhetoric challenging the sovereignty and

constitutional order of Bosnia

and Herzegovina also played a role, with the earlier effort by three political leaders

to open a process of dialogue and compromise foundering.

As a consequence, only very limited progress has been made towards meeting

the outstanding requirements set by the Steering Board of the Peace Implementation

Council for transition from the Office of the High Representative to the European

Union Special Representative as well as on the priorities and conditions which are

required for progress on the Euro-Atlantic agenda. The high-level political

discussions (“Butmir process”) initiated by the European Union and the United

States are welcome. They represent an exceptional opportunity for the country’s

leaders to seize and take the country forward. They have not yielded any concrete

results during the reporting period, but are ongoing and have my full support.

Progress was limited in general, with the late exception of visa liberalizationrelated

laws, where legislative activity eventually gained speed after summer (with

some progress still required, especially related to the Bosnia

and Herzegovina

Criminal Code). This, together with the issuance of the first biometric passports in

October, revived hopes that Bosnia and Herzegovina might not lag too far behind its

neighbours in gaining admission to the “White Schengen” list.

The European Union military mission in Bosnia and Herzegovina (EUFOR)

continues to contribute to a safe and secure environment in the country. EUFOR is a

key reassurance factor in Bosnia and Herzegovina at a time when the political

situation remains fragile and tense. For this reason, the mandate of EUFOR should

be extended. I have also recommended its extension to the European Union and its

member States.

I. Introduction

1. This is my second report to the Secretary-General since assuming the post of

High Representative for Bosnia and Herzegovina – as well as that of European

Union Special Representative to Bosnia and Herzegovina – on 26 March. In

keeping with past practice, the present report assesses progress made towards

attaining the goals outlined in previous reports, reviews developments during the

reporting period, and provides my assessment of mandate implementation in the

most important areas, not least the conditions that must be met by the authorities of

Bosnia and Herzegovina before transition from the Office of the High

Representative to the European Union Special Representative can be concluded. I

have focused my efforts on facilitating progress in these areas, as well as meeting

my primary responsibility of upholding the Dayton Peace Agreement. Regrettably,

my efforts have largely been dedicated to addressing negative developments, in

particular a number of attacks on the State institutions in a context of aggressive

rhetoric.

2. The high-level political negotiations with the political leaders in Bosnia and

Herzegovina which were initiated by the European Union (EU) and the United

States in October are set to continue in November. My staff and I have fully

supported this initiative as a means to facilitate and speed up key reforms related to

the country’s Euro-Atlantic perspective and institutional functionality, as well as the

conditions which have been set for the closure of the Office of the High

Representative.

3. The successful election of Bosnia and Herzegovina to a non-permanent seat on

the Security Council in 2010-2012 represents a milestone in the country’s foreign

policy and an important recognition of the progress achieved in Bosnia and

Herzegovina. However, the Security Council membership will also be a major

challenge for the relevant Bosnia and Herzegovina authorities.

II. Political update

General political environment

4. Anti-Dayton action continued (specifically in relation to Annexes 2, 4, 9 and

10 of the General Framework Agreement for Peace) during the reporting period, in a

context of increasingly divisive rhetoric. Of particular concern has been the

challenge of the authorities in the Republika Srpska against the sovereignty and

constitutional order of Bosnia and Herzegovina, as well as the

authority of the

Steering Board of the Peace Implementation Council and the High Representative.

The Republika Srpska Government and National Assembly took actions that further

undermined State competencies and progress on a number of EU partnership and

visa-liberalization requirements. The lack of trust and of meaningful political

dialogue between party leaders has also been of concern.

5. The lack of progress in addressing reforms and the difficult political climate

resulted in a mostly negative progress report issued by the European Commission in

mid-October. The Commission concluded that there has been only “very limited

progress” in addressing key reforms required for further approximation towards the

European Union. The progress report also concluded that the European Union would

not be able to consider an application for membership by Bosnia and Herzegovina

before the Office of the High Representative has been closed.

6. The work and productivity of the Bosnia and Herzegovina Parliamentary

Assembly remained affected by the negative political climate, strained political

relations and the continuous impasse in the Council of Ministers. One of the key

problems related to the work of the Bosnia and Herzegovina Parliamentary

Assembly is the trend by which the political parties support draft legislation in the

Council of Ministers, only then to oppose the same draft laws in one or both houses

of the Parliament. This has been the case with a number of laws pertaining to visa

liberalization; the European Partnership laws also failed owing to Republika Srpska

opposition. Overall the performance of the Council of Ministers and the Bosnia and

Herzegovina Parliamentary Assembly has been poor, with ethnic and entity agendas

prevailing over the State’s intentions to fulfil requirements for EU and NATO

membership. Visa liberalization-related laws have (lately) become an exception,

with progress achieved towards the end of the reporting period.

7. The reporting period began with the Prime Minister of Republika Srpska

suggesting on 7 May that Serb soldiers serving in the small contingent of the Armed

Forces of Bosnia and Herzegovina then taking part in a NATO Partnership for Peace

disaster response exercise in Georgia should return home. Because the Republika

Srpska Prime Minister is not in the Armed Forces chain of command and should not

interfere in competencies exclusively belonging to the State, the call represented an

anti-Dayton act and led to a public outcry. The Office of the High Representative

condemned the incident, as did a number of other members of the Peace

Implementation Council.

8. The Republika Srpska National Assembly further raised tensions on 14 May

when it adopted conclusions that called into question the constitutional basis and

legality of State competencies which were considered by the Republika Srpska

Government and National Assembly as “transferred” from the Republika Srpska to

the institutions of Bosnia and Herzegovina, including some of the responsibilities

which the entities formally transferred to the State in line with the Constitution. The

legitimacy of the international community’s policies, decisions and presence in

Bosnia and Herzegovina were also challenged in the said conclusions. The

Republika Srpska National Assembly voted to initiate lawsuits challenging the

constitutionality of such transfers before domestic and international courts and to

hold the passage of future State budgets hostage to its own analysis of the

performance of state institutions based on those alleged transferred competencies.

The Republika Srpska alleges that only 3 of the 68 “transferred” competencies were

not “stolen”, seized or surrendered under false pretences, usually as a result of

alleged intervention by the High Representative.

9. The Republika Srpska list of controversial “transferred” competencies

included a number of responsibilities that are already expressly listed in the General

Framework Agreement and thus in the Constitution from the very beginning as

belonging to Bosnia and Herzegovina, including matters related to immigration and

asylum, import and export of arms, and international and inter-entity criminal law

enforcement. Certain matters contained in the Republika Srpska list have already

been subject to challenges before the Constitutional Court of Bosnia and

Herzegovina, which has decided that State-level legislation covering those matters

is in line with the distribution of competencies provided for in the Constitution.

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10. I wrote to the Speaker of the Republika Srpska National Assembly on 25 May

demanding that the Assembly vote by 11 June to nullify its conclusions on transfers

of constitutional competencies, thus preventing them from entering into force. In my

letter I noted that the conclusions undermined the division of responsibilities

between the State and entities established by the Dayton Constitution and

subsequent decisions of the Bosnia and Herzegovina Constitutional Court. They

were also, I noted, “misleading, erroneous and therefore unacceptable”. The

conclusions were nevertheless published on 15 June and entered into force the next

day. As a result of their actions the Republika Srpska authorities left me with no

option but to issue a decision on 20 June annulling the said

conclusions of the

Republika Srpska National Assembly.

11. On 19 and 20 May, Vice-President of the United States of America, Joseph

Biden, and the European Union High Representative, Javier Solana, visited Bosnia

and Herzegovina. Addressing the Parliamentary Assembly, the Vice-President

expressed concern about the deteriorating political situation, noting that “for three

years, we have seen a sharp and dangerous rise in nationalist rhetoric designed to

play on people’s fears, to stir up anger and resentment”. He noted that State

institutions required for EU and NATO membership were being “openly challenged

and deliberately undermined”, and that the reforms “that prompted the European

Union and NATO to open their doors to the citizens of this country” were being

rolled back. The Vice-President also noted that the Office of the High

Representative enjoyed the “full support” of the United States and that Washington

would not agree to the closure of the Office of the High Representative until all the

objectives and conditions set by the Steering Board of the

Peace Implementation

Council had been met.

12. Difficulties in the Federation of Bosnia and Herzegovina continued. Following

his re-election as President of the Party of Democratic Action (SDA) on 26 May at

the party's fifth congress, Sulejman Tihic immediately moved to secure the

resignation of the Prime Minister of the Federation, Nedzad Brankovic, who is

facing criminal charges for abuse of office in the late 1990s. The Federation Finance

Minister, Vjekoslav Bevanda, assumed most of the responsibilities of the Prime

Minister while the parties argued over a replacement for Brankovic. The Federation

Government faced a major challenge over its proposed "intervention" law, needed to

rebalance its 2009 budget and fulfil International Monetary Fund (IMF) conditions

to receive its share of the €1.2 billion, three-year standby arrangement negotiated on

5 May. Strikes, hunger strikes, road and border blockades, and threats of

demonstrations by trade unionists, war veterans and farmers multiplied, until, on

18 June, some 7,000 war veterans, civilian war victims and

non-war invalids

demonstrated in front of the Federation Government building in Sarajevo. The

caretaker government backed down as Minister Bevanda promised to remove a

planned 10 per cent reduction in benefits.

13. The Federation House of Representatives confirmed the SDA replacement

nominee as premier, Mustafa Mujezinovic, on 25 June. He has since tried to hold

the line on meeting the entity’s commitments to IMF, but has also faced

demonstrations as well as a number of disputes with Croat ministers frustrated over

being outvoted in government sessions. In short, the Federation Government

remained disunited, weak and often dysfunctional.

14. Beset by fiscal woes that delay salary and pension payments and facing social

unrest caused by IMF-required cuts, the Federation Government experienced a new

crisis on 27 August. Having been outvoted by their fellow ministers on a proposed

law that would alter the course of a planned motorway through Herzegovina, the

four Croat ministers in the Government announced that they would take no further

part in its work. The Federation Government resolved the standoff by appointing a

working group to analyse the highway plans, but the responsible Minister, a

Bosniak, later resigned and his position remains unfilled at the time of writing.

Relations in the Federation were also shaken on 12 October over a hurriedly called

Government session to decide the fate of the near-bankrupt, Federation-owned oil

terminals at the port of Ploce in neighbouring Croatia. The Government decided –

in the absence of Bosnian Croat ministers – both to appoint a new management and

to provide a financial injection to the company.

15. The European Commission announced on 15 July that it was recommending

visa requirements be lifted for citizens of the former Yugoslav Republic of

Macedonia, Montenegro and Serbia as from 1 January 2010. Albania and Bosnia and

Herzegovina were not included. This decision increased the level of popular

frustration with politicians, but was also used to criticize the European Union over a

perceived double standard. In the case of Bosnia and Herzegovina, the perception is

that the citizens of Bosnia and Herzegovina would be left as “second class” citizens

in a “ghetto”. While the European Commission later acknowledged, in its progress

report of October, that “progress has been made by Bosnia and Herzegovina with

regard to visa policy and in the wider framework of the visa liberalization

dialogue”, the country at this stage still lags behind its neighbours.

16. One of the principal targets of criticism for the failure of Bosnia and

Herzegovina to win access to the European Union’s “white list” for visa-free travel

was Bosnia and Herzegovina Security Minister and Deputy Chairman Tarik Sadovic.

On 3 July the presidency of SDA ordered Sadovic to resign and, following his

resistance, he was removed by a parliamentary dismissal procedure approved by

both houses of parliament.

17. Relations between Serbs and Bosniaks in the Republika Srpska took a turn for

the worse when the Bosniak caucus of the Republika Srpska Council of Peoples, the

effective second chamber of the Republika Srpska National Assembly, decided on

13 July to suspend its participation in the Council of Peoples until the Republika

Srpska Constitutional Court amends its own rules of procedure to preclude

“outvoting” of non-Serbs in cases referred to it by the Council of Peoples. The spur

was a ruling by the Constitutional Court the previous week, rejecting the Bosniaks’

invocation of vital national interest against a Republika Srpska National Assembly

law to delete the prefix “Bosnian” from the names of the towns Bosanski Brod and

Bosanska Kostajnica. The Court ruled that the prefixes related to the State as a

whole and not to Bosniaks specifically. There could, therefore, be no violation of

their national interest. In response to the boycott, the Republika Srpska Prime

Minister threatened to eject SDA from his governing coalition at entity level. He

also threatened to eliminate non-Dayton institutions such as the Council of Peoples

from the entity constitution. This dispute continued throughout the summer and

early autumn.

18. The five-party coalition Government at State level, the Council of Ministers,

was unable to meet or make decisions over much of the summer, because of

obstruction from various quarters. When it did manage to meet on 20 August, it

failed to make appointments to the directorships of three important State agencies

that have long been vacant or occupied by incumbents whose terms have expired:

the Directorate for European Integration, the Indirect Taxation Authority and the

Communications Regulatory Agency. The Chairman of the Council of Ministers,

Nikola Spiric (SNSD) – with the support of the SNSD main board – continues to

block the appointment of the SDA nominee, Sadik Ahmetovic, to the post of

Minister of Security and Deputy Chairman of the Council of Ministers. The

statutory time limit for this appointment lapsed on 12 September, and the Chairman

of the Council of Ministers is therefore in breach of the law. Chairman Spiric and

SNSD have said that they will hold this appointment hostage

until appointments to

the other positions have been made. In the meantime, however, the Civil Service

Agency has substituted for the Government and appointed a new director of the

Directorate for European Integration. This controversy has led to a serious

deterioration of political relations at the State level as the delay in forwarding the

nomination to the House of Representatives has greatly exceeded the legal deadline

and prevents certain types of decisions from being made in the Council of Ministers.

19. The Republika Srpska Prime Minister became ever more outspoken during this

period. His pronouncements included provocative remarks on issues such as

wartime massacres, international judges and prosecutors (including my right to

extend their mandate), the lack of legitimacy and permanence of Bosnia and

Herzegovina, the option of calling for a public consultation/referendum in the

Republika Srpska and my own decisions (qualifying them as “unconstitutional,

illegal and criminal”).

20. At the same time the Republika Srpska Premier presented

his analysis of the

supposed illegality of the Bonn powers and promised to sue me and all former High

Representatives (a threat he first made in person at the meeting of the Peace

Implementation Council Steering Board in June 2009), indicating that he plans not

only to challenge new uses of the Bonn powers, but also to undo decisions of

previous High Representatives.

21. The Republika Srpska Prime Minister’s recent statements on wartime atrocities

have generated anger and chagrin among Bosniaks and members of the international

community. On 11 September he claimed that evidence existed that Bosniaks had

staged the massacres in the Markale Market in Sarajevo in February 1994 and

August 1995, as well as in Tuzla in May 1995. While many Serb leaders have

repeated allegations in relation to Markale Market over the years, the comments in

regard to the Tuzla Kapija massacre, in which more than 70 mostly young people

were killed, represents a new departure. In all three cases, the International Tribunal

for the former Yugoslavia and the War Crimes Chamber of the

Bosnia and

Herzegovina Court have confirmed convictions of Serbs as being responsible. As I

noted in a statement issued with my OSCE and Council of Europe colleagues on

15 September, any attempt to change the established historical record of war crimes

is unacceptable and inexcusable. When such misstatements come from an official in

a position of high responsibility, an official who is obliged to uphold the Dayton

Peace Agreement and cooperate with the Tribunal, they are particularly

irresponsible, and undermine not only the institutions devoted to upholding the rule

of law but also the credibility of the individual himself.

22. Facing an imminent move by the Republika Srpska authorities to illegally

dismantle the State electricity transmission company Elektroprijenos Bosnia and

Herzegovina, which is a public company jointly founded (in 2003) and jointly

owned by the two entities as shareholders, and which had seriously deteriorated as a

result of the continued boycott by the Republika Srpska of the

Management Board, I

issued on 18 September a decision aimed at preventing the collapse of the company

and ensuring continuity of its operations. Indeed, several power outages in Sarajevo

have been attributed to failures of equipment that have become dilapidated owing to

major investments being blocked for the past two years by Republika Srpskacontrolled

officials in Elektroprijenos. The decision reaffirmed the principle of

continuity of function under which the mandate of the general manager of

Elektroprijenos continues until a replacement is appointed, except if otherwise

provided by law.

23. My decisions of 18 September prompted the Republika Srpska Government to

issue a series of conclusions which the National Assembly endorsed, while declaring

all my decisions null and void, illegal and a violation of the Dayton Peace

Agreement. It mandated lawsuits against all High Representatives but fell short of

initiating further immediate action, although it did adopt conclusions threatening a

walkout of Republika Srpska representatives from State

institutions as well as a

public consultation in the Republika Srpska in case of future decisions of the High

Representative. The Republika Srpska Government also refused to publish my

decisions in the Official Gazette, in violation of Republika Srpska law.

24. On 17 September the Republika Srpska Government divided KM 5 million

among media outlets. This payment of direct subsidies has raised concerns about the

independence of the media in the Republika Srpska and together, with OSCE, I will

be monitoring the situation closely. My staff received complaints from opposition

parties in the Republika Srpska alleging difficulties in terms of appropriate coverage

of their statements and activities by Republika Srpska public broadcasters as well as

private media known to be affiliated with the ruling party.

25. Continuing a process begun by my predecessors, on 21 August I lifted the bans

on four former Serb Democratic Party (SDS) members who had been previously

barred from holding public office and standing for elections.

26. In October, the European Union and the United States jointly initiated a highlevel

political dialogue (“Butmir process”), and the Swedish Foreign Minister, Carl

Bildt, representing the EU Presidency, the United States Deputy State Secretary,

James Steinberg, and the European Commissioner, Olli Rehn, jointly visited Bosnia

and Herzegovina twice within a couple of weeks in order to bring seven key party

leaders together. The aim was, through a “package approach”, to break the political

stalemate, relaunch a domestic dialogue and facilitate and accelerate reforms needed

for the country’s Euro-Atlantic perspective. This represented, in the light of the

earlier visit of Messrs. Solana and Biden, the highest-level international initiative to

move the country forward, and my staff and I gave my full support to it throughout

the (ongoing) process (for more details on the content of the process see para. 28

below).

Constitutional reform

27. Domestic actors continued to be given the space to develop their own views on

how to proceed, while I focused my efforts on facilitating the earliest possible

delivery by Bosnia and Herzegovina authorities of the “5 plus 2” agenda for

transition from the Office of the High Representative to the European Union Special

Representative. The response of the ruling coalition at State level was disappointing.

Not only did the parties fail to build on the success of the first amendment

(concerning Brcko District) to the Bosnia and Herzegovina Constitution adopted in

March 2009, but they also failed to engage in any meaningful dialogue on

constitutional reform. As a consequence, they continued to be unable to reach an

agreement on launching a parliament-led constitutional reform process.

28. It was only when high-level visiting and local officials of the European Union

and the United States brought party leaders together on 9, 20 and 21 October that

substantial negotiations commenced (see para. 26 above). The fact that the

international community was required to step in to get this process moving clearly

confirms the need for the international community to play a substantial and handson

role in facilitating constitutional reform. Together, the European Union and the

United States proposed, through a “package approach” covering remaining areas of

the “5 plus 2” agenda (apportionment of State and defence property) and

constitutional changes (relating to functionality, efficiency, respect of human rights

and related to the EU/NATO accession reform process), to reinitiate a domestic

political dialogue and facilitate and accelerate the country’s Euro-Atlantic

perspective and institutional capacity. While not having led to concrete results

during the reporting period, the process is ongoing at the time of writing. In its

progress report issued in mid-October, the European Commission also highlighted

the problems related to the Constitution, and underlined that the problem of

blockages due to abuse of the entity voting rules “needs to be addressed”, and that a

stricter definition of the vital national interest clause in the Constitution is

necessary. The Council of Europe’s Venice Commission had drawn attention to these

and other problems in a report issued in 2005.

III. European partnership requirements and visa liberalization

Visa liberalization

29. The European Commission provided Bosnia and Herzegovina with a “road map” for visa liberalization or abolition in June 2008. This identified the many actions the authorities must take if the country’s citizens are to enjoy visa-free travel to and within the Schengen zone. The road map set out tasks in the fields of document security, illegal migration, public order and security, and external relations. Citing the country’s inadequate progress in fulfilling the road map’s requirements, the Commission decided in July that Bosnia and Herzegovina should not be included among the other western Balkan States (the former Yugoslav Republic of Macedonia, Montenegro and Serbia) whose Governments the European Commission had judged had done enough to merit a recommendation on the introduction of a visa-free regime early in 2010.

30. The outstanding requirements included the issuance of biometric passports; the adoption by the Bosnia and Herzegovina Parliamentary Assembly of both the Law

on the Agency for the Prevention of Corruption and the Coordination of the Fight

against Corruption and amendments to the Bosnia and Herzegovina Criminal Code

(provisions on asset forfeiture, convictions for organized crime and trafficking in

human beings); the appointment of a director and deputy directors of the Directorate

for the Coordination of Police Bodies of Bosnia and Herzegovina, a State-level

police body which has yet to be established in accordance with the police reform

laws of April 2008; appropriate and effective coordination mechanisms for the

exchange of information between national agencies in the field of law enforcement

and the abolition of the offices of the Federation and Republika Srpska ombudsmen

in favour of a functional Bosnia and Herzegovina Ombudsman.

31. On 30 September, law enforcement officials signed an agreement on the

electronic exchange of data between registers of police bodies and prosecutors’

offices. On 1 October the Parliamentary Assembly rejected amendments to the

Bosnia and Herzegovina Criminal Code, but on 14 October the Bosnia and

Herzegovina House of Representatives adopted the Law on the Agency for the

Prevention of Corruption and the Coordination of the Fight against Corruption. This

law still awaits passage by the House of Peoples. Given that the issuance of

biometric passports also commenced in October, there has been a revival of hopeful

speculation that Bosnia and Herzegovina citizens might not lag too far behind their

neighbours in gaining admission to the “White Schengen” list.

Update on the implementation of police restructuring

32. In its assessment in May 2009 of Bosnia and Herzegovina’s implementation of

the visa road map, the European Commission noted the delay in appointing the

directors and deputy directors of the new bodies provided for in the police reform

laws of April 2008. In July, the Bosnia and Herzegovina Council of Ministers

appointed the director of the Agency for Education and Advanced Training. It also

approved start-up budgets for that agency and for the forensics and support agencies

during the reporting period.

33. On 22 July the Bosnia and Herzegovina House of Representatives confirmed

the nominations to the Independent Board and the Public Complaints Board, two

supervisory bodies provided for in the police reform laws. The House of Peoples

followed suit on 23 July. The Bosnia and Herzegovina Parliamentary Assembly

approved the rules of procedure for the Public Complaints Board on 19 October. The

Independent Board adopted its proposed rule book on 28 September, but it has yet to

be approved by the Bosnia and Herzegovina Parliamentary Assembly. The

Independent Board is to be responsible for the still-outstanding procedure to select

the director and two deputy directors of the Directorate for the Coordination of

Police Bodies in Bosnia and Herzegovina, but it cannot proceed until its internal

rules are finalized. The Bosnia and Herzegovina Parliamentary Assembly also

enacted amendments to the Law on the State Investigation and Protection Agency in

June and amendments to the Law on the State Border Police in July, as envisaged by

the police reform laws of April 2008.

IV. Entrenching the rule of law

34. The reporting period has been marked by stagnation in the implementation of

both the National War Crimes Prosecution Strategy and the National Justice Sector

Reform Strategy. Moreover, blockage by the Republika Srpska of the extension

requested by the Bosnia and Herzegovina Court President and the Bosnia and

Herzegovina Chief Prosecutor of the mandates of the international judges and

prosecutors working in the State Court and Prosecutor's Office have served to

highlight the continuing fragility of earlier justice sector reforms.

War Crimes Prosecution Strategy

35. The National War Crimes Prosecution Strategy adopted at the end of 2008 was

hailed as the first comprehensive policy document for dealing with the daunting war

crimes caseload facing Bosnia and Herzegovina. Although a Supervisory Board was

set up to monitor implementation of the Strategy according to the time lines set out

in the document, performance is lagging far behind those

goals. So far, the only

visible progress is that the Council of Ministers has adopted two required

amendments to the Criminal Procedural Code. The Parliamentary Assembly has yet

to enact them. Nor is there a central database, which means that exact information

on war crimes cases remains unavailable. The lack of this basic element makes

further implementation nearly impossible.

36. Having been publicly criticized for falling behind schedule – most notably by

the President of the Court of Bosnia and Herzegovina – the Supervisory Board has

asked for the help of the Office of the High Representative in speeding up data

collection from lower level jurisdictions. My Office has thus written to all

prosecutors' offices urging them to cooperate.

37. The initially promising talks in the spring between the Bosnia and

Herzegovina Ministry of Justice and its Serbian counterpart in improving regional

cooperation in processing war crimes cases have also failed to produce results. The

September first-instance verdict of the Belgrade District Court sentencing a citizen

of Bosnia and Herzegovina, Ilija Jurisic, to 12 years in prison for his alleged part in

ordering an attack by Tuzla Civil Defence units on a retreating Yugoslav People’s

Army convoy in May 1992 has served both to inflame passions and to underscore

the need to clarify jurisdictional responsibilities when it comes to war crimes cases.

National Justice Sector Reform Strategy

38. The State-wide Justice Sector Reform Strategy has also fared poorly during the

reporting period. A second ministerial conference convened at the end of May to

assess progress concluded that implementation rates had averaged less than 20 per

cent over the previous five months and that between 40 and 50 per cent of projects

had registered no progress at all. The conference conclusions noted that the various

working groups would in the future meet only once between inter-ministerial

conferences, but that two quarterly reports on implementation must be provided. A

technical secretariat, comprising representatives of the State, entities, Brcko District

and the High Judicial and Prosecutorial Council, was established to support

coordination efforts according to an agreed plan of activities. The third ministerial

conference is scheduled for December.

Other rule of law issues

39. My Office has fully supported the view of the highest State-level judicial and

prosecutorial officials that the mandates of the international judges and prosecutors

working in the war crimes and organized crime, economic crime and corruption

chambers of the State Court and the Bosnia and Herzegovina Prosecutor’s Office

should be extended beyond December 2009. Although the Council of Ministers had

endorsed an inter-party compromise that would keep the international judges and

prosecutors dealing with war crimes, no such extension for those engaged in

combating organized crime, corruption and terrorism was acceptable to all parties,

particularly those based in the Republika Srpska. The rejection late in September of

proposed amendments to the Law on the Court of Bosnia and Herzegovina and the

Law on the Prosecutor’s Office of Bosnia and Herzegovina by

the Serb members of

the Bosnia and Herzegovina House of Peoples – which had the effect of nullifying

all extensions of foreign judges and prosecutors – thus represents a serious blow to

the ability of those institutions to function effectively and efficiently in future. This

is all the more so because the Bosnia and Herzegovina Parliamentary Assembly had

failed to provide the State Court and Prosecutor's Office with budgets in 2008 and

2009 that would enable them to hire Bosnia and Herzegovina nationals to replace

the departing international judges and prosecutors, who have heretofore been paid

by the international community.

40. The political controversy that developed around the extension of the

international judges and prosecutors and, more generally, about the effectiveness

and legitimacy of these State institutions was symptomatic of the intensified

offensive mounted by the Republika Srpska authorities against past justice sector

and State-building reforms during the reporting period. On the other hand, the

Bosnia and Herzegovina Registry successfully completed the

integration of all its

services (maintenance, security, information technology and telecommunications) as

wholly domestic operations. Maintaining the Registry, however, may pose a new

challenge to international donors.

41. The Federation Constitutional Court is still short of three judges, the

appointment procedure having been delayed by an ongoing struggle between the

High Judicial and Prosecutorial Council and the entity President over the procedure

of selection of the candidates. As was noted in the previous report, the Federation

President had nominated Croat and Serb candidates who failed to pass in the

Federation House of Peoples. The selection process has been reinitiated by the High

Judicial and Prosecutorial Council, but has not yet returned to the Federation

Presidency. In the meantime, the appointment of a Bosniak judge has also stalled

after the entity President wrote to the High Judicial and Prosecutorial Council in

June questioning the procedure. Although the High Council replied in July, the

President has thus far failed to endorse a candidate. It is

therefore obvious that the

dispute between the Federation President and the High Judicial and Prosecutorial

Council over their respective roles in the appointment of Federation Constitutional

Court judges continues.

42. Laws imposed by a previous High Representative in December 2005 that, in

line with recommendations of the High Judicial and Prosecutorial Council, regulate

the salaries of judges and prosecutors at all levels in Bosnia and Herzegovina are

now under threat in the Federation because of steps taken to make expenditure cuts

required by IMF in return for the maintenance of the country's standby arrangement.

This important reform, which has ensured the harmonization of salaries across the

country and so encouraged judicial mobility and independence, could be

undermined by the Federation Government's across-the-board pay cuts for public

employees. Although the State and the Republika Srpska authorities have managed

to decrease expenditures in line with IMF requirements without cutting judicial

salaries, the Federation has thus far turned a deaf ear to

expressions of concern by

my Office and the High Judicial and Prosecutorial Council.

43. Finally, while the technical review of the project to build a State prison that

had been requested by the Council of Europe Development Bank (CEB) and the

delegation of the European Commission was completed in mid-September, some of

the initially committed donations have been lost as a consequence of the delay. The

Council of Ministers has, however, approved the loan application and forwarded it

to CEB within the set deadline. CEB is expected to consider the application in

November.

V. Cooperation with the International Tribunal

44. The International Tribunal for the Former Yugoslavia continues to assess that

Bosnia and Herzegovina does cooperate with the Tribunal.

45. The trial of Radovan Karadzic which began on 26 October, as well as the early

release of former Republika Srpska President Biljana Plavsic from prison in

Sweden, stirred high emotions and continued to generate

extensive press coverage

and public interest in Bosnia and Herzegovina and abroad. On the other hand, Ratko

Mladic remains at large. As the Tribunal seeks to complete its work in the shortest

possible time it will be important to retain the capacity to deliver concrete results.

46. It is necessary to note that Radovan Stankovic remains at large, and that no

serious measures have been taken to locate him. He was the first war crimes indictee

of the Tribunal to have his case transferred to the Bosnia and Herzegovina Court for

trial. Soon after his conviction, he escaped from the prison in Foca in May 2007.

More positively, domestic and international efforts on behalf of the Tribunal have

continued to apply pressure on Mladic’s presumed support network, including

several raids on close relatives and known supporters. Cooperation among the

relevant agencies, including NATO, EUFOR, the Office of the High Representative,

the Intelligence-Security Agency of Bosnia and Herzegovina and the Republika

Srpska police, has been excellent, and will continue for as long as Mladic remains

on the run.

VI. Reforming the economy

47. Economic indicators[1] demonstrate the impact of the global economic crisis on

Bosnia and Herzegovina. Its foreign trade deficit in the period January-August is

estimated at €2.2 billion, which is 29 per cent less than in the same period last year

owing to a 22-per cent decrease in exports and a 26-per cent decrease in imports. In

July, the registered unemployment rate was 41.8 per cent, while the real

unemployment rate was estimated at 24.1 per cent. Compared to the same period last

year, the average net salary in the period January-July increased by 8 per cent and

amounted to €400, while the average pension increased by 6.4 per cent and amounted

to €160. Foreign direct investments in the first half of 2009 dropped by 52.8 per cent

compared to the same period in 2008. In the period January-August, there was also a

decrease in revenues by 7.8 per cent in the Federation and by 12.9 per cent in the

Republika Srpska. The banking sector appears stable but there is evidence of the

Bosnia and Herzegovina-based banks’ reduced access to capital, which is reflected in

1 Data taken from the information on macroeconomic indicators for the period January-August

2009, prepared by the Bosnia and Herzegovina Directorate for Economic Planning.

their reduced potential for lending and high interest rates on deposits and particularly

loans.

48. To mitigate the effects of the crisis, the Bosnia and Herzegovina Fiscal Council

and IMF agreed on 5 May to a three-year standby arrangement worth €1.2 billion.

Based on a positive assessment of the readiness of the State and entity authorities to

cut expenditures through reforms and payment reductions, the arrangement was

approved by the IMF Executive Board on 8 July, the first tranche of funds being

released on 10 July. IMF is due to review Bosnia and Herzegovina’s progress in

meeting the agreed programme benchmarks in November, conditioning payment of

second tranche on the outcome. The biggest challenge to ensuring a positive verdict

is the Federation Government’s questionable ability to implement benefit cuts on war

veterans and other politically potent social categories.

49. As to the reform agenda, agreement within the Governing Board of the Indirect

Taxation Authority facilitated the adoption of the Bosnia and Herzegovina Law on

Excises and accompanying implementation legislation on 18 June, so ensuring, inter

alia, a boost in annual indirect tax revenues. However, the Board disagrees on a

manner of allocation of road toll tax revenue, as required under the new Bosnia and

Herzegovina Law on Excises, thus blocking disbursement of €24 million, as

accumulated on the Single Account so far. Moreover, there is still no agreement

between the entities on new coefficients for the allocation of indirect tax revenues

and, therefore, those agreed in the second quarter of 2008 continue to be applied.[2]

This is because the Republika Srpska Minister of Finance continues to question the

main element of the allocation formula and, thus, the credibility of the institution

responsible for it: the Indirect Taxation Authority. This should be seen in the context

of calls from the Republika Srpska for the abandonment of the Single Account,

which is under the jurisdiction of the Indirect Taxation Authority, as well as in the

context of the Republika Srpska Government's recent conclusions challenging the

jurisdiction of that institution.[3] There has also been no agreement on the long

overdue appointments of a new director of the Authority and expert members of its

Governing Board.

50. While the Bosnia and Herzegovina Fiscal Council played an important role in

bringing the negotiations with IMF to a successful conclusion, it once again failed

to establish itself as a true coordination mechanism. The world recession has

appeared on the agenda of the Fiscal Council more often as a matter for information

than for action. Moreover, in the case of the assets received by Bosnia and

Herzegovina as a consequence of the post-Yugoslav succession agreement, the

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2 Republika Srpska: 32.06 per cent; Federation of Bosnia and Herzegovina: 64.39 per cent; Brcko

District: 3.55 per cent.

3 On 16 October, the Republika Srpska Government ordered Republika Srpska members of the

Governing Board of the Indirect Taxation Authority to note that the Authority had illegally and

unconstitutionally usurped the competencies of the Republika Srpska Ministry of Trade and

Tourism by regulating the trade of bunker fuel and other petroleum heating fuel derivatives.

Board members from the Republika Srpska were instructed to demand modification of the Rule

Book on the Application of the Bosnia and Herzegovina Law on Excises, thus de facto being

instructed to act inconsistently with the Law itself, as it is the Bosnia and Herzegovina Law on

Excises that defines bunker fuel and other petroleum heating fuel derivatives as being subject to

excise tax. It is worth noting that the issues raised by the Republika Srpska Government were

not raised during the recent parliamentary adoption of the Bosnia and Herzegovina Law on

Excises nor prior to it.

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Fiscal Council has provided an extralegal forum for dividing those assets between

the entities, without a proper legal basis and any regard to the State and Brcko

District. Following the failure of the responsible authorities to meet the deadline of

15 September set by the Peace Implementation Council Steering Board for resolving

this issue,4 I was obliged to act by issuing on 18 September a Decision Enacting the

Law on the Distribution, Purpose and Use of Financial Assets Obtained under

Annex C to the Agreement on Succession Issues. The Decision addresses the

distribution of succession assets in a systematic manner, establishes exact allocation

shares for the State, entities and Brcko, and sets a method of rebalancing the assets

allocated in April in line with the allocation shares.

51. There was no progress during the reporting period on efforts to improve the

business environment. The situation is especially worrying in the energy sector,

where the operations of Elektroprijenos Bosnia and Herzegovina, the electricitytransmission

company owned jointly by the entities, have continued to deteriorate as

a result of both actions and obstructions on the part of the Republika Srpska

authorities and their representatives in the firm. Owing to the absence of investment

over the past two years, itself the result of the Republika Srpska boycott of the

management bodies responsible for such matters, the electricity transmission grid is

in increasingly poor shape and prone to interruptions and

failures. Blackouts are

becoming ever more common throughout the country.

52. On 16 September I learned of a Republika Srpska plan to carve out an

extralegal, entity-specific transmission company from Elektroprijenos that was

scheduled to go into effect upon the expiration of the (Bosnian Serb) general

manager’s term of office on 19 September. Such illegal action by the Republika

Srpska authorities would have jeopardized all electricity transmission both in the

country and between Bosnia and Herzegovina and its neighbours. On the other hand,

the absence of a general manager, whose replacement or reappointment in

accordance with the applicable law had likewise been blocked by the Republika

Srpska boycott, would have brought all the company’s operations to a halt. In order

to provide for continuity of the company’s business operations – and thus also to

ensure undisturbed electricity transmission across Bosnia and Herzegovina – I

acted on 18 September by issuing a decision ordering the Elektroprijenos

Management Board to initiate the appointment of a new general

manager without

delay, obliging the incumbent to continue in office and perform all his lawful duties

until a successor was appointed or he was removed, and providing for a mechanism

to appoint an acting director during the interregnum in case of his resignation or

incapacitation. This decision has served to prevent the collapse of the company and

helped maintain electricity transmission.

53. In addition, to prevent unlawful altering of the status and operations of

Elektroprijenos, the Brcko Supervisor issued on 19 September a Supervisory Order

confirming that the Elektroprijenos property situated in the Brcko District will

continue to belong only to Elektroprijenos in case of any action intended to have the

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4 Communiqué of 30 June 2009 in which the Peace Implementation Council Steering Board noted

that the entities had not yet fulfilled their remaining obligations under the 1999 Awards of the

Brcko Arbitral Tribunal to resolve, inter alia, the issue of the share of gold and other proceeds

from Socialist Federal Republic of Yugoslavia assets due to the Brcko District of Bosnia and

Herzegovina, and called upon the entities, and the State,

where appropriate, to resolve these

issues no later than 15 September 2009.

effect of dissolving, liquidating or incapacitating the company as a legal entity,

unless that company ceases to exist as a legal person. In such a situation, the

Elektroprijenos property in the Brcko District of Bosnia and Herzegovina would be

automatically considered property of the Brcko District, in accordance with the

Final Award, the Annex to the Final Award, and the Bosnia and Herzegovina

Constitution.

54. On 24 September the Republika Srpska Government adopted, and on 1 October

the Republika Srpska National Assembly endorsed, a set of conclusions contradicting

my and the Brcko Supervisor’s decisions. In parallel, the Republika Srpska

Government continued to block a full restoration of the company’s normal operations

and, hence, to provide a pretext for creating its own electricity transmission system.

Relevant international partners as well as my Office remain engaged and, at the end

of the reporting period, the Prime Ministers of both entities had agreed to convey a

shareholders’ meeting early in November.

VII. Public administration reform

55. During the reporting period, the national Public Administration Reform

Coordinator departed to become the director of the Directorate for European

Integration. Overall, there was little progress in addressing public administration

reform. The Public Administration Reform Strategy and the action plan have been

only partially implemented (36 per cent as of July).

56. The severe delays in appointing directors and other key personnel to Statelevel

institutions are also affecting the performance of the public administration.

Several key appointments have been delayed for over a year and overall the

appointments of more than 10 Directors are pending at the State level. The reason

for these delays is principally the lack of agreement between the leading political

parties on how to distribute the positions.

VIII. State property

57. Owing to the lack of demonstrable progress during the reporting period

towards a sustainable State property apportionment between the State and other

levels of government, which is one of the remaining objectives set by the Peace

Implementation Council Steering Board to allow for the closure of the Office of the

High Representative, the Office undertook a more proactive role in assisting the

authorities by initiating an inventory of State property, which will underpin the

necessary intergovernmental agreement settling the competing ownership claims

and clarifying unresolved issues related to the former social ownership regime.

58. On 11 September, with the support of the Steering Board Ambassadors, I issued

a decision formally committing my Office to the inventory process and deploying

field teams to begin compiling the necessary property data. I initiated the process

recognizing that, despite the welcome decision of the Bosnia and Herzegovina

Council of Ministers in April establishing a working group to compile the inventory,

the authorities took no action to complete the process within its 30 September 2009

deadline.

59. Since its initial deployment in September 2009, the State Property Inventory

Team of the Office of the High Representative has completed the initial data

gathering in 72 per cent of the 184 land registry and cadastre offices throughout the

country. However, further progress has been hampered by the refusal of the

Republika Srpska to release data from its cadastral offices. Efforts to gain access to

this data or to identify suitable alternative data sources are ongoing.

60. Perhaps more problematic are the threats by the Republika Srpska to

unilaterally overturn the High Representative’s temporary prohibition on State

property transfers, which was initially introduced in 2005 as three laws designed to

maintain the status quo until the authorities reach a sustainable agreement that

ensures that the State, and all subdivisions, own the property needed for the exercise

of their respective constitutional and legal responsibilities. Such a unilateral

revocation would undermine the authority of the Peace

Implementation Council and

further enflame pre-election tensions.

61. An acceptable and sustainable resolution to State property issues remains a

requirement for the Bosnia and Herzegovina authorities to meet before the transition

from the Office of the High Representative to a stand-alone office of the European

Union Special Representative can take place.

IX. Defence reform

62. Bosnia and Herzegovina continued to implement the NATO Partnership for

Peace although the overall political environment has hindered progress. Reforms

have proceeded, but delays or stoppages continued to be encountered as the

decision-making process moved from the technical to the political level.

63. Nevertheless, on 2 October the Chairman of the Bosnia and Herzegovina

Presidency, Zeljko Komsic, visited NATO Headquarters to submit the country’s

official application for a Membership Action Plan, the penultimate step designed to

prepare candidate States for full NATO membership. The NATO Secretary General

welcomed Bosnia and Herzegovina’s Euro-Atlantic aspirations,

but also stressed

that Bosnia and Herzegovina needed to continue and, indeed, step up its reform

work, especially in regard to its democratic institutions and constitutional

arrangements, and not only in the defence realm.

64. On defence property, despite earlier Republika Srpska Government assurances

to NATO that it would instruct Republika Srpska cadastre offices to cooperate with

the requests of the Bosnia and Herzegovina Ministry of Defence for documentation

on property necessary for any agreement transferring ownership of prospective

defence property to the Bosnia and Herzegovina level, no such instruction was

issued. In fact, at the time of reporting, Republika Srpska cadastre offices were

continuing to deny access to relevant public property records in line with Republika

Srpska Government orders. While the issue of inventory data should be an

administrative matter, it was becoming apparent that political controversies relating

to an overall solution to the bigger question of State property in general were

impacting upon the more limited issue of defence property.

Collection of all

property documents remained one of the basic preconditions for preparing an annex

to the Agreement on immovable defence property.

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65. The Bosnia and Herzegovina Ministry of Defence submitted its proposal for

the disposal of established surpluses of movable defence property to the Bosnia and

Herzegovina Presidency early in October. The destruction list was based on the

inspection of 11 ammunition sites (10 sites remained to be inspected). The

Presidency adopted the Ministry of Defence’s proposal on 7 October but,

regrettably, the vast majority of items were earmarked for sale rather than

destruction. This was despite repeated international and bilateral appeals and

declared commitments to pay for the destruction of surplus arms and ammunition, as

the equipment in question is either outdated or of dubious quality.

66. An acceptable and sustainable resolution to both the immovable and movable

defence property issues remains a requirement for the Bosnia

and Herzegovina

authorities to meet before the transition from the Office of the High Representative

to a stand-alone office of the European Union Special Representative can take place.

X. Intelligence reform

67. The leadership of the Intelligence-Security Agency of Bosnia and Herzegovina

continued its efforts to consolidate the reformed agency. At the European

Commission’s request, the Council of Ministers established a working group tasked

with harmonizing the Law on Secret Data Protection with European Union

legislation.

68. Through various conferences across Bosnia and Herzegovina, the Bosnia and

Herzegovina Parliamentary Committee for Oversight of the Intelligence-Security

Agency of Bosnia and Herzegovina continued to promote and refine the functioning

of the oversight system by encouraging links between and among civil society,

academics, the media and sectoral stakeholders. The Committee also initiated a

working party charged with drafting an overarching Law on Parliamentary

Oversight – in line with the Law on the Intelligence-Security Agency of Bosnia

and Herzegovina and requiring the harmonization of Bosnia and Herzegovina’s

democratic oversight practices with those of EU and NATO member States. Overall,

a positive trend towards the entrenchment of democratic control over the sector

continued.

XI. European Union military mission in Bosnia and Herzegovina

69. EUFOR continued to provide a military force of some 2,000 personnel and

retained the capacity to bring in over-the-horizon reserves. Its headquarters and

peace-enforcement capability remained based in the Sarajevo area, but liaison and

observation teams were present throughout the country. The presence of EUFOR in

the field provided the crucial reassurance that citizens in general still feel to be

necessary. Given the difficult political environment, it remained important that

EUFOR retained the capacity to deploy troops throughout Bosnia and Herzegovina

at short notice. EUFOR also continued to work closely with the Armed Forces of

Bosnia and Herzegovina, especially in terms of handing over

additional military

functions to the domestic authorities.

70. EUFOR still plays a key role in contributing to a safe and secure environment

that, in turn, helps the Office of the High Representative and other international

organizations to fulfil their respective mandates. As such, EUFOR continued to

serve as an important factor of stability in the country at a time when the political

situation was deteriorating. While the European Union has been planning for a

non-executive, capacity-building and training mission of some 200 military

personnel, an extension of the current executive mandate and configuration of

EUFOR will remain important in the near term, at the very least until three months

after transition from the Office of the High Representative to the European Union

Special Representative takes place. For this reason, an extension of the executive

mandate of the EUFOR configuration is important.

71. I have, in my capacity as European Union Special Representative, continued to

offer political advice and support to the EUFOR mission.

XII. Return of refugees and displaced persons

72. There are still 120,000 persons registered as internally displaced, more than

2,000 of whom live in squalid collective centres. Despite this, political actors have

once again politicized the issue of refugee return and the full implementation of

Annex VII of the Peace Agreement. On 6 July 2009, Serb delegates in the Bosnia

and Herzegovina House of Peoples rejected the revised Strategy for Implementation

of Annex VII of the Peace Agreement, despite its earlier approval by the Council of

Ministers and House of Representatives. The draft strategy is back with the Ministry

for Human Rights and Refugees for revision. My Office considers that the draft

strategy provides a solid basis for resolving the problems of displacement in Bosnia

and Herzegovina by promoting sustainable return, addressing the needs of those still

living in collective centres, and by looking into the needs of those who cannot or

will not return to their homes of origin. The strategy needs to be adopted post-haste.

The Office of the United Nations High Commissioner for

Refugees remains the lead

international agency in this sector and my Office will continue to support its efforts

to ensure full implementation of Annex VII.

XIII. Mostar

73. More than a year after the elections, a new mayor of Mostar has yet to be

elected and the parties have failed to even negotiate seriously. In July, with the city

gripped by widespread strikes and work stoppages, I had no choice but to enact a

temporary financing decision. The decision lapsed on 1 October. Owing to a lack of

action by the parties, Mostar still does not have a mayor or a budget. In this

situation, I had no other option but to impose a decision on 30 October, compelling

the Mostar City Council to hold a Council session within 30 days to elect a mayor

by secret ballot, which is already provided for in the city’s statute.

Football violence triggers rise in ethnic tensions

74. On 4 October a fan of the visiting team from Sarajevo – Vedran Puljic – was

shot dead in Siroki Brijeg in Herzegovina. Sixty-four civilians and 29 police officers

were also injured. The incident quickly took on ethnic

overtones, as Croat and

Bosniak political actors made claim and counterclaim about who was responsible.

On 15 October a number of arrests were made in connection with the murder.

Several police officers have also been detained and questioned.

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XIV. Brcko District

75. The adoption of Amendment I to the Constitution of Bosnia and Herzegovina,

which ensures Brcko District’s access to the State Constitutional Court, and the

promising start of the District’s new all-party coalition government, enabled the

Brcko Supervisor to inform the Peace Implementation Council Steering Board in

June that the District’s institutions were functioning effectively and apparently

permanently and that he might, as a consequence, be in a position by autumn to

recommend the closure of the supervisory regime, provided that the entities and

State fulfilled their remaining obligations under the Arbitral Awards and that the

Arbitral Tribunal concurred.

76. The Steering Board unanimously endorsed the Supervisor’s plan, but regretted

that the entities and State had thus far failed to resolve the remaining issues specified

in its communiqué of March 2009 regarding Brcko District. Those issues – the

settlement of mutual debts with the entities, the possibility for District residents to

choose, declare or change their entity citizenship, the District’s legal inclusion in the

regulatory framework of the Bosnia and Herzegovina electricity market, and its right

to share in the apportionment of ex-Yugoslav succession funds – derive either

directly from the 1999 Final Arbitral Award or from formal agreements signed with

the entities in autumn 2000. The Peace Implementation Council Steering Board

therefore called upon the entity and State authorities to settle these long-outstanding

matters no later than 15 September 2009 in anticipation of being in a position in

November to decide on terminating supervision.

77. Given the highly technical nature of these issues, my Office and the

Supervisor’s staff sought to assist the domestic authorities by preparing draft

amendments to the relevant State, entity and District legislation, which I duly

forwarded to the Chairman of the Council of Ministers, the entity premiers, and the

Brcko Mayor in July, asking for their comments and, as I hoped, their subsequent

introduction of the amendments into their respective legislative bodies. The

Supervisor and I would have been prepared to accept an extension of the

15 September deadline if there had been any serious effort to resolve these matters

by then. But in the absence of such efforts, and after nine years of non-action by

relevant local authorities, I resorted to my executive powers to enact the requisite

legislation on 18 September.

78. At this point the only requirement for the State and entities was to publish the

decisions in their respective official gazettes, so putting them into effect. That

would still have enabled the Supervisor (a) to notify the Arbitral Tribunal that the

entities were now compliant with their obligations under the Final Award, so

permitting the Tribunal to terminate its own jurisdiction and (b) to recommend to

the Peace Implementation Council that it close down the supervisory regime by

year’s end. Although the State, the Federation, and Brcko District duly complied

with my decisions, the Republika Srpska Government and Assembly publicly

rejected these decisions with the argument that the High Representative has no

authority under the General Framework Agreement for Peace to impose legislation.

Moreover, the Republika Srpska plan to dismantle Elektroprijenos mentioned in

paragraph 52 above, which would involve the Republika Srpska unlawfully

asserting authority over electricity transmission in Brcko District, is a serious

violation of the Final Award, which prohibits either entity from exercising any

authority in the territory of the District.

79. As a consequence of the Republika Srpska refusing to meet its remaining

obligations under the Final Award and attempting to assert authority in Brcko

District, the Brcko District Supervisor considers to be at present in no position to

recommend the closure of his office, and has now suspended all preparations to do

so, and is reserving the right to refer the serious non-compliance of the Republika

Srpska to the Arbitral Tribunal.

XV. Bosnia and Herzegovina and the region

80. Relations between Bosnia and Herzegovina and its immediate neighbours,

Croatia, Montenegro and Serbia, have remained relatively stable. However, the

Prime Minister of the Republika Srpska, Milorad Dodik, has continued to engage in

occasional polemics with the President of Croatia, Stipe Mesic. For their part,

Bosnia and Herzegovina Presidency Chairman Zeljko Komsic and member Haris

Silajdzic appear to relish taking issue with statements or actions by the President of

Serbia, Boris Tadic, though the latter has been consistent in expressing public

support to the sovereignty, territorial integrity and European perspective of Bosnia

and Herzegovina. The two Presidency members, other non-Serb politicians and the

Federation-based media often complain also about other manifestations of the

Republika Srpska’s Dayton-ordained special parallel relations

with Serbia.

81. Such arguments – and small, unresolved border issues – do not, however,

alter the fact that Croatia and Serbia remain the most important trading partners of

Bosnia and Herzegovina. The potential threat to that trade – and to Bosnia and

Herzegovina’s obligations under the Central European Free Trade Agreement –

represented by the Parliamentary Assembly’s adoption of protectionist legislation in

June – was averted late in September when the Constitutional Court ruled that

legislation to be unconstitutional. Meanwhile, the dispute with Croatia over its

construction of a bridge from the Dalmatian mainland to the Peljesac peninsula that

could imperil Bosnia and Herzegovina’s access to the sea was put on hold when

Zagreb was forced, for fiscal reasons, to suspend construction during the summer.

82. As noted in paragraph 37 above, the most serious blow to good relations with

Serbia was the conviction by a court in Belgrade late in September of Ilija Jurisic, a

former Tuzla municipal leader sentenced to 12 years’ imprisonment for his part in an

attack in May 1992 on a Yugoslav People’s Army column withdrawing from the city.

The case highlights the continuing disarray among former Yugoslav republics

regarding their respective jurisdictions in the prosecution of war crimes cases.

XVI. European Union Police Mission

83. The European Union Police Mission, working in coordination with my staff in

the Office of the High Representative and as European Union Special

Representative, has continued to support police reform, in particular, by promoting

the implementation of the new legislation, encouraging the harmonization of

existing laws, as well as supporting the fight against organized crime and assisting

in coordinating the policing aspects of efforts to combat major and organized crime.

I have, in my capacity as European Union Special Representative, continued to offer

political advice and support to the police mission.

XVII. Non-certification of police officers

84. The Republika Srpska remained the only jurisdiction in Bosnia and

Herzegovina that has failed to implement the provisions of the letter of April 2007

from the President of the Security Council on persons denied certification by the

International Police Task Force.

XVIII. Media development

85. The reform of the public broadcasting system (PBS) continued to proceed very

slowly. Owing to the lack of political support for the creation of a unified system,

cooperation among the three public broadcasters is poor. Many elements of the Statelevel

PBS legislation, adopted four years ago, have still not been put into effect. The

PBS System Board – which was finally inaugurated on 11 August 2009 – has yet

to adopt a statute or register the PBS corporation (responsible for streamlining the

activities of the three broadcasters).

86. The Communications Regulatory Agency, responsible for regulating the

telecommunications and electronic media sectors, remains in a difficult position as a

result of the continuing blockade of appointments both to its council and of its

general director. Party-political wrangling and interference have been to the fore,

with the result that the Agency has had an acting director for more than two years.

In September the Bosnia and Herzegovina House of Representatives rejected the

slate of new nominees to the Agency’s council. This means that the Council of

Ministers will need to prepare and present a new list of candidates while the expired

council continues in a caretaker capacity. The delays in these appointments have

already had a negative impact on the functioning of the Agency, particularly as a

number of decisions prepared by it have been put on hold by the Council of

Ministers.

XIX. European Union Special Representative

87. In my capacity as European Union Special Representative, I continued to

promote political processes, initiatives and events aimed at broadening and

deepening debate on EU issues and fostering active domestic support for the

country’s integration into the European Union. Together with the European

Commission, I held a number of EU agenda coordination meetings with the relevant

Bosnia and Herzegovina authorities to assist the European

integration efforts of

Bosnia and Herzegovina. Targeting parliamentarians, media, civil society and

non-governmental organizations, social partners, as well as young people, the

second phase of the EU Outreach Programme was completed in summer 2009.

Seven sessions of the programme’s core component, “The Parliament for Europe”

have been held. European Union Special Representative staff have also initiated

dialogue with and support for non-governmental organizations and civil society

organizations designed to encourage their activities on behalf of EU accession. They

have likewise endeavoured to ensure more and better-informed media coverage of

EU-related issues and developments. Finally, the reci.ba (have-your-say.bosnia)

website has continued to serve as a useful tool for fostering discussion with and

among citizens of Bosnia and Herzegovina.

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XX. Future of the Office of the High Representative

88. The Peace Implementation Council Steering Board met at the level of political

directors once during the reporting period, on 29 and 30 June, to review the

situation in Bosnia and Herzegovina. The Steering Board expressed its concern over

recent political developments in Bosnia and Herzegovina, not least the adoption of

the conclusions on 14 May by the Republika Srpska National Assembly.[5] The

Steering Board also expressed its concern and disappointment with the lack of

progress achieved on the “5 plus 2” agenda for transition from the Office of the

High Representative to the European Union Special Representative since its

previous meeting in March 2009. It set out in precise terms what remained to be

done. The Steering Board made clear that, until the domestic authorities deliver

fully on this agenda, the Office of the High Representative will remain in place to

exercise its mandate under the General Framework Agreement for Peace, ensuring

full respect for the Peace Agreement. The next Peace Implementation Council

meeting will be held on 18 and 19 November.

XXI. Reporting schedule

89. 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 second regular report. Should the

Secretary-General or any Security Council member require information at any other

time, I should be pleased to provide an additional written update.

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5 The delegation of the Russian Federation did not join with the rest of the Steering Board on this

paragraph of the Steering Board communiqué.