

# **25th Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations**

**1 SEPTEMBER 2003-31 DECEMBER 2003**

Pursuant to Security Council Resolution 1031 of 15 December 1995, which requested the Secretary General to submit to the Council reports from the High Representative in accordance with Annex 10 of the Peace Agreement and the Conclusions of the London Peace Implementation Conference of 8-9 December 1995, I herewith present the twenty-fifth Report.

## **SUMMARY**

1. More than 18 months after taking over as High Representative on 27 May 2002, I remain committed to my overarching objective of ensuring that Bosnia and Herzegovina (BiH) is put irreversibly on the road to statehood and the European Union (EU). My priorities continue to center on consolidating the rule of law and advancing economic reform – justice and jobs – while further improving the functioning and effectiveness of BiH's key governing institutions.

2. In the period since my last report, four months ago, we have continued to make measurable progress in several key areas. On the rule of law: Working alongside the European Union Police Mission (EUPM) and in conjunction with the BiH Ministry of Security, we have made great strides toward establishing a single, State-level High Judicial and Prosecutorial Council (HJPC), expected to be in place by April

2004. Based on a law developed by my office, this multi-ethnic HJPC will appoint and discipline judges and prosecutors, and serve as the foundation for a new BiH judiciary that meets the highest European standards.

3. OHR continued to oversee the establishment of a State Information and Protection Agency (SIPA) for BiH. During the reporting period, a package of SIPA laws was prepared for consideration in the parliamentary process, which includes an amendment that will establish a State level Agency with appropriate law enforcement powers, professional standards and procedures, and provisions to address money laundering and witness protection issues.

4. The Specialized Department for Organized Crime, Economic Crime, and Corruption of the BiH Prosecutor's Office began investigating and prosecuting cases of major organized crime and corruption in the country. The Department includes international and domestic prosecutors who are effectively utilizing the provisions of the new Criminal Procedure Code enacted in early 2003. The Court of BiH ruled in cases of forgery, smuggling, drug trafficking, and human trafficking, with more than 200 defendants now being processed on additional charges. In October, the Court conducted its first trial with international judges presiding and the use of the plea bargaining provisions of the new Code.

5. On 30 October 2003, a donors' conference in The Hague, organized by my office and hosted by the International Criminal Tribunal for Yugoslavia (ICTY), received pledges of nearly 16 million Euros (of an estimated 38 million Euros needed) to launch a domestic War Crimes Chamber in BiH. Shortly thereafter, OHR, EUPM, and the OSCE formed a group to monitor "Rules of the Road" cases cleared by the ICTY and to ensure that these cases are properly investigated and prosecuted in the country.

6. The three expert reform Commissions I launched earlier in

2003 – covering Indirect Tax Policy, Defence, and Intelligence, and comprised of local representatives but chaired by respected international experts – completed their mandates during the reporting period and presented their findings.

7. Work of the tax reform Commission led to establishment of a single, countrywide Indirect Taxation Authority (ITA), which transfers competency from the two Entity governments to the State level. The BiH Parliament adopted a Law on the Indirect Taxation System of BiH, thereby abolishing the Entity Customs Administrations, while the Council of Ministers (CoM) appointed Bosnia's first ITA Director.

8. The Defence Reform Commission (DRC) presented its final report in September and by the end of November the BiH Parliamentary Assembly and both Entity legislatures enacted the new BiH Law on Defence. This law will establish State level joint command and control of the Armed Forces, placing Bosnia firmly on the path toward membership in NATO's Partnership for Peace (PfP). We are now working toward appointing a new State level Minister of Defense.

9. On intelligence agency reform, I was forced to submit a draft law developed by the Expert Commission directly to the BiH Parliamentary Assembly (after the CoM failed to consider it) and to ask the legislature to decide on the best means for adopting the law by March 2004. I am hopeful that with proper assistance the parliamentarians will play an active role in the reform process, helping to ensure that BiH develops a modern and professional State intelligence agency capable of combating organized crime and international terrorism.

10. Since my last report, I also launched a new Commission under international community chairmanship aimed at unifying the ethnically divided city of Mostar and providing for economic growth there, which has been so painfully lacking since the war. In December, the Chair produced his

recommendations on how best to move forward on a solution for Mostar which ensures there exist no parallel government structures and no domination of one people over another.

11. A year after the endorsement of the Annex VII Strategy by the PIC Steering Board, I am pleased to report that our principal targets for the transition to domestic leadership on Annex VII, as a guarantee of the right to return, have been achieved. With approximately 1 million people returned to their former homes, most large-scale reconstruction completed, and nearly all claimed properties repossessed by their owners, the Refugee and Return Task Force (RRTF) was able to cease as a discrete OHR unit, having successfully completed its mandate on schedule at the end of 2003.

12. On 11 December, OHR presented a progress report on the first year of its Mission Implementation Plan (MIP), together with the essential objectives that will form the basis of our work in 2004. The updated MIP distinguishes where the work of OHR complements the goals set forth by the European Commission (EC) in its Feasibility Study and NATO in its Partnership for Peace (PfP) requirements.

## **REPORT**

### **I – Introduction**

1. This is my third report to the UN Secretary-General since taking over as High Representative on 27 May 2002. In this report, I will assess the progress made toward the goals outlined in my last report, and review developments during the reporting period.

### **II – The rule of law**

2. My priorities have remained constant from the outset: providing first justice, then jobs, through carefully targeted reforms. Building on our earlier work, we continued to make progress during the period 1 September – 31 December 2003.

Key steps taken toward firmly establishing the rule of law in BiH have included the following:

- On 25 September, local officials signed an agreement designed to deal with the unacceptable backlog of cases pending before the Human Rights Chamber and to redirect the flow of additional cases to the Constitutional Court. OHR's Rule of Law Pillar worked with the Constitutional Court, the Human Rights Chamber, BiH officials at both the State and Entity levels, as well as international organizations, to develop a suitable "road map," by which the mandate of the Human Rights Chamber and some staff would be transferred permanently to the Constitutional Court. After receiving endorsement from the PIC at its meeting in June, we secured approval from appropriate local officials and donors in the international community.
- Throughout the month of October, OHR worked with Parliamentary leaders and other Federation officials to secure adoption by the Federation Parliament of the Civil Procedure Code, among other important legislation. Adopting this code, which was developed through a working group that included local legal community members as well as the international community, proved a vital step in our efforts to foster investment in new business enterprises.
- OHR continued to work closely with Serbian officials, exchanging documents and other information as part of ongoing investigations against organised crime. These exchanges have proven invaluable to both BiH and Serbia in their efforts to combat serious international criminal activities.
- OHR continued its leadership of a management group to establish the State Information and Protection Agency (SIPA). The SIPA package of laws includes an amendment to the existing law on the Information and Protection Agency that will establish a State level law enforcement

agency with appropriate law enforcement powers. It also provides a Law on Police Officials that will establish professional standards and procedures for all State level law enforcement agencies, together with a Law on Prevention of Money Laundering and a Law on Witness Protection. This package was drafted, considered, and revised through the joint efforts of OHR, EUPM, and other international organizations working with a Task Force appointed by the CoM. The package now awaits consideration in the Parliamentary process.

- During the reporting period, three additional international judges arrived to serve on the special panel of the State Court of BiH, raising the number to five. In October, the Court held its first trial in which international judges presided. Of particular note was the use of the plea bargaining provisions of the new Criminal Procedure Code.
- Three additional international prosecutors were appointed to serve in the special department of the Prosecutor's Office of BiH, bringing that number to four. OHR provides continuing support to the Prosecutor's Office in the form of prosecutors, translators, equipment, and technical expertise, as well as working with prosecutors in both Entities to assist with the investigation and prosecution of cases of financial crimes or corruption. Amendments to the laws relating to the State Court and Prosecutor's Office of BiH were enacted in October to remove the limits on the number of international judges and prosecutors in these bodies.
- The Criminal Institutions and Prosecutorial Reform Unit (CIPRU) continued to assist the ministries in both Entities to address problems attendant to court and prosecutorial restructuring. CIPRU worked with the Prosecutor's Office of BiH and the Court of BiH to develop books of rules for the operations of the Special Department of the Prosecutor's Office and the Special

Chamber of the Court. CIPRU also presented a policy paper on the establishment of a civil asset forfeiture program to the PIC, in addition to drafting a proposed money laundering law that will be the basis for establishing a comprehensive money-laundering program.

- OHR's Rule of Law Pillar also undertook an analysis of the budgets at the State and Entity levels for courts, prosecutors' offices, and the police to assist these governments in preparation of their 2004 budgets. This proved particularly challenging, given the number of new institutions created in the past year and the limitations on government expenditures imposed by international financial institutes.
- During the reporting period, several meetings were organized to discuss ideas put forth by EUPM and by OHR for restructuring police agencies within BiH. This issue will become clearer once the SIPA laws discussed above have been considered and adopted.

### **High Judicial and Prosecutorial Councils (HJPC)**

3. Over the past several months, OHR and the Independent Judicial Council (IJC) facilitated negotiations with BiH officials on creating a single, State-level High Judicial and Prosecutorial Council (HJPC). These meetings produced a proposed agreement which was sent to all parties, along with amendments to laws necessary to carry out this agreement. In December, a draft law drawn up with input from local stakeholders was forwarded to the State Minister of Justice for introduction into parliamentary procedure. The draft provides for a representative, multi-ethnic HJPC that will appoint and discipline judges and prosecutors, as well as regulate and supervise administrative and budgetary affairs of the judiciary. This law provides the platform for a judiciary in BiH which meets the highest European standards. Other steps toward realizing the new HJPC include the following:

- IJC developed a transition plan to phase out its own

operations by the beginning of April 2004 and to shift them to the secretariat of the permanent, nationalized HJPC. This plan includes budget projections, staffing needs, organizational proposals, and timelines. OHR continues to advocate on behalf of a single HJPC – in face of substantial opposition from the Government of the Republika Srpska (RS) – as a critical step toward developing a strong and independent judiciary, free of political interference.

- Bosnia's present HJPCs, with the IJC acting as their Secretariat, made steady progress in the reselection process for judges and prosecutors, as well as verifying all remaining applications. The HJPCs appointed 347 judges and prosecutors to 15 courts and six prosecutor's offices.
- At year's end, approximately 550 appointments remained to be made before the 31 March 2004 deadline to establish a single, State-level HJPC. The majority of interviews have been completed, giving me confidence that the appointment process will be completed on time.
- During the reporting period, 776 new complaints were received against judges and prosecutors charged with violating their duties. The HJPCs conducted several disciplinary proceedings and completed a case at second instance, rejecting an appeal against a finding of disciplinary responsibility at first instance. Meanwhile, the Office of the Disciplinary Prosecutor submitted six disciplinary indictments to the HJPCs, with two cases being resolved.
- OHR, through the IJC, has continued to oversee the complete restructuring of the court system in BiH. This process, slated for completion by April 2004, will result in a significant reduction in the total number of judges (by 28 percent) and generate significant savings (approximately 3.6 million Euro annually). The implementation of a streamlined court system involves 22 court mergers, two of which were successfully completed



in the fourth quarter of 2003.

- In early December, the final drafts of the entity laws on courts were completed and sent to the Ministers of Justice, to be entered into parliamentary procedure. The two laws harmonize the court structure of the entities to achieve a high degree of uniformity throughout the country. The law on courts for the Federation will replace the ten existing cantonal laws on courts, thus simplifying the entire court organization.
- The Minor Offence Court Restructuring Project started in October 2003 and issued its preliminary report in December 2003. The goal of the project is to assess the entire system – which includes 116 minor courts and 316 judges, who handle hundreds of thousands of cases each year – and to provide recommendations for its future streamlining.

### **III – Attacks on Networks Supporting Persons Indicted for War Crimes (PIFWCs)**

4. We have continued to benefit from close cooperation with the EU and the U.S. Government in this area. The EU has maintained the visa ban list it put in place, at our initiative, against individuals suspected of obstructing the ICTY in its mandate and providing material support to PIFWCs. The United States has frozen assets of a number of persons on similar grounds, while seeking to identify additional supporters of PIFWCs.

### **IV – Jobs**

5. OHR began the second portion of its two-stage Bulldozer Initiative, designed to help BiH businesses tear down roadblocks and cut through as much red tape as possible to free up the economy for growth and job creation. The Bulldozer Committee identified a second allotment of 50 economic roadblocks and discussed with local businessmen and business associations legal solutions to these impediments.

Adoption of these 50 new reforms is expected for completion during the first quarter of 2004.

6. During the reporting period, my office continued to drive efforts to transfer the competency for privatisation of strategic enterprises from the Canton Privatisation Agencies to the Federation Privatisation Agency, and to establish a single information point (single web-site) for privatisation opportunities. Out of 15 enterprises scheduled for sale by tender by the end of 2003, 14 have now been published. The highest-profile privatisation example involved the sale of the Holiday Inn Hotel in Sarajevo.

7. To capitalize on momentum gained on economic reforms throughout the country, my office identified several clear objectives to continue pursuing over the next six months. Topping this list are: full implementation of the indirect tax reforms without delay; creation of a single business registration system by adopting and implementing the Framework Law on business registration; and drawing up a comprehensive trade policy that promotes exports. Other priorities include: creation of and improvements to institutions and services that support local businesses, such as the Foreign Investment Promotion Agency and the Standardisation Institute; implementation of the domestic debt package; and acceleration of the privatisation process by strengthening Entity privatisation agencies.

## **Tax and Fiscal Structure**

8. One of OHR's major achievements during the last quarter of 2003 was the establishment of a single countrywide Indirect Taxation Authority (ITA), transferring competency from the Entity to the State Level. On 29 December, the BiH Parliament adopted the Law on the Indirect Taxation System of BiH, which legally abolishes the Entity Customs Administrations and puts into practice a unified ITA for the country. Shortly thereafter, Kemal Causevic was selected as

the new ITA Director and appointed by the CoM to this position.

9. OHR also oversaw an agreement on an internal debt plan for BiH, which removes a major obstacle to investment and job creation in the country. With considerable involvement from my office, the State, Entity, and Brcko authorities agreed on a plan to settle outstanding financial claims held by citizens against the various governments. The solution involves a combination of cash payments and issuance of bonds. Spreading payments over time was the only way for the State and Entity Governments to settle claims totaling billions of Euro. The governments now must draft and implement legislation, verify all claims, and make arrangements for repayments and the issuance of bonds.

10. Over the last few months, my office ensured proper execution of the annual budget drafting process and drafting of the State and Entity Budgets for fiscal year 2004. The setting of Entity and State Budgets for 2004 had to overcome the challenge of transferring new competencies and resources from the Entity to State level.

## **Agriculture**

11. My office successfully assisted the State Veterinary Institute to become operational and capable of fulfilling its international reporting requirements. These actions are expected to generate greater confidence in local and international investors, as well as improve opportunities for BiH's producers to export their agricultural products.

## **Telecommunications**

12. The release of the audits of the three public telecom companies revealed alarming patterns of mismanagement and incompetence, which have cost consumers and taxpayers huge amounts of money. In light of this development, the Entity governments committed themselves to implementing reforms aimed

at improving management practices and eliminating endemic corruption in the telecom sector. With the support of my office, several pieces of legislation have been drafted, including the Law on Public Enterprises, the Law on Investment of Public Funds, and the Law on Public Procurement. These laws are expected to institutionalise management oversight and modern accounting standards in BiH.

### **Electric Power and Utilities**

13. During the reporting period, the CoM adopted the Laws establishing the Electricity Transmission Company and Independent System Operator, yet these laws continue to languish in Parliament. Once implemented, the laws will help ensure proper functioning of the electricity transmission system and BiH's further integration in the EU Internal Electricity Market. Progress also was made toward finalising the legal framework in the utilities sectors.

### **Transportation**

14. The Law on Civil Aviation was adopted by the Parliament in December and is expected to come into force soon.

### **Public Administration and Civil Service Reform**

15. On 1 September, the Public Administration Reform (PAR) process – a core task on the OHR reform agenda since the BiH authorities presented it to the PIC Steering Board in March 2003 – was further strengthened by the appointment of a National Coordinator at the BiH Ministry of Justice responsible for managing and overseeing the reform agenda. This Coordinator was tasked with overseeing development towards a more efficient and affordable public administration, as an essential prerequisite for European integration.

16. Throughout the reporting period, my office was involved in the recruitment process for the first Director of the Federation Civil Service Agency, following entry into force of

the Federation Civil Service Law in July. Proper supervision of this agency is essential to prevent party patronage during the hiring of civil servants. OHR continues to closely supervise the final phase of this process – which includes staffing and establishment of the Agency, plus full implementation of the legislation at the Entity, Cantonal, and Municipal levels – by consulting with UNDP to ensure the application of international standards and selection criteria. UNDP has pledged additional financial and technical support, but more funds are required to make certain an effective and efficient instrument is established which rewards recruitment of public officials based solely on merit.

## **V – The Political Environment**

17. The reporting period was marked by political clashes between the Government and opposition, coupled with growing tensions in the ruling coalition, dominated by the three national parties. The opposition parties from both Entities have been making some attempts to consolidate forces in advance of the October 2004 municipal elections. These included the signature of a joint platform, taking advantage of continuing economic difficulties in BiH, and a common desire for early general elections. The output of the governments, and the state institutions in particular, remains low, while the inevitability of reform looms large.

18. In November, the EC issued its Feasibility Study for BiH, concluding that it hopes to be able to recommend the opening of Stabilisation and Association Agreement (SAA) negotiations next year, but only on condition that BiH makes significant progress in a number of areas identified as priorities for action. In December, NATO issued clear benchmarks for BiH's entry into PfP.

19. Two important reforms in the areas of defence and taxation were adopted at the State level in December, establishing two key institutions with statewide

competencies. The BiH Defence Law gives the BiH Presidency command and control of the armed forces across the country, taking this competency away from Entity level. It also establishes a BiH Ministry of Defence with a policy-setting role in all matters and a new operational command at the State level. The Law on Indirect Taxation establishes the statewide ITA, which, for the first time in BiH's post-war history, will provide a guaranteed source of income to the State treasury. The BiH Parliament passed these two laws with support of the Entity parliaments, although strong international pressure on the governments and parliaments was necessary to adopt both reforms.

20. Relations between the SDA and HDZ – the two main governing parties in the Federation – remains strained, sustaining parallelism along ethnic lines, in spite of the constitutional changes introduced two years ago. Increasing political rivalry within the SDA party leadership, in part triggered by the illness and death of the party's founder and BiH's first President, Alija Izetbegovic, has had particular impact on the government of the Federation, with persistent rumours that Prime Minister Ahmet Hadzipasic and his government will be replaced. In the RS, social unrest is more apparent, though tensions in the governing coalition have not led to the often-predicted changes in the government. Much debate continues to focus on the constitutional position of the RS, given the state's assumption of new competencies in the fields of security and taxation. Debate has now turned to the creation of a single Intelligence Agency for the whole of BiH and the strengthening of state level police functions – both core conditions for further European integration.

21. On 15 September, after the Commission led by the City Council failed to produce a new statute for the City of Mostar, I established a Commission chaired by an international expert. In December, the Chair produced his recommendations, mapping out the steps that must be taken to ensure that the

City of Mostar has a unified administration capable of delivering adequate services and economic growth for all citizens of Mostar. SDA and HDZ obstructed the adoption of the new statute, voicing their desire to retain the parallel structures that have benefited both parties at the expense of citizens.

22. The once disputed Brcko District also moved forward in the latter part of the year, particularly in regard to judicial reform and property repossession. The Brcko Assembly succeeded in adopting a long awaited but controversial Election Law in the summer, enabling the Brcko Supervisor to schedule the District's first local elections, to be held together with BiH's municipal elections planned for October 2004.

## **Security and Defence**

23. On 25 September, the Defence Reform Commission (DRC) presented its report, which included a proposed BiH Law on Defence, establishing a State level joint command and control of the Armed Forces of BiH, as well as a new State Minister of Defence. The DRC's legislative proposals and recommendations matched the guidelines for membership in NATO's PfP programme and the OSCE politico-military commitments of BiH.

24. By the end of November, the BiH Law on Defence and amendments to the Entity constitutions were enacted by the BiH Parliamentary Assembly and by the legislatures of the Federation of BiH (FBiH) and the RS. The DRC also produced a set of recommendations relating to the development of a common Law on the Army of FBiH and introduction of parliamentary democratic control over the armed forces. The Commission gave special attention to the need for the Armed Forces of BiH to be affordable, proposing the downsizing of many elements of the defence establishment. It also suggested that BiH look beyond PfP and make an explicit commitment to achieving membership in NATO in the future. The Commission's

recommendations provide a basis for additional reforms required to fulfill this aspiration.

25. At its 4 December meeting, the North Atlantic Treaty Council noted that passage of the BiH Defence Law proved BiH a credible PfP candidate and emphasized that it was looking “forward to welcoming BiH into PfP once the conditions set forth by the Alliance have been met.” The Council urged BiH “to envisage the Istanbul Summit as a realistic target by which it could meet the outstanding conditions.”

26. During the reporting period, a Joint Defence and Steering Committee of the BiH Parliamentary Assembly was put into operation, manifesting the principle of parliamentary oversight. The Presidency was urged to move ahead quickly to appoint the key State level positions with the hope that the Minister of Defence and Deputies would be in post by mid-February. Preparations for the transition of the Standing Committee on Military Matters Secretariat into a Ministry of Defence were initiated and progress was made toward restructuring, with final organizational proposals scheduled for presentation at the end of January 2004.

27. In order to oversee the implementation of the DRC’s recommendations and assist BiH in reaching the target of meeting the PfP conditions by the Istanbul Summit, I issued a decision in January extending the mandate of the DRC throughout 2004.

## **Intelligence Reform**

28. At the end of August, after two months of deliberation, the Expert Commission on Intelligence Reform finalized the draft law on the Intelligence and Security Agency, which was sent to local and international experts for comment. The Law was well received by academics and practitioners, and significant parts of the Law have been used by the Geneva Centre for the Democratic Control of Armed Forces in its



effort to create an Intelligence Oversight Model Law.

29. In mid-September, the draft law was submitted to the CoM, which proved reluctant to consider the law. This lack of progress raised concerns, especially in light of renewed terrorist outrages abroad. Government procrastination threatened to disrupt earlier progress made in unifying the BiH intelligence-security sector at the State level, while exacerbating the danger that the country's insufficient security service poses to its citizens.

30. On 18 December, after making minor amendments to the draft law, I submitted it directly to BiH's Parliamentary Assembly and asked the legislature to decide on the most appropriate procedure to ensuring adoption of the law by 1 March 2004. The law envisages the creation of a single intelligence agency by April.

31. I have made it clear that it is now up to BiH's parliamentarians to regulate the intelligence-security sector in accordance with established European standards. I am confident that they will confirm the Parliamentary Assembly's will to play a full and active role in the reform process, in particular when it comes to reforms such as those that have been outlined in the EC Feasibility Study. BiH needs a modern, professional State intelligence agency that will empower the country to meet its obligations, fighting against organized crime, international terrorism, and other threats. As recent international events have shown, BiH can no longer afford to have an intelligence-security sector effectively outside proper State control.

## **Mostar**

32. As indicated in my last report, I launched a second Commission for the Reform of the City of Mostar, which remains, eight years after the war, a collection of municipalities without coordination or the capacity to

generate development, while threatening to destabilise BiH as a whole. In mid-September, I issued a decision to this new Commission, tasked with drafting the permanent Statute for the City of Mostar, and asked Norbert Winterstein from Germany to serve as its chair. The Mostar Commission included members nominated by BiH's political parties represented in the City Council of Mostar, in addition to several local and international experts.

33. In the period immediately prior to the start of the Commission, one of my Senior Deputies, Ambassador Werner Wnendt, held extensive consultations with stakeholders in Mostar and throughout BiH. These meetings resulted in the signing of a Commitment to participate in the work of a second Commission.

34. Over the next several weeks, the Commission held 14 sessions in which all relevant subjects for a new statute were extensively discussed. While the Commission members were able to agree on the majority of items in the text of the new statute, the set deadline of 15 December expired without a final agreement. Two crucial questions – the system of elections and the status of the existing municipalities – split members of the Commission, preventing an agreement on the statute from being reached. Chairman Winterstein attempted to bridge the gap between competing standpoints by providing his own proposal to serve as compromise solution. Yet some representatives from the Croat-dominated parties (led by the HDZ) disagreed with the election system, while leaders from the Bosniak side (led by the SDA) objected to the abolition of the municipalities.

35. My office carefully examined the Chairman's proposal and concurred with him that abolition of the municipalities was essential to unifying the city and preventing the continuation of parallel structures that have divided Mostar along ethnic lines. The proposal also sets out to establish an election system that precludes domination of one group of people over

another in the City Council, thereby protecting minority rights.

36. In late December, I asked for those engaged in the work of the Commission to further explore ways to develop a permanent statute for Mostar by the end of January 2004, not ruling out the possibility of amendments to the Chairman's proposal. I discussed with Ambassador Wnendt how he and I could launch activities during early 2004 to press for a timely solution, including personal involvement in a round of extensive consultations with party representatives and members of Mostar civil society.

37. Our interlocutors, including PIC members, agreed with this strategy and with the idea that should these talks fail to produce a solution agreeable to the parties by the end of January, I would be compelled to impose a new statute for Mostar, as was the case. I tasked my office to begin developing a strategy for implementation of reforms, which would involve the international community while fostering local ownership as far as possible.

## **Srebrenica**

38. On 20 September, former U.S. President Bill Clinton served as guest of honour at the opening ceremony of the Srebrenica-Potocari Memorial and Cemetery, commemorating those who suffered from atrocities committed in Srebrenica in July 1995. In connection with the ceremony, 107 identified individuals were buried at the site.

39. Following my recommendation that a private BiH citizen take over from me the chairmanship of the Executive Board of the Foundation of Srebrenica-Potocari Memorial and Cemetery, Beriz Belkic was appointed 28 October as the new chair. Belkic, a former State Presidency member, was joined by co-chair Amor Masovic, who is Head of the Federal Commission for Missing Persons and Exhumations. I remain an active member of

the Foundation and plan to continue my engagement and support, particularly in fundraising efforts for this important project.

40. On 6 December, the Executive Board appointed Mersed Smajlovic as Director of the Service of the Foundation. This appointment was made following a public vacancy announcement placed by the BiH Ministry of Human Rights and Refugees and following interviews conducted by representatives of the Foundation. Smajlovic took over the work from my office, which continued to provide full support and coordination tasks through the end of 2003.

### **Srebrenica Commission**

41. In early September, the RS Government made its initial 2 million KM (1 million Euro) payment to the Srebrenica-Potocari Foundation, as prescribed in the March 2003 Decision by the BiH Human Rights Chamber, to compensate families of persons missing since the 1995 massacre. The Decision calls for an additional 2 million KM to be paid out in 500,000 KM allotments over the next four years.

42. On 8 September, the RS Government provided a report to the Human Rights Chamber, as outlined in its Decision, purporting to disclose information about the deceased and their whereabouts. In response, I noted during a press conference on 15 October: "This report shows a marked change in tone by the RS authorities, but not yet a change in substance." I praised the RS for recognizing in its report the scale of crimes committed in Srebrenica and the suffering brought upon the families there, but I criticized them for failing to provide sufficient information concerning the events which took place. I urged the RS leadership to establish an independent commission tasked with reporting exactly what happened in and around Srebrenica.

43. In line with my proposal, the RS Government adopted on 15

December a draft decision establishing the Srebrenica Commission, tasked among other duties with investigating and reporting on missing persons. While I am encouraged by this development, I wrote in a letter dated 19 December to the RS President and Prime Minister that I thought it “regrettable that this Commission has taken so long to start its work.” I added in that letter that the Srebrenica Commission should complete its task and publish its final report by 14 April 2004 and that “any attempt to obstruct the work of the Commission would be regarded as a clear attempt to obstruct the rule of law.” I also confirmed the nomination of Gordon Bacon as the Commission’s chief of staff and Smail Cekic as its representative to the survivor community, and announced that two international observers will be part of the Commission – one staff member from the ICTY and one from OHR.

44. At its 53<sup>rd</sup> Session, held 25 December, the RS Government appointed seven members to the Srebrenica Commission ahead of its opening session in Banja Luka on 12 January 2004. I publicly applauded the RS authorities for including their Ministries of Defence and Interior in the Commission’s work. I emphasized that I intend to hold these ministries, plus the RS Army and intelligence services, under a moral and political obligation to provide full and unconditional cooperation to the Commission.

### **BiH in the Region**

45. Significant steps toward reconciliation between the former warring states of BiH, Croatia, and Serbia and Montenegro (SiCG) were taken during the reporting period. On 10 September, SiCG President Svetozar Marovic publicly apologized to Croatian President Stjepan Mesic during his trip to Belgrade for atrocities committed against Croatian citizens during the war. On 13 November, Marovic extended another public apology during the Inter-state Co-operation Council meeting “for every evil or tragedy that anyone in BiH suffered

from anyone from SiCG.”

46. A positive signal was sent on 2 October when BiH, Croatia, and SiCG concluded a tripartite agreement by signing the Protocol on the Three-Point Border between the countries. This agreement establishes on paper the two points where the borders of the three countries meet and proclaims that these borders cannot be removed.

47. BiH also took steps to simplify movements of people among the three countries by signing bilateral agreements separately with Croatia and with SiCG. These agreements enable BiH citizens to pass across borders carrying only personal identification cards.

### **ICTY and Domestic War Crimes Prosecutions**

48. On 30 October, my office organized a donors’ conference hosted by the ICTY in The Hague to raise funds to implement the War Crimes Chamber project. The conference resulted in pledges of 15.7 million Euro (nearly half of the estimated total of 38 million Euro needed) for operations of the domestic war crimes chamber during its first two years.

49. OHR, EUPM, and OSCE formed a group to monitor “Rules of the Road” cases cleared by ICTY and returned to the local law enforcement and prosecutorial agencies. This group was tasked with tracking these cases to ensure they are appropriately investigated and prosecuted after clearance by ICTY. During the reporting period, ICTY participated in meetings held by the group to resolve a number of key issues. OHR referred several cases to the BiH Prosecutor’s Office, which, in each instance, were sent to the Special Department for further investigation.

50. As tasked by the Steering Board in June 2003, OHR established a Multi-Agency Implementation Task Force (ITF). The ITF, co-chaired by one of my Senior Deputies and the BiH Ministry of Justice, developed a detailed management plan

during the reporting period. The working groups initiated by the ITF's General Secretariat to address issues relevant to the establishment of the chamber – such as legislation, witness protection, and case review – held a series of constructive meetings involving all relevant national and international agencies.

51. On 5 December, the Joint Executive Board of the ITF held its inaugural session. All relevant BiH authorities participated in the meeting, along with several international agencies, including ICTY, OSCE, Council of Europe, SFOR, EUPM, UNHCR, and UN OHCHR. All members of the Board committed themselves to establishing the War Crimes Chamber and participating in the multi-agency working groups.

## **VI – Returns**

52. My office made considerable progress in return of refugees and displaced persons (DPs) during the reporting period, preparing the ground for the closure of RRTF as scheduled at the end of 2003 and the transfer of its Annex VII responsibilities to BiH authorities. These activities included key legislative reforms, the result of which was a set of Amendments to the State Law on Refugees from BiH and DPs in BiH.

53. According to UNHCR statistics, by the end of last year the total number of registered returns to and within BiH had risen to nearly 1 million people, including some 430,000 so-called minority returns. Approximately 350,000 refugees and DPs, as estimated by the BiH Ministry for Human Rights and Refugees (MHRR), still had not returned to their pre-war homes, although many among them still expressed the desire to do so. This was encouraging information that shows potential for a continuing return movement

54. During the reporting period, the countrywide property repossession rate rose above 90 percent. This total indicates

substantial completion of the Property Laws Implementation (PLIP), promising its finalization in all BiH municipalities in early 2004. While no major internal obstacles to achieving this goal are expected, there still exist problems with refugees in BiH who remain unable to repossess property in their countries of origin and continue to occupy pre-war homes of BiH citizens. For instance, more than 20,000 Croatian Serbs are still trying to return to Croatia, and my office welcomed commitments made recently by the Croatian Government to address this problem.

55. On 30 September, the BiH Parliamentary Assembly adopted Amendments which identified the MHRR as the main policy-making and supervisory body for Annex VII issues. The Amendments provided for a field presence of the MHRR through the establishment of four regional centers (Banja Luka, Mostar, Sarajevo, and Tuzla). They also strengthened the role of the BiH Commission for Refugees and DPs as the main coordinating body between the State, Entities, and Brcko District, and established the Return Fund, as a State-level institution responsible for the financial realization of return and reconstruction projects.

56. My office also remained heavily engaged in the transfer of responsibilities to domestic authorities for the Commission for Real Property Claims (CRPC), as established under Annex VII. These activities include transferring the CRPC databases and records to BiH bodies, putting in place Entity legislation for the takeover of undecided CRPC claims, and identifying the body for reconsideration of the CRPC decisions. The Framework Agreement providing for the realization of these activities, however, was not signed. As this failure questions not only the actual transfer of the CRPC responsibilities, but also some basic rights of BiH people, my office appealed to the responsible BiH authorities urgently to resolve this issue.

57. Significant progress was made on sustainability, including putting in place legal framework necessary to ensure



returnees' unbiased access to socio-economic facilities and opportunities. OHR continued developing information campaigns to inform returnees on the applicable laws and their rights stemming from those laws, especially on access to health care and on reconnection to utility networks.

58. My office developed a media program and information booklet on agricultural production as a means of income to assist returnees. We passed on to the Sarajevo Economic Region Development Agency a web-service ([www.posao.ba](http://www.posao.ba)) related to this media campaign, which is expected to be available in local employment bureaus.

59. We also remained active in identifying alternative sources of funding the ongoing return process. As a result, BiH became a member of the Council of Europe Development Bank (CEB), entitled to CEB loans for financing return and reconstruction projects. At a time of declining international funds in BiH, there is no doubt that this membership will be of the utmost importance in achieving substantial completion of Annex VII by the end of 2006, as foreseen by the MHRR.

60. Given the level of progress achieved in the return sector in 2003, it was possible to close the RRTF as a discrete OHR function on 31 December and to transfer its implementation role to the MHRR and other newly established institutions. OHR has retained a small Annex VII Verification Unit (AVU) to actively monitor the process and to advise our domestic partners on the realization of their strategic goals.

## **VII – European Union Police Mission (EUPM)**

61. As the first EU's crisis management mission, the European Union Police Mission (EUPM) has now become a well-established feature of police life in Bosnia and Herzegovina. Currently, the mission consists of nearly 500 police officers and some 60 civilian experts from 33 states. For the first time, the Russian Federation has also contributed personnel to the EUPM.

Commissioner Sven Frederiksen led the mission with great professionalism and commitment. When writing this report, I received the dreadful news of Sven's sudden passing away. I would like to pay special tribute to this great policeman and friend, whose biography is proof of his commitment to bringing peace and stability in the Balkans.

62. As part of the EUPM chain of command and High Representative, the Commissioner and his mission has been able to count on my total and continued support for his and the mission's work. Throughout last year, I did not use my powers to enforce the Decision I issued on 23 January 2003. This decision enables the EUPM to recommend to me the removal, as a last resort, of police officers who obstruct the implementation of the GFAP through their proven failure to follow domestic law in terms of initiating and/or conducting appropriate disciplinary procedure.

63. EUPM's programmes aimed at creating sustainable policing arrangements under BiH ownership and in line with best European and international standards have become well established in the past period. The strengthening of the State-level law enforcement agencies, the fight against organised crime (in particular trafficking in human beings), and the safety and security of returnees has continued to be EUPM priorities.

64. The EC's Feasibility study (part of the EU's Stabilisation and Association process) that was published in November 2003 has underlined the need for further reforms in the BiH police. The study has particularly stressed the need for reinforcing the State-level law enforcement capacity as well as the need for further restructuring and rationalising the BiH police forces.

65. During the last months of 2003, both the Commissioner and I were faced with inappropriate political interference in the police of the Federation of BiH. These attempts to undermine

professional policing by political meddling occurred in three Cantons and at the Federation level and were conducted in particular, but not solely, by the SDA. We have sent a strong message to all BiH politicians reminding them that this kind of intervention cannot and will not be tolerated. We have managed to reverse further political interference in the police, but both EUPM and I must remain vigilant since this problem has the potential of re-emerging in the future.

66. The most serious development facing policing in BiH involves the increasing number of challenges to the police certification process, which was conducted by the UN International Police Task Force (UN/IPTF) during its mandate in BiH. Attempts to overturn the certification process have in general been undertaken by police officers, who were denied certification and who have brought their cases to court. Some local courts have ruled in favour of these officers, stating that at the time of their dismissal (resulting from being denied certification) the Ministry of Interior did not apply domestic legislation. There is a serious risk that in the near future the international community will be confronted with the reinstatement of police officers denied certification by the UN/IPTF. It is essential that this piece of “unfinished business” be tackled by the UN, the authorities of BiH and the organisations operating in Bosnia and Herzegovina, with the urgency it requires.

67. The seriousness of this issue cannot be overstated. It is crucial that the UN/IPTF legacy, which laid the foundation for a professional BiH police force, is protected and defended with the utmost vigour, including by the UN itself. If not, there is a very real risk that the UN’s policing legacy in BiH will unravel, inflicting grave damage not just on the UN’s reputation in BiH, but also, crucially, on progress made in establishing the rule of law in this country – not just in the field of policing, but in other areas too, such as the judiciary. After consultation with the EUPM and the local UN

representatives, I have repeatedly sought advice from the UN on how the UN would like to see this issue tackled in a manner that secures the achievement of the UN Mission in BiH. Thus far a mutually satisfactory and workable solution has not been found. The urgency of the matter requires immediate attention, including of the UN.

## **VIII – Media Development**

68. In line with the EC Feasibility Study requirement that BiH reform its public broadcasting system, my office has been working closely with the EC to monitor the adoption of legislation conforming to European media standards. We have been encouraging BiH authorities to take the necessary steps to ensure the long-term viability of a financially and editorially independent and integrated state-wide public broadcasting system, whose constituent broadcasters share a common infrastructure.

## **IX – Mission Implementation Plan (MIP)**

69. In December, OHR presented an update to its MIP for endorsement by the PIC Steering Board. This comprehensive document served as a formal report and assessment of the first year of the MIP, as well as setting out clearly the core tasks which remain for me and my office. (The full text of the original MIP, introduced in January 2003, can found on our website at <https://www.ohr.int>; the updated MIP will be added there soon.) In light of progress made over the past year, we have reduced the number of core tasks remaining for OHR from six to four, to include the following:

- **Entrenching the rule of law**
- **Reforming the Economy**
- **Strengthening the capacity of BiH's governing institutions, especially at the State-level**
- **Establishing State-level civilian command and control over the armed forces**

70. Each core task is divided into several sub-programmes, and OHR Departments are responsible for defining and implementing the steps to achieve these essential objectives. Each sub-programme identifies a transition point at which that programme can be considered completed or handed over to a lead domestic authority to finish, often in concert with an international agency. We have made clear in the text of the updated MIP those areas where the work of OHR overlaps with the 16 priority goals set by the EC in its Feasibility Study and NATO in its PfP requirements. We plan to conduct another assessment of the MIP toward the middle of 2004.

### **X – Reporting Schedule**

71. In keeping with my proposal to provide my reports to you on a more regular schedule, for onward transmission to the Security Council as required by UNSC Resolution 1031 of 15 December 1995, I plan to submit my next report in July 2004. This report will cover the period from 1 January until 30 June 2004. I plan for subsequent reports also to cover six-month periods. Should you or any Council member require information at any other time, I would be pleased to provide an update in the form of a letter.

Sarajevo, February 2004