

# **51st Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations**

## **Summary**

This report covers the period from 22 October 2016 through 21 April 2017. There have been several challenges during this period, particularly concerning the political situation that has developed in Bosnia and Herzegovina (BiH) as a result of the attempt to submit a revision request in the International Court of Justice's (ICJ) 2007 judgment in BiH's genocide lawsuit against Serbia<sup>[1]</sup> as well as the activities of the RS authorities to implement an unconstitutional referendum by adopting the *Law on the RS Day* and by observing the "RS Day" holiday on 9 January.

Despite the often turbulent political atmosphere, there were also a few positive developments in the country's efforts to integrate with the North Atlantic Treaty Alliance (NATO) and the European Union (EU). These included the adoption by the BiH Presidency of the long-outstanding Defence Review in November, the formal receipt by the authorities of the EU Questionnaire in December and the signature of the Protocol on the Adaptation of the Stabilisation and Association Agreement with the EU in December, which put an end to a long process of negotiations between the European Union and Bosnia and Herzegovina on this issue.

As the ten-year deadline for BiH to request a revision of the ICJ's 2007 judgment in BiH's genocide lawsuit against Serbia approached in February, tensions arose between the Sarajevo-based parties, which supported the revision, and their Republika Srpska (RS) counterparts, who opposed it, including the RS "Alliance for Change" parties, which are part of the state-level coalition. The controversy centered around whether the previous agent, Sakib Softic, retained the mandate to submit a request, as the SDA party and Bosniak war victims' associations maintained, or whether further action from the Presidency would be needed to renew his mandate, as the RS-based parties argued. Ultimately, the ICJ decided on 8 March not to consider the revision request submitted by Softic on the grounds that no decision had been taken by the competent authorities on behalf of BiH to request the revision.

These developments led to strong public criticism of the Bosniak member of the BiH Presidency and President of the SDA from the ruling coalition in the RS and strained relations between the SDA and its Serb coalition partners in the state-level government. The controversy played out within the BiH Presidency, which did not hold any regular sessions between January 25 and 11 April. The BiH Parliamentary Assembly also briefly saw paralysis, including the cancellation of at least one session due to lack of a quorum. The authorities in Serbia also received the news of the submission of a revision request negatively, but did not overreact.

Continued developments related to the 25 September referendum held in the RS against decisions of the BiH Constitutional Court also hindered political progress during the reporting period. In October, the RS National Assembly (RSNA) adopted the *Law on the RS Day*, which was presented as the implementing act of the referendum. In December, the BiH Constitutional Court decided that the 15 July RSNA decision to hold a referendum was unconstitutional and annulled the referendum results.

On 9 January, despite the BiH Constitutional Court's decisions determining the date of 9 January as the "RS Day" holiday as unconstitutional, the RS organized "RS Day" celebrations in Banja Luka. Events included a parade of police and civil protection services, sports associations and others, as well as the participation of some Serb members of the BiH Armed Forces.

During the reporting period, positive cooperation between BiH and Serbia at the government level continued despite the overall negative political atmosphere within BiH. In January, a delegation of the BiH Council of Ministers (CoM) met in Belgrade with a delegation of the Serbian Government to discuss bilateral cooperation, after which Serbian Prime Minister Aleksandar Vucic expressed clear support for the territorial integrity and sovereignty of BiH. In March, Prime Minister Vucic visited Sarajevo to meet with other prime ministers from the region ahead of the Annual Western Balkans Summit in July 2017. Positive regional cooperation continued in April, with the meeting of BiH, Croatian and Serbian political leaders in Mostar.

Even as BiH continues to progress towards Euro-Atlantic integration and regional relations improve, the country's persistent internal political turmoil remains a concern to its immediate neighbors. In a 29 November interview Croatia's President cited "the instability of BiH" as the greatest threat in Croatia's neighborhood, saying that a potential internal conflict could very quickly become a regional conflict.[i]

The rhetoric advocating for the dissolution of BiH coming from the RS authorities, foremost the RS President, has lessened since the imposition of sanctions against him by the United States. Nevertheless, statements to this effect have been made during the reporting period[ii] and the possibility of a referendum on independence remains on the party platform of the ruling party in the RS. Likewise, Croat leaders continue to advocate for the reorganization of the country along ethnic lines.[iii]

Under the authority vested in me under Annex 10 of the General Framework Agreement for Peace (GFAP), I use this report to reiterate that the entities have no right to secede from BiH and that the GFAP guarantees the sovereignty and territorial integrity of BiH and the constitutional position of the entities.

## **I. Introduction**

This is my 17<sup>th</sup> periodic report to the United Nations (UN) Secretary-General since assuming the post of High Representative for BiH in 2009. It provides a narrative description of progress made toward attaining goals outlined in previous reports, registers factual developments, logs citations relevant to the reporting period, and provides my impartial assessment of the implementation of key areas falling under my mandate. I have focused my efforts on addressing these areas, in line with my responsibility to uphold the civilian aspects of the GFAP. In this respect, I have consistently encouraged the BiH authorities to make progress on the five objectives and two conditions necessary for the closure of the Office of the High Representative (OHR), and have worked to preserve measures that have been undertaken previously to implement the GFAP.

I continue to direct my energies towards meeting my mandate as defined under Annex 10 of the GFAP and relevant UN Security Council Resolutions. Additionally, my Office fully supports the efforts of the EU and NATO to assist BiH in moving toward closer integration with those bodies.

## **II. Political Update**

### **A. General Political Environment**

Following a period of turbulence, the political situation in BiH has generally stabilized, with some positive developments, especially in terms of regional relations. However, the overall dynamic whereby leading politicians focus excessively on ethnically divisive issues, while demonstrating a lack of urgency in addressing the need for real reforms, cannot be ignored.

The situation with regard to rule of law in the country continues to deteriorate. Corruption is a serious problem, while authorities at all levels regularly disregard or openly reject the decisions of courts. For example, the RS authorities continue to flaunt the constitutional order and the rule of law, not just ignoring decisions of the BiH Constitutional Court on the "RS Day" holiday, but also adopting acts that implement the unconstitutional referendum and its annulled results. The RS has also disregarded the judgement of the BiH State Court concerning the registration of defense property.

On 17 January the United States Treasury Department's Office of Foreign Assets Control imposed travel and financial sanctions against RS President Milorad Dodik (SNSD), noting that he "has played a central role in defying the Constitutional Court of Bosnia and Herzegovina, violating the rule of law, and poses a significant risk of obstructing the implementation of the Dayton Accords."

In the Federation, Croat parties continue to advocate for the "federalization" of BiH, which increasingly appears to imply the further ethnic division of the country into three to four "federal units," one of which would have a Croat majority.

Equally troubling, the Bosniak member of the BiH Presidency ignored the implorations of his fellow Presidency members about the role of the Presidency in an attempt to seek a revision in the ICJ's 2007 judgment in the *BiH v Serbia and Montenegro* genocide case, damaging relations within a key BiH institution.

Increasingly, the authorities in BiH appear unable to act even in their own self-interest in a win-win situation, for

instance in addressing the commitments made under the International Monetary Fund's (IMF) Extended Fund Facility (EFF) arrangement with BiH. The completion of the first review of BiH's performance under the IMF EFF and thus the second IMF disbursement to the country are still awaiting the completion of several measures at the State and Federation levels. The failure to meet the IMF deadline to allow the completion of the first quarterly review and release the second tranche of funds will additionally increase fiscal pressures on the country.

Even gains in regional relations appeared tenuous at times during the reporting period. On 31 October, the BiH State Investigation and Protection Agency arrested 10 former members of the wartime Croat Defense Council (HVO) on suspicion of war crimes committed against Serbs between April 1992 and July 1993 in the Orasje area. That the arrestees held dual BiH and Croatian citizenship provoked reactions from neighboring Croatia. The incident also served to highlight the lingering divisions within BiH, as the Croat member of the BiH Presidency condemned the arrests, while the Serb and Bosniak members expressed surprise at Croatia's reaction, and insisted the matter was within the jurisdiction of the BiH judicial institutions. The BiH Court ultimately confirmed indictments against nine individuals for crimes against humanity and war crimes against prisoners of war.

## **B. Decisions of the High Representative during the Reporting Period**

Despite continued challenges to the rule of law and the GFAP during the reporting period, I continued to refrain from using my executive powers in line with the Peace Implementation Council (PIC) Steering Board policy of emphasizing "local ownership" over international decision-making.

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

### *Progress on Objectives*

Over the last six months, the BiH authorities made limited progress toward meeting the requirements of the 5+2 agenda set by the PIC Steering Board as necessary for the closure of the OHR.

### *Defense Property and State Property*

On 24 November, the BiH Presidency adopted the long-awaited Defense Review, as well as the accompanying decision on the size, structure and location of the Armed Forces of BiH (AFBiH), pursuant to which the number of prospective defense locations is to be reduced from 63 to 57. The term "prospective defense property" refers to a defined list of immovable assets which are needed by the AFBiH and should be registered to the BiH State in line with the Agreement on Succession Issues, the *BiH Law on Defense* and relevant BiH Presidency decisions. In addition to being part of the conditionality for BiH's participation in the NATO MAP, progress on this issue is one of the outstanding objectives set as a prerequisite for OHR transition.

Efforts to register prospective property under the ownership of the BiH State continued during the reporting period, but the number of registered defense locations remains at 24, all located on the territory of the Federation. In recent months, the completion of the registration of remaining properties located in the Federation has slowed considerably, primarily due to technical and legal (rather than political) problems.

In the RS the process of registration of prospective defense property remains blocked due to political obstruction, as entity authorities have rejected several registration requests. The most prominent example is the case of the prospective defense location "Veliki Zep" in the municipality of Han Pijesak, where the RS Administration for Geodetic and Property Affairs and other authorities refuse to implement the final and binding July 2016 verdict of the BiH Court, which determined that the ownership of the property is that of the State of BiH and instructed the geodetic authorities to conduct the respective registration.

Instead of abiding by the Court's instruction, the RS Geodetic Administration recently rejected the BiH Public Attorney's request for registration, claiming that, "there are no conditions to implement the ruling of the BiH Court" in this case. Instead, the state has been directed to initiate a court case before the District Court of the RS, a clear attempt by RS authorities to bring the Han Pijesak case within the jurisdiction of its own judicial system rather than the state-level judiciary. In the meantime, following the final and binding second-instance verdict of the BiH Court, the RS submitted to the same court a request for a revision of the verdict. This procedure is ongoing, but it is important to note that the extraordinary legal remedy of revision does not stay the enforcement of the court's final judgment.

Progress on the broader issue of how state property assets are to be apportioned between different levels of government remains elusive. Pursuant to the ruling of the BiH Constitutional Court from July 2012, “there is a true necessity and positive obligation of BiH to resolve this issue as soon as possible.” More concretely, comprehensive state-level legislation must be adopted where the State of BiH, as the titleholder and owner of state property, would regulate the issue of apportionment and distribution of state property assets by taking into consideration the interests and needs of the entities.

#### *Fiscal Sustainability*

The OHR continued to follow, analyze and inform its international partners on developments related to fiscal sustainability, including developments in the BiH Fiscal Council and the BiH Indirect Taxation Authority (ITA) Governing Board.

The BiH Fiscal Council held two sessions during the reporting period. On 22 November, the BiH Fiscal Council and the IMF mission reached a staff-level agreement on the Supplementary Letter of Intent, including measures required to complete the first quarterly review of the country’s progress under the EFF arrangement approved in September. The authorities have failed to complete the agreed measures to date, thereby delaying consideration of the first review by the IMF Executive Board as well as the second IMF disbursement to BiH. The 14 March BiH Fiscal Council session only dealt with technical issues of relevance for its activities.

The ITA Governing Board met seven times during the reporting period, which was more frequently than in the previous period, but with less substantive results. Continued disputes between the finance ministers and the experts negatively impacted voting. Also evident were disagreements over issues of relevance to the IMF and the European Bank for Reconstruction and Development (EBRD), as well as continued arguments over outstanding inter-entity debt settlements based on past indirect tax revenue allocations, which cumulatively show an RS debt to the Federation of BAM 27.8 million.

#### *Brcko District*

Following the confirmation of the October 2016 local elections, parties in the Brcko District quickly negotiated a majority, electing a mayor at the Brcko District Assembly’s inaugural session on 15 November, while the new Brcko District Government was fully operational by 16 January. In view of BiH’s EU path, a new Department for European Integration was created.

My office continued to provide expert assistance to the Brcko District authorities at their request in preparing by-laws and addressing other issues needed for the implementation of four key pieces of financial legislation adopted in June 2016. The legislation is intended to further integrate the Brcko District with the legal system of BiH, facilitate the implementation of the BiH economic program negotiated with the IMF and empower the District with instruments for increasing fiscal transparency, fighting the gray economy and generating revenues. My office also provided support to the Brcko District Finance Directorate in preparing a new *Law on Budget*. The Brcko District has not yet adopted its 2017 budget and functions under a temporary financing decision.

In October, Vitomir Popovic voluntarily withdrew from the post of Arbitrator appointed by Republika Srpska in the Arbitral Tribunal for Dispute over the Inter-Entity Boundary in the Brcko Area, and was replaced in November by Sinisa Karan, who previously headed the RS Referendum Commission.

After the two arbitrators appointed by the Federation and Republika Srpska failed to agree on the appointment of the replacement for former Presiding Arbitrator Roberts Owen, who passed away in March 2016, the International Court of Justice President announced, on 13 January, the appointment of U.S. Ambassador John Clint Williamson. Williamson visited BiH for the first time in his new capacity on 7 and 8 March.

While 9 January as the “RS Day” holiday was determined unconstitutional by virtue of decisions of the BiH Constitutional Court, the holiday was nonetheless observed in Brcko District, but on 10 January, with a reception hosted by RS President Milorad Dodik.

Although the decision on *Amendments to the Decision on Protection of Civilian Victims of War* entered into force on 18 June 2015, correcting discriminatory provisions for the victims of rape and sexual abuse in Brcko, the decision has thus far not been implemented.

## *Entrenching the Rule of Law*

My office continued to provide support to the BiH authorities in the implementation of the BiH *Law on Foreigners* and the BiH *Law on Asylum*, including assistance in the development of rulebooks necessary for implementing this legislation.

### **D. Challenges to the General Framework Agreement for Peace**

#### *Challenges to the Sovereignty and Territorial Integrity of Bosnia and Herzegovina*

During the reporting period, there were numerous statements made which challenged the territorial integrity of BiH, primarily by officials from SNSD, the ruling party in the RS. RS President Milorad Dodik, who is also the leader of SNSD, continued to be the most frequent and vocal exponent of BiH dissolution.<sup>[iv]</sup>

#### *Calls for Redrawing of Internal Boundaries*

Some Croat leaders continued to call for a new administrative and territorial organization of BiH, which would result in the formation of a “federal unit” with a Croat majority. At the 28 January Croat People’s Assembly (HNS) Congress, HNS Main Council President Bozo Ljubic reaffirmed this goal as “the permanent aspiration of Croats in BiH.”<sup>[v]</sup>

On 17 November, HNS organized a commemoration of the 25<sup>th</sup> anniversary of the breakaway Croat Republic of Herzeg-Bosnia (HRHB – originally the Croat Community of Herzeg-Bosnia/HZHB). At the event, various speakers commended the concept of HRHB as still valid and vowed that there would be no BiH without the HRHB.<sup>[vi]</sup> Some Croat leaders continue efforts to rehabilitate the image of the HRHB, many of whose leaders were indicted and sentenced for war crimes by the International Criminal Tribunal for the former Yugoslavia.

#### *RS National Assembly Awards War Criminals*

On 24 October, the RS National Assembly (RSNA) marked the 25<sup>th</sup> anniversary of the withdrawal of Serb delegates from the former Socialist Republic of BiH’s Parliamentary Assembly and the formation of the Assembly of Serb People in BiH. On this occasion, the current RSNA leadership gave special awards to all former RSNA Speakers and members of the first RS Presidency, including convicted war criminals Biljana Plavsic and Momcilo Krajisnik, as well as Radovan Karadzic, who was convicted in the first instance for crimes against humanity, genocide and war crimes, and to Nikola Koljevic.

The event resulted in condemnations by various international organizations and demonstrated the continued reluctance or inability of the RS leadership to break with the past.

#### *Implementation of RS Referendum on 9 January as the “RS Day” Holiday*

As detailed in my *Special Report on a Referendum in Republika Srpska against the State Constitutional Court’s Decisions*, delivered in tandem with my previous regular report, the RS authorities held a referendum on 25 September 2016 concerning the support for 9 January as the date of the “RS Day” holiday in spite of the BiH Constitutional Court’s 17 September 2016 interim measure suspending the 15 July 2016 decision by the RSNA to hold a referendum pending a final decision of the BiH Constitutional Court concerning the aforementioned RSNA decision.

On 25 October, the RSNA passed the *Law on the RS Day*, intended to implement the results of the referendum conducted in violation of the BiH Constitutional Court decisions. This law was subjected to a vital national interest procedure raised by the Bosniak Caucus in the RS Council of Peoples.

On 1 December, the BiH Constitutional Court granted the request of Bosniak member of the BiH Presidency Bakir Izetbegovic *et al* “to resolve the constitutional dispute with the Entity of Republika Srpska” in connection with the RSNA’s 15 July 2016 decision to conduct the “RS Day” referendum on 25 September 2016. The Court held that the RSNA decision was not in conformity with Article I/2 and Article VI/5 of the BiH Constitution, since it defined a referendum question that pertained to a matter already decided by the final and binding decision of the Court, which all public authorities and institutions are obliged to respect.

The Court also annulled the referendum results on the grounds that the referendum was held on the basis of a

decision on a referendum that the Court had declared incompatible with the BiH Constitution and contrary to the Court's order set forth in its 17 September 2016 interim measure.

On 22 December, the RS Constitutional Court decided that the vital national interest of the Bosniak people was not violated by the *Law on the RS Day*. The law was published in the RS Official Gazette on 27 December 2016 and entered into force.

On 9 January, despite the BiH Constitutional Court's decision determining the date of 9 January as the "RS Day" holiday as unconstitutional, the authorities organized "RS Day" celebrations in Banja Luka. Events included a parade of police and civil protection services, sports associations and others, as well as the participation of the 3<sup>rd</sup> Regiment of the BiH Armed Forces, which was present at the request of the Serb member of the BiH Presidency, Mladen Ivanic.

By organizing the referendum in direct contravention of the decisions of the BiH Constitutional Court and by implementing it, the RS affirmed its continued policy of disregarding the constitutional order as set forth in Annex 4 to the GFAP and the authority of the state-level judiciary. By rejecting the final and binding decisions of the BiH Constitutional Court, and in particular the Court's decision ordering interim measures, the RS authorities set a precedent of misusing referenda to attempt to justify violating their obligations under the GFAP, irrespective of any eventual decisions of the Constitutional Court.

#### *BiH Constitutional Court Decision in "Ljubic Case"*

On 1 December the BiH Constitutional Court adopted a decision on the so-called "Ljubic Case," which concerns the request of the current Croat People's Assembly Main Council President Bozo Ljubic for a review of the constitutionality of the provisions of the BiH Election Law pertaining to the election of delegates to the Federation House of Peoples. The Constitutional Court established that several challenged provisions of the BiH Election Law are not in conformity with Article I (2) of the BiH Constitution, and ordered the BiH Parliamentary Assembly to harmonize those provisions with the BiH Constitution no later than six months from the date of delivery of its decision. The court's decision was published on 6 January and sent to the BiH Parliamentary Assembly. Consequently, the six-month deadline to harmonize the unconstitutional provisions shall expire in early July.

The "Ljubic Case" decision includes political elements and considerations, and raises several difficult legal questions. Its effects cannot be precisely predicted and depend on what the key political stakeholders and authorities in charge of its implementation agree. Based on early reactions to the decision, it is difficult to see how the Federation-based parties might reconcile their conflicting views on its implementation.

While SDA (the main Bosniak party) President Bakir Izetbegovic expressed the view that minor technical amendments to the BiH Election Law should be adopted to reflect the exact wording of the Federation Constitution, HDZ BiH (the main Croat party) President Dragan Covic stated that BiH Election Law provisions concerning the Federation House of Peoples must be adopted in accordance with the principles set forth in the "Ljubic Case," and that the next indirect elections to the Federation House of Peoples – subsequent to the 2018 General Elections in BiH – cannot be completed without the adoption of appropriate amendments to the BiH Election Law.

The opposing views, particularly between HDZ BiH and SDA officials, center on whether elections for the Federation House of Peoples in 2018 can be carried out if the BiH Parliamentary Assembly fails to amend unconstitutional provisions of the BiH Election Law and if the BiH Constitutional Court consequently repeals the provisions it deemed unconstitutional. The issue is even more important considering that, without elections to the Federation House of Peoples, it would be impossible to elect delegates to the BiH House of Peoples, impossible to elect members of the Federation Presidency, and impossible to elect a new Federation Government following the 2018 Elections.

Moreover, looking at the broader potential implications of the decision, as far as the implementation of the judgments of the European Court of Human Rights in "Sejdic & Finci", "Zornic" and "Pilav" cases are concerned, conflicting views amongst certain political stakeholders emerged on whether the principle of proportional and legitimate representation developed by the Constitutional Court in the "Ljubic Case" would also have an impact on the rules concerning the elections of the members of the BiH Presidency.

My office will continue to closely follow the developments regarding the implementation of the "Ljubic Case" Decision.

According to various BiH authorities, BiH recorded no new departures of BiH citizens to join the Islamic State of Iraq and Levant (ISIL) during the reporting period. The BiH Prosecutor's Office continued its activities related to the investigation and prosecution of BiH citizens who left or planned to leave BiH with the aim of joining ISIL, despite having knowledge of the 30 May 2013 UN Security Council decision declaring ISIL a terrorist organization.

### **III. State-level Institutions of Bosnia and Herzegovina**

#### **A. BiH Presidency**

In the reporting period, the BiH Presidency was affected by the political fallout from wider controversies, in particular the attempt at submitting a revision request to the ICJ described above.

The revelation that the ICJ had communicated its position to the disputed BiH Agent in May 2016 that a request for revision of the judgement would require a new formal authorization by the BiH Presidency transformed a controversial issue into a political scandal. BiH Presidency Chair Mladen Ivanic and other Serb political leaders insisted that Izetbegovic had acted unilaterally and outside the scope of the BiH institutions, and that he should bear political and possibly legal responsibility. Ivanic also stated that the BiH Presidency might never again function normally.

Several Bosniak political leaders who had supported Izetbegovic's efforts called for his resignation, while RS political party NDP President Dragan Cavic submitted criminal complaints against Izetbegovic and the disputed BiH Agent with the BiH Prosecutor's Office. To date, the BiH Prosecutor's Office has confirmed opening a case only against the disputed BiH Agent.

In a welcome development, the BiH Presidency resumed its work in an 11 April session, discussing several accumulated items and decisions.

Among the notable decisions adopted by the BiH Presidency during the reporting period was the adoption of the BiH Defense Review on 24 November. On 20 December the BiH Presidency nominated BiH for membership in the UNESCO World Heritage Committee. Additionally, the Presidency adopted a decision extending the mandate of the Armed Forces of BiH (AFBiH) in NATO-led peacekeeping operations in Afghanistan, and gave initial support to a possible contribution of the AFBiH to the Common Security and Defense Policy of the EU via the engagement of 40 persons in an EU training mission in the Central African Republic.

On 17 November, the Serb member of the BiH Presidency Mladen Ivanic took over the Presidency Chair from Bosniak member Bakir Izetbegovic.

#### **B. BiH Council of Ministers**

The BiH Council of Ministers (BiH CoM) continued to meet regularly in the reporting period, holding 21 regular sessions and four extraordinary sessions, focusing with some success on issues related to BiH's EU path, as well as addressing technical and economic topics. At the same time, the BiH CoM's overall legislative output was relatively small.

The BiH CoM adopted only two new laws (the *2017 State Budget* and the *Law on Insuring Bank Deposits in BiH*) and eight sets of amendments to existing legislation, including a set of amendments required by the IMF Letter of Intent: amendments to the *Law on Excise Tax*, to the *Law on Payments to the Single Account* and to the *Law on the Indirect Taxation System*.

The BiH CoM adopted its 2017 Work Plan and its 2017 Action Plan on 1 February, which includes nearly 100 development-investment projects related to EU accession and fulfilling requirements from the Partnership for Peace, and further enhancing regional and international cooperation. The Action Plan envisions the adoption of more than 40 laws and 650 decisions, reports, strategies and international treaties on the BiH CoM's agenda in 2017.

The BiH CoM also established an Inter-Agency Working Group to analyze and propose modalities, including new technology in the electoral process in BiH. At the same time, the Inter Agency Working Group to prepare changes

to the *Law on Election in BiH* and the *Law on Financing of Political Parties* established in 2015 has continued its work in 2017.

The BiH CoM engaged in regional cooperation, leading a BiH delegation in a visit to the Serbian capital of Belgrade on 23 January to discuss potential improvements in bilateral relations.

### **C. BiH Parliamentary Assembly**

During the reporting period, the work of the BiH Parliamentary Assembly was lackluster, with both houses bogged down by boycotts or threats of boycotts by delegates from RS parties and an unstable ruling majority coalition, resulting in lower output. Sessions often became the stage for politicking between various parties.

The BiH Parliamentary Assembly was affected by the political crisis that resulted from the request for the revision of the ICJ's 2007 judgment in the *BiH v. Serbia* case. In February and March, sessions of the BiH House of Representatives (HoR) and the BiH House of Peoples (HoP) were disrupted by the threatened non-attendance of RS delegates, who disputed the legitimacy of the revision request. In the 7 March session of the BiH HoR, even BiH coalition partner the "Alliance for Change" refused to participate in voting on any issue. SNSD delegates have repeatedly boycotted sessions of the BiH HoR since December over the issue of SDA delegate Sefik Dzaferovic's rotation to the HoR Speaker position and their accusations of his involvement in war crimes.

The BiH Parliamentary Assembly is also yet to adopt the excise and banking deposit insurance-related legislation required for the completion of the first review under the International Monetary Fund's (IMF) Extended Fund Facility (EFF). At the end of March, the BiH Council of Ministers (CoM) adopted the legislation and sent it to the BiH Parliamentary Assembly in urgent procedure to meet the IMF's 7 April deadline. In its 5 April session, the BiH HoR rejected the urgent procedure, after which the BiH CoM resubmitted the same proposals, again with a request for urgent procedure. The BiH HoP adopted the legislation on 7 April, while the BiH HoR declined to consider the legislation under urgent procedure at its 20 April session. Consequently, these laws still remain among the requirements holding back the second tranche of the IMF EFF.

The BiH House of Representatives held only eight regular sessions and one urgent session during the reporting period, and the BiH House of Peoples held only five regular sessions and one urgent session. The parliament adopted three new laws and five changes to existing legislation.

The parliament ultimately rejected the proposed removal of BiH Deputy Defense Minister Sead Jusic over his role in approving the participation of members of the 3<sup>rd</sup> Regiment of the BiH Armed Forces in the 9 January "RS Day" holiday events in Banja Luka.

## **IV. Federation of Bosnia and Herzegovina**

### *Federation Coalition Developments*

During the reporting period, the Federation Government worked fairly consistently, holding 25 regular sessions and 19 extraordinary sessions. However, frequent disagreements over proposed legislation plagued the ruling SDA-HDZ BiH-SBB coalition, disrupting the functioning of the parliament. Although both Houses of the Federation Parliament had several months of no sessions due primarily to disputes over proposed amendments to the *Law on Lotteries* and amendments to restore benefits to some 6,000 Croat war veterans, the Federation Parliament adopted a total of seven new laws and 12 amendments to existing laws during the reporting period.

### *BiH Constitutional Court Dismisses RS National Assembly Challenge against Constitutionality of Laws Adopted in the Federation House of Peoples*

In October, 30 delegates in the RS National Assembly submitted to the BiH Constitutional Court a request for a review of the constitutionality of all laws and by-laws adopted by the Federation Parliament since the 2014 General Elections, arguing that the Federation House of Peoples was not fully constituted due to only 13 of 17 Serb delegates having been appointed, and that the Serb caucus was unable to invoke the mechanism for protection of vital national interest in decision-making. On 19 January, the BiH Constitutional Court dismissed the request, clarifying that under the Constitution of the Federation and the Election Law there are no provisions that prevent the Federation House of Peoples from being constituted before all delegates are elected, and that the Serb caucus in the Federation House of Peoples has not been prevented from invoking the vital national interest mechanism.



### *Federation Constitutional Court Strikes Down Amendments to Federation Civil Service Law*

On 7 December, the Federation Constitutional Court decided that amendments to the *Law on Civil Service in the Federation* adopted in October 2015 were not in accordance with the Federation Constitution.

### *Stolac Repeat Elections*

On 19 February, the Stolac municipality, where the 2 October 2016 local elections were suspended due to several incidents, successfully conducted repeat elections without further incident. The BiH Central Election Commission (CEC) removed several candidates from the ballot over the earlier incidents, including the only Bosniak mayoral candidate. The BiH CEC has confirmed the election results, and the Stolac authority has been partially constituted. The HDZ BiH candidate won the mayoral position. At the inaugural session of the municipal council, a deputy speaker from HDZ BiH was elected, while negotiations are ongoing about the position of speaker.

### *Federation House of Representatives Adopts Resolution against "Ethnic Federalization"*

In a 21 March extraordinary session of the Federation House of Representatives (HoR), an SDP delegate proposed a resolution condemning calls for the further federalization of BiH. Croat delegates in the Federation HoR called the SDP-proposed Resolution an attack against Croats, and left the session, with the remaining 70 delegates unanimously adopting the resolution.

Subsequently, Croat political parties called the adopted resolution "anti-Dayton" and "anti-EU," claiming that it promotes a "unitary and nationalistic Bosniak agenda." In a 23 March open letter, the Croat People's Assembly warned that if Bosniak delegates did not revoke the resolution, the Assembly would launch unspecified measures. The Resolution has not been revoked, and there have been no further actions.

### *Two Schools Under One Roof in Jajce*

In March, Central Bosnia Canton authorities moved forward with the foundation of a high school in which Bosniak and Croat students – who have heretofore attended classes together – would attend classes separately according to their national (i.e. ethnic) curricula. This marks the first attempt to found such a school – so-called "two schools under one roof" – in the Federation in nearly 15 years. Authorities insist that they founded the school according to requests from the local community, but some Bosniak and Croat students, parents and teachers have protested the decision. On a positive note, it seems that some of the authorities previously advocating for the foundation of a new school, may be exploring ways to concentrate their efforts on finding a solution within the current school system.

### *No Agreement to Enable Local Elections in Mostar*

Regrettably, no political agreement was reached during the reporting period to enact amendments to the BiH Election Law that would enable the holding of local elections in the City of Mostar. Meeting in December 2016, the PIC Steering Board Political Directors again "*deplored the utter failure of the political parties over the past six years to meet their obligations to implement the ruling of the BiH Constitutional Court on the electoral system for Mostar*" and "*called upon all parties, in particular SDA and HDZ BiH, to reach a compromise to allow voters in Mostar to exercise their basic right to vote.*"

## **V. Republika Srpska**

During the reporting period, the ruling coalition led by the SNSD remained functional, with the RS Government meeting regularly. The RS National Assembly (RSNA) held four regular and four special sessions, and adopted 10 new laws and 19 sets of amendments to existing laws.

The political situation in the RS has seen two major political trends, each of which perpetuated the ongoing crisis in the country. The first was caused by rising tensions between Sarajevo and Banja Luka over two issues: the referendum on the 9 January "RS Day" holiday and the attempted request for a revision of the 2007 ICJ judgment in BiH's genocide lawsuit against Serbia. The second trend has been the constant political power struggle between the ruling coalition in the Republika Srpska led by the SNSD and its president, RS President Milorad Dodik, and the opposition parties gathered under the "Alliance for Change."

In October the RSNA decided to give special awards to former RSNA Speakers and members of the first RS

Presidency, including convicted war criminals Momcilo Krajisnik and Biljana Plavsic, as well as Radovan Karadzic, who has been convicted of genocide, crimes against humanity and war crimes in first instance by the ICTY.

RS authorities also decided to continue to observe the “RS Day” holiday on 9 January, despite the BiH Constitutional Court’s ruling that the date (not the holiday itself) is unconstitutional. RS President Dodik used the ceremony marking the date as an opportunity to reiterate his position on the dissolution of BiH.

Reacting to the attempted revision of the ICJ’s 2007 judgment in BiH’s genocide lawsuit against Serbia, on 27 February the RSNA adopted a set of wide-ranging conclusions condemning the effort and seeking to block decision-making at the state level except on issues of importance to the RS. Notably, the “Alliance for Change” parties stated they would not observe the latter.

Several weeks after the 2016 Municipal Elections in BiH, RS President Dodik said that the RS Government would no longer support municipalities run by the RS opposition parties. In turn, on 14 November the “Alliance for Change” parties condemned Dodik’s statement as illegal and announced they would no longer cooperate with Dodik’s SNSD party.

On a positive note, on 9 March, the RS and Federation Governments held a joint session in Banja Luka to discuss the Reform Agenda for Bosnia and Herzegovina and the implementation of the IMF Extended Fund Facility arrangement, focusing on implementing measures aimed at reducing the gray economy. Generally speaking, the cooperation between the entity governments, led by RS Prime Minister Zeljka Cvijanovic and Federation Prime Minister Fadil Novalic, could be characterized as positive and pragmatic.

#### *Non-cooperation with the High Representative*

On 12 January, the RS Government decided to cease all communication and contacts with my office over my alleged comparison of the “RS Day” holiday and the day of the founding of the Nazi-era Independent State of Croatia (NDH). Needless to say, my statement was misinterpreted and I immediately clarified that I was not drawing a parallel between the RS and the NDH.

The RS Government continues to deny my office access to official information and documents as required under Annex 10 of the GFAP. Article IX of Annex 10, obliges all authorities in BiH to fully cooperate with the High Representative, as well as with the international organizations and agencies. Repeated calls by the PIC SB reminding the RS authorities of their obligations in this regard have had no impact. The practice of the RS Government not to provide information and documents as requested by the OHR dates to 2007, and contradicts frequent RS claims that the entity respects the letter of the GFAP.

## **VI. Entrenching the Rule of Law**

#### *Draft Law on BiH Courts*

The jurisdiction of the BiH State Court is still a major point of contention between the RS and other political authorities, preventing the adoption of a new *Law on BiH Courts*. While a working draft includes provisions for the BiH state to maintain its current criminal jurisdiction over organized crime and corruption, alongside alternate provisions reflecting the view of the RS, which seeks limitations on BiH state jurisdiction, the BiH Minister of Justice attempted to introduce a new draft that sought to substantially diminish state-level criminal jurisdiction. However, within the EU-led Structured Dialogue on Justice, it is expected that work will continue on the previous draft, which would not diminish the state-level jurisdiction. I have made it clear that the state-level jurisdiction must not be diminished, as it follows the division of competencies between the state of BiH and the entities under the BiH Constitution.

#### *Non-execution of Court Judgements*

The reporting period saw the continuation of one of the most serious violations of the rule of law in BiH to date, which necessitated my previous special report to the United Nations Security Council as the RS violated its obligations under the GFAP and, in particular, the BiH Constitution as set forth in Annex 4 thereof. After the RS authorities conducted a referendum on 25 September 2016, violating two final and binding decisions of the BiH Constitutional Court, on 25 October the RSNA passed the *Law on the RS Day* with the aim to implement the results of the conducted referendum, in violation of the BiH Constitutional Court decisions.

The BiH Prosecutor's Office is conducting an investigation into the organization and conduct of the RS referendum, which, under Article 239 of the BiH Criminal Code, *Failure to Enforce Decisions of the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Human Rights Chamber and the European Court of Human Rights*, constitutes a criminal offense, with a sanction of six months to five years of imprisonment.

After previous refusals to submit to questioning in the matter, RS President Dodik appeared before the BiH Prosecutor's Office on 30 December to give his statement. The BiH Prosecutor's Office has also questioned the RS Prime Minister and the former head of the RS Referendum Commission, among others.

Another example of the deterioration in the entrenchment of rule of law that requires my attention is the RS authorities' direct rejection of the applicability of BiH-level judicial decisions in that entity. Thus, the BiH State Court's decision on a prospective defense property location in Han Pijesak, located in the RS, continues to be ignored by the RS authorities.

#### *Entity Anti-Corruption Efforts*

In the RS, organizational changes within the RS prosecution introduced by the new *Law on Repressing Corruption, Organized and Most Serious Forms of Economic Crime*, were implemented in the reporting period. In the Federation however, 2014 legislation on a special prosecutor and court department for fighting corruption and organized crime remains unimplemented.

### **VII. Public Security and Law Enforcement, including Intelligence Reform**

The practice of improper political interference in operational policing has not diminished in the reporting period.

Sarajevo Canton's *Law on Internal Affairs*, adopted in January 2016, remains unimplemented in its most important aspect, which is establishing the operational and financial independence of the police organization, as the Sarajevo Cantonal Government has not yet adopted an essential bylaw. An initiative by the Sarajevo Cantonal Assembly to introduce major changes to the yet-to-be-implemented law would lead to more political control over the police and would disrupt the harmonization of police-related legislation in the Federation.

In November, the Sarajevo Cantonal Government dismissed the Sarajevo Cantonal Police Commissioner. In March, the Sarajevo Cantonal Independent Board issued the vacancy announcement for selecting a new commissioner. The international community pushed back earlier efforts to reduce the criteria for the new commissioner, thereby resulting in the delay in issuing the vacancy announcement.

The appointment of a new police commissioner in Canton 10 has been outstanding since December 2014. The January 2015 appointment of the Federation Administration Police Director remains unresolved to date due to an ongoing court dispute. After long delays, West Herzegovina Canton appointed a new police commissioner on 1 December. The appointment of the Federation Independent Board remains outstanding since 2015, and the procedure is ongoing in Herzegovina-Neretva Canton.

On 8 December, the Federation House of Peoples adopted the draft *Law on Police Officials*. On 7 February 2017, the Sarajevo Cantonal Assembly adopted its draft *Law on Police Officials*. Both laws are currently in further parliamentary procedure.

OHR and its main international community partners continue to monitor changes to police legislation and to encourage harmonization in jurisdictions throughout the country. However, attempts to disharmonize the legislative frameworks are on the rise.

### **VIII. Economy**

Available economic indicators for 2016 show a mixed picture. While foreign trade and industrial production slightly increased over 2015, the Council of Ministers' Directorate for Economic Planning also noted a substantial decline in the rate of growth to almost half that of 2015.

Despite a 5.1 percent drop in unemployment, the figure of over a half-million persons registered as unemployed in December is still of concern. The administrative unemployment rate is 40.9 percent, while the real unemployment rate is about 25.4 percent. The share of youth unemployment in the total unemployment figure is estimated at

54.3 percent.

According to the BiH Central Bank's preliminary data, foreign direct investments in 2016 amounted to BAM 504.4 million, a 5.8 percent increase over 2015. Living standards are poor. With the average December salary of BAM 853 and the average pension of BAM 358, even those with a steady income struggle to make ends meet. The number of pensioners also increased by 1.9 percent.

Available economic indicators also show a decline across several areas and in comparison with the region. The UN Conference on Trade and Development's 2016 World Investment Report ranked BiH 4<sup>th</sup> in 2015 foreign direct investment inflows in Southeastern Europe. The Heritage Foundation's 2016 Index of Economic Freedom ranked BiH 109<sup>th</sup> out of 178 countries and 39<sup>th</sup> out of 43 countries in Europe, with the overall score below global and regional averages. The World Bank's 2017 "Doing Business" Report ranked BiH 81<sup>st</sup> out of 190 economies in terms of ease of doing business, the worst of all Balkan countries. The UNDP's 2015 Human Development Report ranked BiH 85<sup>th</sup> out of 188 countries in terms of human development. Transparency International's 2016 Corruption Perceptions Index ranked BiH 83<sup>rd</sup> out of 176 countries, behind neighboring Croatia, Serbia and Montenegro. The Economic Freedom of the World 2016 Annual Report ranked BiH 91<sup>st</sup> out of 159 countries and territories, while the World Economic Forum's 2016-2017 Global Competitiveness Report ranked BiH 107<sup>th</sup> out of 138 economies, again the lowest ranked country in the region. The Report also showed the country's poor capacity to retain talent, as in terms of "brain drain" BiH ranked 134<sup>th</sup> out of 138 countries.

BiH's credit rating remains the same. On 10 March, Standard & Poor's Ratings Services affirmed BiH's credit rating at "B with stable outlook" based on BiH's fiscal performance, robust indirect tax revenues and still comparably low debt burden, among other factors. The constraints stem from the country's political divisions, rising external indebtedness and substantial external financing requirements.

The banking sector is assessed as generally stable and liquid, and should be further strengthened following the adoption of the full legislative package prepared by the authorities as part of their commitments under the IMF EFF. The BiH Deposit Insurance Agency, with the efficient handling of deposit refunds following the bankruptcy of two RS-based banks (Bobar Banka and Banka Srpske) contributed to the sector's stability.

#### *Fiscal Issues*

Indirect tax revenues continued to grow, which is essential for fiscal stability at all levels of government in BiH. In 2016, the BiH Indirect Taxation Authority collected BAM 6.638 billion, 4.48 percent more than in 2015, a record annual collection.

During the reporting period, BiH did not benefit from IMF disbursements as the responsible authorities failed to complete all the measures required for the completion of the first review of BiH's performance under the IMF EFF arrangement. Following a visit in March 2017, the IMF identified the outstanding issues as: the adoption of an increase in fuel excises and amendments to the BiH *Law on Deposit Insurance Agency* by the BiH Parliamentary Assembly; a decision to limit 2017 employment in the BiH Institutions by the BiH Council of Ministers; the adoption by the Federation Parliament of amendments to the Federation *Law on Banking Agency*; and a due diligence procedure for BH Telecom and HT Mostar by the Federation Government. The completion of these tasks will pave the way for the consideration of the first review by the IMF Executive Board and, in case of approval, for the second IMF disbursement to BiH.

In the absence of IMF assistance, the sustained growth of indirect tax revenues and the continued reliance on domestic borrowing were key to maintaining fiscal stability during the reporting period. However, fiscal challenges are evident and likely to increase in the case of further delays in IMF disbursements, and also due to a 31 percent increase in foreign debt payment obligations (BAM 1.011 billion), among other factors, which impacts budget revenues of the entities and the lower levels of government.

The challenges may be somewhat alleviated by the settlement of the Russian Federation USD 125.2 million "clearing debt" towards BiH, stemming from the commodity exchange between the former Union of Soviet Socialist Republics (USSR) and the former Socialist Federal Republic of Yugoslavia (SFRY). Following its acceptance by the BiH CoM on 10 November and the BiH Presidency on 24 November, BiH Finance and Treasury Minister Vjekoslav Bevanda (HDZ BiH) signed the debt settlement agreement with Russian Federation Deputy Finance Minister Sergei Anatolievich Storchak on 21 March 2017 in Moscow. The debt will be settled upon ratification of the Agreement, and the resulting financial assets will be apportioned to the state (10 percent), the Federation (58 percent), the RS

(29 percent) and the Brcko District (3 percent).

The 2017 budget adoption process was completed prior to 31 December at the state and entity levels. Brcko District, half of the cantons and the City of Mostar failed to comply with the budget adoption calendar and were forced to operate on temporary financing or, in the case of Mostar, without any financing until budget adoption.

On 15 December 2016, the BiH Parliamentary Assembly adopted the *Law on the Budget of BiH Institutions and International Obligations of BiH for 2017* in the amount of BAM 1.961 billion, a 14 percent increase over the previous budget. The financing of state institutions has been locked at the same level since 2012, in terms of both the total amount (BAM 950 million) and the amount of indirect tax revenues (BAM 750 million), which comprises 78.9 percent of total state budget revenue. Other revenue sources for state institutions are limited and they do not benefit from IMF financing. There are concerns that these financial constraints may affect their ability to fully meet their obligations.

The Federation Parliament completed the adoption of the 2017 Federation Budget on 29 December 2016. The adopted budget totals BAM 2.747 billion, a 6 percent increase over the previous budget, which includes BAM 562.6 million for foreign debts (a 39 percent increase), BAM 530 million for domestic borrowing (a 33 percent increase) and BAM 42.7 million for internal debts (a 74 percent decrease). The total projected domestic revenues in 2017 are BAM 1.985 billion, and the BAM 762.6 million deficit is to be covered by proceeds from the sale of financial assets (BAM 120 million), short-term borrowing (BAM 360 million), and long-term borrowing (BAM 282.6 million).

Fiscal challenges in the Federation may arise in the case of further delays in IMF disbursements, underperformance of domestic revenue or a lack of interest for government securities. There is also continued concern over the stability of the Federation Pension and Disability Fund, which struggles to secure regular and timely payments of pensions in the Federation. The new Federation *Law on Pension and Disability Insurance* currently in parliamentary procedure should address this issue by including the Fund in the Federation treasury system. However, judging from experience in the RS, while the inclusion of the Pension Fund in the treasury system secures timely pension payments, it causes delays in other budget payments. A serious budget challenge for the Federation also stems from demands to restore military pension rights to some 11,000 demobilized soldiers of the former Army of BiH and the Croat Defense Council.

In December 2016, the Federation Parliament adopted amendments to the *Law on Budgets in the Federation* to provide a legal basis for the continued financing of the City of Mostar, which has no functioning City Council to adopt the budget. The amendments empowered the Mayor of Mostar, with the consent of the head of the Mostar Finance Department, to announce the 2017 Mostar City Budget in February.

On 24 December, the RS National Assembly adopted the 2017 RS Budget, which totals BAM 3.2 billion, a 2.3 increase over the previous year. Budget revenues are set at BAM 2.7 billion, with a deficit of BAM 522 million (a 6 percent decrease), to be covered by domestic and foreign borrowing. With similar concerns as the Federation, of particular concern in the RS is the accumulated debt of the RS healthcare sector, which exceeds BAM 1 billion. The RS Pension Fund also faces challenges to its sustainability, due to poor revenue collection and an increasing number of pensioners, among other factors. The inclusion of the RS Pension Fund in the 2016 RS Budget resolved the issue of delayed pension payments but led to delays in other RS Budget payments.

#### *International Obligations and Other Issues*

The Energy Community reintroduced sanctions against BiH on 1 April following the country's failure to follow through on an earlier commitment to support the adoption of a state law addressing persistent breaches of obligations arising from the Energy Community Treaty. Although the BiH Ministry of Foreign Trade and Economic Relations, led by Minister Mirko Sarovic (SDS), attempted to negotiate an acceptable solution, the entity authorities failed to agree on regulation of the gas sector at the state level.

On 16 March, the RS Government adopted a conclusion requesting the RS Ministry of Transport and Communications to initiate a review of the *Agreement between the Federation and the RS on the Establishment of a Joint Public Railway Corporation as Part of the Transportation Corporation*, concluded in 1998 under Annex 9 of the GFAP. The RS Government also requested the Ministry to assess the justification for the continued existence of the BiH Public Railway Corporation. The BiH Public Railway Corporation is the only corporation established thus far under Annex 9 and is crucial for smooth, safe and regular inter-entity and international railway traffic, including the allocation of rail routes for inter-entity and international traffic in a non-discriminatory manner and the

harmonization of signaling, safety, telecommunication and other systems.

## **IX. Return of Refugees and Displaced Persons**

Upholding the right of refugees and displaced persons to return to their pre-war homes remains central to the full implementation of Annex 7 of the GFAP, which requires authorities at all levels “to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.”

The continued observation by RS authorities of the “RS Day” holiday on 9 January in contravention of several rulings of the BiH Constitutional Court does not contribute positively towards social conditions or the harmonious reintegration of refugees and displaced persons in this regard.

I also remain concerned by ongoing difficulties faced by returnees in the field of education in several local communities, particularly in light of the 25 November ruling of the Banja Luka Basic Court that Bosniak students in Vrbanjci, Kotor Varos, have not been discriminated against, despite the local primary school’s failure to offer the national group of subjects.

The period following the October 2016 elections in Srebrenica, the site of the 1995 genocide against the Bosniak population of the former UN-protected enclave, and now an area of significant return, was marked by initial disputes of the election results. For the first time in the post-war era, a Serb was elected to lead the municipal administration, while Serb parties won a majority of seats in the municipal assembly. This development raised concerns within the Bosniak returnee population and caused divisions amongst their political representatives. Subsequently, some Bosniak representatives formed a ruling coalition with their Serb counterparts while others joined the opposition. The new Serb Mayor has continued to focus on general developmental issues. Nonetheless, distrust remains between the Bosniak and Serb communities, and is continuously fueled by political rhetoric at the higher levels in BiH.

## **X. Media Developments**

The BiH Public Broadcasting System (PBS) continued to face challenges in terms of financing and independence from political influence. Authorities have attempted to extend the arrangement of financing public broadcasting through taxes collected by the three main telecom operators, but it is unlikely that this will be realized, bearing in mind the current political situation and the lack of political will to facilitate a solution for supporting the state public broadcaster.

Due to the ongoing failure to find a permanent financing solution and the resulting inability to fulfil its regular obligations towards both the domestic authorities in terms of taxes and employer contributions, as well as to the European Broadcasting Union, the state public broadcasting service is in serious financial trouble.

## **XI. Defense Matters**

In early January, the Armed Forces of BiH (AFBiH) were drawn into the political controversy surrounding the marking of the “RS Day” holiday on 9 January despite the BiH Constitutional Court ruling that the marking of the “RS Day” on that date is unconstitutional. The BiH Minister of Defense informed RS authorities that the AFBiH would participate in ceremonies on 8 January honoring military and civilian war dead, but would not participate in the “RS Day” parade on 9 January as had been done previously. Serb politicians, including the Serb Deputy BiH Minister of Defense, encouraged Serbs serving in the AFBiH to make their way to Banja Luka and to participate in the parade regardless of orders to the contrary.

On 9 January, elements of the Serb band of the AFBiH military orchestra and an honor guard of Serb troops from the 3<sup>rd</sup> (Republika Srpska) Infantry Regiment rendered honors to the serving BiH Presidency Chair, Serb member of the BiH Presidency Mladen Ivanic, on his direct orders. Additionally, all top-ranking Serb officers were present at the event.

This circumvention of the chain of command, and the political encouragement to disobey orders, constituted the gravest threat to the integrity of the AFBiH since its establishment as a unified force in 2006. An investigation ordered by the BiH Minister of Defense has blamed the incident on a lack of regulatory clarity regarding the rendering of military honors to members of the BiH Presidency, but has thus far not addressed the behavior of

individual officers who attended the event, which is potentially a matter of concern under Annex 1A of GFAP.

On a positive note, the BiH Ministry of Defense is actively planning for the implementation of the Defense Review adopted in November 2016 in line with the political consensus agreed by the BiH Presidency, and is also reinvigorating its legal and technical efforts in relation to the registration of immovable defense property.

## **XII. European Union Military Force**

The European Union military mission in BiH (EUFOR) continues to play a vital role in supporting BiH's efforts to maintain a safe and secure environment, which in turn assists my Office and other international organizations in fulfilling their respective mandates. EUFOR's presence on the ground, including its liaison and observation teams, remains an important contributing factor to stability and security.

## **XIII. Future of the Office of the High Representative**

The PIC SB Political Directors met in Sarajevo on 6-7 December 2016 to underline the progress in implementing the GFAP, as well as their unequivocal commitment to BiH's territorial integrity and sovereignty. The PIC SB also reinforced the need to complete the 5+2 agenda, which remains necessary for OHR's closure. The next meeting of the PIC SB is scheduled for 6-7 June 2017 in Sarajevo.

My Office continues its fiscally responsible approach to budget planning and the results are evident. Since the beginning of my mandate in March 2009, the OHR's budget has been reduced by over 47 percent and my staff by over 53 percent. Given the deep and ongoing nature of the cuts, it is important to highlight that given the realities of the situation on the ground and as entitled under Annex 10 of the GFAP, I must remain equipped with the budget and the staff required to carry out my mandate effectively.

## **XIV. Reporting Schedule**

In keeping with the practice of submitting regular reports for onward transmission to the UN Security Council, as required by Security Council Resolution 1031 (1995), I herewith present my 17<sup>th</sup> regular report. Should the UN Secretary-General or any UN Security Council member require further information at any time, I would be pleased to provide an additional written update. The next regular report to the UN Secretary-General is scheduled for October 2017.

## **Notes**

[1] The International Court of Justice (ICJ) passed its judgment in the case of *BiH v Serbia and Montenegro – Application of the Convention on the Prevention and Punishment of the Crime of Genocide* on 26 February 2007, finding that Serbia was neither directly responsible for nor complicit in the July 1995 Srebrenica genocide. The ICJ ruled that Serbia had committed a breach of the Genocide Convention by failing to prevent the genocide, and for not cooperating with the International Criminal Tribunal for the former Yugoslavia (ICTY) in punishing its perpetrators, particularly former Republika Srpska Army General Ratko Mladic, and for violating its obligation to comply with the provisional measures ordered by the Court. As the only available legal remedy, the ICJ Statute envisages that a request for revision of the original judgment may be filed when based on the discovery of some fact of such a nature as to be a decisive factor and which was at the time of the judgement unknown to the party asking for the revision. An application for revision must be made not more than six months from the discovery of the new fact, and no later than 10 years following the date of judgement. The deadline for revision thus expired on 26 February this year.

[i] *Defense News*, 29 November 2016.

[ii] "We are not adventurers. But we do not exclude organizing a referendum on the status [of the RS] in the event that there is not a satisfactory solution for us." *RS President Milorad Dodik, reported in Nezavisne Novine and other media from TASS*, 2 March 2017.

[iii] "One of the ways to organize BiH is clearly one in which Croats have their entity. That too can be an element of equality. I am personally working towards the organization of BiH comprised of four territorial units..." *Croat member of BiH Presidency/HDZ BiH President Dragan Covic, N1 TV interview*, 14 December 2016.

[iv] "You cannot expect to resolve all national issues of other peoples in the Balkans, and yet to leave the Serb

people fragmented in several countries, and to try to unilaterally impose a solution in each of those countries that is in its essence anti-Serb. ...Hypothetically speaking, the territory which would be organized so that Bosniaks have their state in which they are the dominant majority, Serbs have theirs in which they are the dominant majority, Croats theirs, Albanians theirs, seems to have the potential to be the best possible solution for long-term stability." *Milorad Dodik, Sputnik, 6 March 2017*. "If Kosovo becomes a full-fledged member of international organisations like the United Nations, then the RS will also take steps to that end." *Milorad Dodik, Izvestija interview, 6<sup>th</sup> March 2017*. "Bosnia-Herzegovina cannot survive the future with the competences it snatched from Republika Srpska...I think that the decades to come, not necessarily 2018, are the time when the Serb national issue must be seen integrally." *Milorad Dodik, Nezavisne novine / Sputnik, 5 March 2017*. "In 1992 [Republika Srpska] was formed out of the need of our people to live free, in freedom, to have their state, and that that state in time we dream of joining and become a single part together with mother Serbia." *Milorad Dodik, Speech on the Occasion of 9 January 2017*. "The RS is determined to assert the original Dayton powers and position. If that is not possible, nobody will keep us in BiH." *Milorad Dodik, Faktor.ba, 9 January 2017*. "This Bosnia is a country which has no chance to succeed...and I am trying for that to be our dominant process, that we peacefully separate along entity lines. We lay down a state line and in that way we resolve and then we turn towards cooperation." *Milorad Dodik, N1/Beta, 8 January 2017*.

[v] "If BiH wishes to become self-sustainable, then its administrative and territorial reorganization is necessary, so as to include a federal unit with Croat majority. And that remains a permanent aspiration of the Croat people in BiH." *Božo Ljubić, Ljubuški.net, 28 January 2017*.

[vi] "Had it not been for the HZHB, we would have met the destiny of Vukovar, and Croats would not exist in BiH. That is why the HZHB was created." *HDZ BiH/HNS President Dragan Covic, Mostar, 17 November 2016*.