

52nd Report of the High Representative for Implementation of the Peace Agreement on BiH to the Secretary-General of the UN



Summary

This report covers the period from 22 April through 21 October 2017. Although the 2018 General Elections in Bosnia and Herzegovina (BiH) are a full year away, the country's political leaders have already shifted their focus away from economic reforms towards divisive, nationalistic issues – which, in fact, have never been completely sidelined. The political parties, in pre-election campaign mode, have hardened already polarized positions on several contentious issues. In its 16 October conclusions, the European Union (EU) Foreign Affairs Council, “expressed regret that a divisive rhetoric rooted in the past and an early electoral agenda have slowed the pace of reform and affected the political climate.”

On the positive side, Bosnia and Herzegovina took some steps to implement the Reform Agenda and continued work on compiling answers to the European Commission's Questionnaire. In addition, BiH signed a Transport Community Treaty with the EU and five other Western Balkans countries in September. The Treaty opens the door to infrastructure developments and

improvements in the transport sector, and enables the signatories to harmonize their transport laws with the EU.

Disagreement continued during the reporting period about changes to the BiH electoral rules. In July, the BiH Constitutional Court struck down provisions of the election law regulating the indirect election of delegates to one of the chambers of the Federation parliament. The court had previously declared these provisions unconstitutional, agreeing in part with the appellant that the rules should be changed to ensure legitimate representation in the election of Serb, Bosniak and Croat members to the Federation House of Peoples.

Political parties have opposing views as to whether the indirect elections to the Federation House of Peoples will be able to move forward after the 2018 General Elections if the gap in the law is not filled. If the Federation House of Peoples is not formed after the next elections, this would likely prevent the formation of a Federation government and the formation of one chamber of the state-level parliament, the BiH House of Peoples. There are precedents for such blockages due to delays in forming the Federation House of Peoples from 2001, 2007 and 2011, when the High Representative intervened to unblock its establishment.

Despite these risks, the parties in the state parliament have not yet begun a serious political dialogue to discuss potential amendments to the BiH Election Law addressing the issue. At its June meeting, the Peace Implementation Council Steering Board called on the relevant authorities to “ensure that all necessary conditions are met, including an appropriate legal framework, to enable the smooth conduct and implementation of the 2018 General Elections.”

As I reported six months ago, the Republika Srpska (RS) President and other members of his *Party of Independent Social Democrats* (SNSD) have reduced the frequency of calls for RS

secession and the dissolution of Bosnia and Herzegovina following the imposition of travel and financial sanctions against the RS President by the United States in January 2017. In September, party representatives announced that the threat of holding a referendum on the status of the RS, which had been part of the SNSD's official platform since 2015, would be taken off the table for the time being. However, RS President Milorad Dodik subsequently made numerous statements supporting eventual RS independence and union with Serbia. Similarly, some Croat politicians continued to advocate for the reorganization of the country along ethnic lines.[\[1\]](#)

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 internal constitutional position of the entities.

Another constitutional issue that will need to be followed closely relates to the rejection of the authority of the Court of BiH and BiH prosecutor's office in the RS. The RS President repeated calls for Serb members of the state judiciary to withdraw from these institutions, following a controversial war crimes acquittal by the BiH state court in October.

Also of concern is the fact that a 2015 decision by the RS National Assembly (RSNA) to hold a referendum on the BiH judiciary and the authority of the High Representative, which had been set aside, was allowed to enter into force on 20 September 2017. While the RS President initially announced that this was being done so that the decision could be formally suspended, he has since hinted that the referendum could take place as currently scheduled on November 19, or rescheduled for a later date. As I previously stated in my reports to the United Nations (UN) Secretary-General, this decision represents a violation of Annex 4 and Annex 10 to the General Framework Agreement for Peace, and, consistent with my

previously expressed position, I call on the RS authorities to put this decision out of force.

In October, the RSNA adopted a *Resolution on the Protection of the Constitutional Order and Assuring the Military Neutrality of the RS* which asserted the entity's neutrality vis-à-vis integration with the North Atlantic Treaty Organization (NATO) and sought to redefine the position and obligations of the entity under the GFAP, in particular under the Constitution as set forth in Annex 4. In response, I have been clear that the GFAP, including the Constitution, prevails over any act adopted by the RSNA and that foreign policy is an exclusive responsibility of the state institutions.

I. Introduction

This is my 18th regular report to the 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

As noted at the outset of this report, the authorities in BiH need to address several pending issues, and the political parties have already begun their pre-electoral campaigns a full year ahead of the October 2018 General Elections. In such an environment, in which political differences are hardened and ethnic divisions are exploited and amplified, the need to address real reforms is both challenging and urgent.

At the state and Federation levels, political disputes among the parties within the ruling coalition have reduced the chances for meaningful progress. The predominantly Bosniak *Party for a Better Future* (SBB) has openly sided with opposition parties in rejecting a report on the performance of the BiH Council of Ministers, leading to calls from the predominantly Bosniak *Party for Democratic Action* (SDA) for SBB to leave the coalition. Relations between the SDA and the *Croat Democratic Union* (HDZ BiH) have also soured over differing views on the need for changes to the BiH Election Law, the resolution of Mostar's electoral system and the method of electing members to the BiH Presidency. A lack of political dialogue and cooperation between the SDA and the HDZ BiH has similarly stalled work in the Federation, where several key items of legislation remain unaddressed.

In the Republika Srpska, opposition parties reacted strongly after the RS President and his ruling coalition successfully pressured the RS Supreme Auditor to resign over an unfavorable audit of entity finances. When the leadership of the RS National Assembly removed discussion of the issue from the parliamentary agenda on 12 September opposition delegates disrupted the session. RS Police, reportedly acting on the request of the RSNA leadership, physically separated the ruling majority and opposition delegates, while the majority continued the session in a separate smaller hall to which opposition delegates were denied access. Controversy was also generated by reports that police officers with weapons were

present inside the parliament building.

Corruption and lack of respect for the rule of law remain serious problems, as authorities at all levels consistently disregard or even reject binding decisions of the judiciary. The RS continues to disregard judgments of the Court of Bosnia and Herzegovina (Court of BiH) and the Constitutional Court of Bosnia and Herzegovina (BiH Constitutional Court) concerning the registration of defense property, while the Federation parties show no commitment to reaching political agreement on the enactment of amendments to the BiH Election Law in compliance with BiH Constitutional Court decisions, potentially hampering implementation of the 2018 General Elections and continuing to leave the City of Mostar deprived of any system to enable the holding of local elections.

The continued failure by the authorities to implement the rulings of the European Court of Human Rights in the “Sejdic & Finci” and related cases also reflects the overall disregard for the rule of law. As a result, under the current system, certain groups have been discriminated against for over two decades in their right to hold political office.

As in the previous period, BiH authorities failed to act in their own self-interest and complete several measures at the State and Federation levels to allow the second disbursement of funds under the International Monetary Fund’s (IMF) Extended Fund Facility (EFF).

There were some positive developments in terms of regional relations during the reporting period, in particular the official visit of Serbian President Aleksandar Vucic to Sarajevo in September. Although Vucic had visited BiH several times in his former capacity as Prime Minister, this visit marked the first by a Serbian head of state since 2011.

B. Decisions of the High Representative during the Reporting Period

Despite ongoing challenges to the rule of law and the GFAP during the reporting period, I have refrained from using my executive powers, in accordance 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

As in the previous period, the BiH authorities have made only 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.

State and Defense Property

The process of registration of prospective defense property under the ownership of the State of BiH continued. The term “prospective defense property” refers to a defined list of immovable assets that are needed by the Armed Forces of BiH and should be registered to the BiH State in line with the BiH Constitution, 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 Membership Action Plan (MAP), progress on this issue is one of the outstanding objectives set as a prerequisite for OHR transition.

Concerning the registration of prospective defense property located in the Federation, 26 military locations have been successfully registered to date, while several other properties are in various phases of the registration process. The competent state-level institutions have expedited their efforts to drive this process forward, mainly focused on clarifying and resolving various technical legal difficulties related to some prospective defense locations.

Unfortunately, the registration process for prospective

defense property located on the territory of the RS remains blocked due to political obstruction, as the RS Geodetic Administration has rejected several registration requests due to the alleged “non-existence of a valid legal basis.” In several public statements, high-ranking RS officials have made it clear that the authorities have no intention to implement the final and binding decision of the Court of BiH in the case of the prospective defense location in Han Pijesak, thereby openly violating the principle of the rule of law. On 6 July 2017 the BiH Constitutional Court rejected the RS motion challenging the Court of BiH final decision in the Han Pijesak case.

Concerning the wider issue of Defense and State Property and its apportionment between different levels of government, progress remains elusive. There is an urgent need for the adoption of comprehensive state-level legislation that fully acknowledges and adopts the principles of the 2012 Decision of the BiH Constitutional Court.

Fiscal Sustainability

The OHR continued to track, 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 met more frequently than in the previous period, but focused almost solely on reaching agreement on the *Global Framework of Fiscal Balance and Policies for 2018-2020*. The Framework includes key parameters and projections required for budget planning, and should have been adopted in May to allow for the timely preparation and adoption of state and entity budgets for 2018. However, dissenting views within the BiH Fiscal Council concerning the upper limit for financing the state institutions in 2018 and their share in indirect tax revenues in 2018 made any

agreement impossible until October.

Specifically, the RS opposed any increase in the budget of the state institutions, while the state and the Federation considered a minimal increase necessary to cover the purchase of equipment for firefighting purposes nationwide, as well as new expenditures in 2018, such as those for the General Elections and those stemming from the parliamentary adoption of a salary increase for state-level police officers. In the end, the Framework adopted on 4 October locked the state institutions overall budget and their share in indirect tax revenues at the same amount as has been the case since 2012.

While the ITA Governing Board met relatively regularly during the reporting period, the quality and the quantity of its work declined. The Board consistently fails to adopt revenue allocation coefficients and settle inter-entity debts pursuant to its *Rulebook on Coefficient Calculation*. Finance ministers continued the practice of agreeing on agenda items in advance of Board meetings, bypassing the experts and the Board itself. Also evident were disagreements over issues of relevance to the International Monetary Fund (IMF) and the European Bank for Reconstruction and Development, in particular concerning the excise tax-related legislation aimed at generating additional revenue for road and highway construction.

Brcko District

My office continued to provide expert assistance to the Brcko District authorities at their request in preparing by-laws and addressing other issues for the implementation of four key pieces of financial legislation adopted in June 2016, which aim to further integrate the Brcko District with the BiH legal system, facilitate 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*.

In May, the Brcko District authorities sought the intervention of the Brcko District Supervisor and the assistance of my office over the failure of the Brcko District Judicial Commission to appoint a Brcko District representative to the High Judicial and Prosecutorial Council (HJPC). Initially, the Commission appointed a person who was not eligible under the rules and the decision of the HJPC, thereby bringing into question the legality of the future work of the Council with an illegally elected member. Following multiple interventions, the situation has been corrected in line with the law.

Although 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

During the reporting period, my office continued to provide assistance and support to the BiH authorities in implementing the 2015 BiH *Law on Foreigners* and the 2016 BiH *Law on Asylum*.

D. BiH Constitutional Court Decision in “Ljubic Case” and its Impact on the BiH Election Law

On 1 December 2016 the BiH Constitutional Court adopted a decision on the so-called “Ljubic Case,” which concerned the request of 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 Court established that several provisions were 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.

In April, the Croat Caucus of the BiH House of Peoples proposed amendments to the BiH Election Law, which aim to address the Ljubic decision. However, in addition to regulating the indirect election to the Federation House of Peoples, the amendments also regulate the election of the members to the BiH Presidency and address the electoral issue in the City of Mostar. The amendments were adopted in the BiH House of Peoples on 19 July, but their adoption in the BiH House of Representatives appears unlikely.

In the meantime, since the BiH Parliamentary Assembly failed to harmonize the provisions of the BiH Election Law with the BiH Constitution by the established 30 June deadline, the court adopted a ruling on non-enforcement on 6 July, which repealed the provisions.

HDZ BiH and SDA continue to focus on the issue of whether elections for the Federation House of Peoples in 2018 can proceed following the BiH Constitutional Court's repeal of the provisions of the BiH Election Law it deemed unconstitutional. SDA has promised its own proposal of amendments to the BiH Election Law, but to date has not submitted anything into parliamentary procedure.

My office will continue to closely follow the developments regarding the implementation of the "Ljubic Case" Decision and its eventual impact on the upcoming General Elections in 2018, and the process of government formation thereafter.

E. 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 that challenged BiH's territorial integrity and sovereignty, with RS President Milorad Dodik again the most frequent and vocal exponent of such proclamations, which included referring to BiH as a failed state, referring to the RS as a state and

BiH as a mere union of states, and calling for the unification of RS and Serbia.[\[ii\]](#) He also sparked controversy by referring to the return of Bosniak refugees and displaced persons ethnically cleaned from Eastern Bosnia as an “occupation”.[\[iii\]](#)

Challenges to the Authority of the State Level Judicial Institutions

The RS President has repeated his calls for Serb judges to withdraw from state judicial institutions[\[iv\]](#) and clearly voiced his opposition to the implementation of the Court of BiH decision on the registration of prospective defense property on RS territory. In a 29 August meeting of RS ruling coalition leaders, plans were announced to adopt a law banning the registration of such property in the RS without the consent of the RSNA.

Potential RS Referendum on the State Judiciary and the Authority of the High Representative

In September 2015, I submitted a special report to the UN Secretary-General on a July 2015 decision by the RS National Assembly to hold a referendum in the RS on the validity of the legislation on the Court and Prosecutor’s Office of Bosnia and Herzegovina, and the applicability of these institutions’ decisions on the territory of that entity, as well as on the authorities and decisions of the High Representative.

In my report, I made clear that while the RS authorities have the right to organize referenda on matters falling within the constitutional responsibilities of the entity, the referendum at hand addressed areas outside this authority and constituted an open challenge to the sovereignty of Bosnia and Herzegovina and a violation of the RS’s commitments and obligations arising under the BiH Constitution as set forth in Annex 4 and Annex 10 to the GFAP. The Council of the European Union also expressed its serious concern about the potential referendum

in its 12 October 2015 conclusions, saying that it would “challenge the cohesion, sovereignty and territorial integrity of Bosnia and Herzegovina.”

At the time, the authorities in Republika Srpska ultimately decided to put the planned referendum aside, and the decision of the RSNA was never published in the RS Official Gazette and thus did not enter into force. However, in September 2017 the 2015 decision was published and came into force, following criticism by the opposition in the RS against the authorities for failing to publish a duly adopted act of the entity parliament. At that time, the RS President explained that the act would soon be suspended or taken out of force.

While I very much welcome the stated intention of the authorities in the RS to take this anti-Dayton decision out of force, I note with concern that this has not yet been done, since the decision provides for the referendum to be held in November.

RSNA “Resolution on the Protection of the Constitutional Order and Assuring the Military Neutrality of the RS”

At its session of 17-18 October 2017, the Republika Srpska National Assembly adopted a “Resolution on the Protection of the Constitutional Order and Declaration of RS Military Neutrality.” The Resolution is not yet published as it has yet to be considered by the Republika Srpska Council of Peoples.

In terms of military neutrality and BiH’s relationship to NATO, the resolution proclaims the “military neutrality of Republika Srpska in relation to existing military alliances until such time as a possible referendum on this matter is scheduled in Republika Srpska that would make a final decision on this issue.”

Setting aside the specific issue of BiH’s relationship to NATO, the resolution is problematic in other respects. It asserts that the constitutional order of BiH as set forth in

Annex 4 to the GFAP was created by the entities and can be changed only by their agreement. Under this view, the RS asserts that it is entitled to unilaterally dictate certain policy matters falling within the exclusive jurisdiction of the State and contrary to the existing decisions of the State. In this case, the RS would proclaim on "military neutrality", despite the exclusive competency of the BiH state for foreign policy under the constitution and despite the fact that the BiH Presidency and other institutions have already passed decisions on this issue.

The resolution also attempts to use provisions about the territory of the entities under the GFAP in order to prevent registration of state and defense property on the territory of the RS in the name of the state. This goes against final and binding decisions of the BiH Constitutional Court, the Court of BiH and existing state legislation. The resolution claims that such registration would represent a "violation of the constitutional order and international law and would not have a legal effect." It relies on the incorrect assumption that any registration of real estate property under the name of the state of Bosnia and Herzegovina would be the equivalent of reducing the territory of the RS.

The resolution also asserts the entity's right to coordinate its future status with the Republic of Serbia, as a signatory to the GFAP. It is worth mentioning in this context that the Constitution of BiH does allow the entities to develop special parallel relations with neighboring states, however such arrangements must be implemented fully in accordance with the BiH Constitution and BiH's sovereignty and territorial integrity, which includes full respect for foreign policy as a constitutional responsibility of the state institutions.

Finally, the resolution seeks to compel both RS officials and officials in the state institutions elected from the RS to advance the views taken in the resolution and foresees possible legal sanctions for those who do not comply.

Glorification of War Criminals

On 8 June, the Croat People's Assembly, a political organization of Croat parties in BiH, supported the organization of a concert in Mostar in support of six officials of the former Croat Republic of Herzeg-Bosna whom the ICTY had convicted and sentenced in the first instance to a total of 111 years of imprisonment.

Foreign Fighters Issue

During the reporting period, the relevant BiH authorities reported that there were no new departures of BiH citizens to join the Islamic State of Iraq and Levant (ISIL). The BiH Prosecutor's Office continues to prosecute BiH citizens who left or planned to leave BiH with the aim of joining ISIL. According to available information, the BiH State Court has so far found guilty 23 persons for joining ISIL.

III. State-level Institutions of Bosnia and Herzegovina

A. BiH Presidency

Croat member of the BiH Presidency Dragan Covic (HDZ BiH) is the current Chair of the Presidency, having assumed the function from Serb member Mladen Ivanic (PDP) on 17 July.

During the reporting period, the BiH Presidency met monthly and focused on BiH's Euro-Atlantic integration processes. Sessions often began with the BiH Council of Ministers Chair providing a detailed progress report on Euro-Atlantic integration, and the Presidency issuing statements of support and advice to overcome identified obstacles. On 13 September, the Presidency overcame earlier disagreements and adopted a decision accepting the Transport Community Treaty.

On 20 June then Presidency Chair Ivanic led the BiH delegation at the North Atlantic Council meeting in Brussels, where he said there was no internal consensus in BiH on full NATO

membership, but that all political representatives understand the relevance and importance of the activation of the NATO Membership Action Plan (MAP) for BiH. In terms of fulfilling conditions for MAP activation, he highlighted the completion of BiH's Defense Review and its adoption by the BiH Presidency in November 2016, the participation of the BiH Armed Forces in NATO peacekeeping operations in Afghanistan, and BiH's progress in resolving the issue of surplus weapons and military equipment. However, he noted that the requirement to register defense property under the ownership of the state has proven difficult, and may take years to resolve.

B. BiH Council of Ministers

The BiH Council of Ministers met regularly during the reporting period, holding 19 regular sessions and one telephone session, but its work was hampered by the lack of parliamentary majority support. One of the main priorities during this period has been the preparation of answers to the EC Questionnaire, and BiH authorities have extended their deadline to deliver a compiled set of answers to the European Commission, initially set for May to December 2017.

The Council adopted only six sets of amendments to existing legislation, and not a single new law during the reporting period. The widespread perception of its poor legislative output led to the BiH House of Representatives' rejection in July of the Council's annual work report for 2016. Opposition delegates voted against the report, with the support of SBB, despite the fact that the party is part of the coalition, with representatives in the Council of Ministers.

The Council of Ministers eventually secured consensus for a decision on BiH joining the Transport Community Treaty, which is an important step to unblock over BAM 500 million in EU funds for four infrastructure projects in BiH. CoM Chair Denis Zvizdic (SDA) signed the Treaty on behalf BiH in Brussels on 18 September.

C. BiH Parliamentary Assembly

During the reporting period, the protracted political crisis in the country affected the performance of the BiH Parliamentary Assembly, impacting upon its functionality and severely reducing its legislative output.

SNSD delegates continued to boycott sessions of the BiH House of Representatives over the issue of SDA delegate Sefik Dzaferovic's rotation to the Speaker position and their long-held accusations of his involvement in war crimes, until Borjana Kristo (HDZ BiH) rotated into the position on 9 August. In addition, SNSD delegates in both houses resigned from parliamentary committees, in protest over the BiH House of Representative's removal of SNSD delegate Nikola Spiric from the Joint Committee for Oversight of Work of the BiH Intelligence Agency in July.

The durability of the ruling coalition became more doubtful following the BiH House of Representatives rejection of the Council of Minister's 2016 annual work report. Coalition partner SBB's support for the opposition on this issue triggered speculation of a possible non-confidence vote against the Council of Ministers, which has thus far not occurred.

Also contributing to the ruling coalition's instability are significant political disagreements between SDA and HDZ BiH over amendments to the BiH Election Law, as well as an internal rift within SDA, which led to three delegates leaving the party and establishing their own party ("Independent Bloc"), thereby weakening SDA's presence in parliament.

On 10 May, the BiH Parliamentary Assembly rejected a set of excise and banking deposit insurance-related legislation required for the completion of the first review under the International Monetary Fund's Extended Fund Facility. The non-adoption of these laws delays the second tranche of the IMF

EFF.

The BiH House of Representatives held eight regular sessions during the reporting period, while the BiH House of Peoples held only five. As a whole, the BiH Parliament adopted only three pieces of legislation during the reporting period, in the form of amendments to existing legislation, and rejected 11 laws.

The issue of financing the BiH Public Broadcasting System (PBS) also remains unresolved in any permanent systematic manner. On 4 May, the BiH House of Peoples rejected amendments to the existing PBS law that sought to extend the temporary collection of PBS taxes by the telecom operators until the end of the year.

On 14 June, the BiH House of Representatives held a thematic session on the BiH Judiciary, in which many delegates expressed frustration over the insufficient prosecution of political corruption cases.

IV. Federation of Bosnia and Herzegovina

Federation Coalition Developments

During the reporting period, the Federation Government worked consistently, holding 24 regular sessions and 15 extraordinary sessions. However, frequent disagreements over proposed legislation continued within the ruling SDA-HDZ BiH-SBB coalition, disrupting the functioning of the Federation Parliament, which adopted only one new law and five sets of amendments to existing legislation.

The stagnation of the work of the Federation House of Peoples is notable, with only two regular sessions held during the reporting period and more than a dozen important items of legislation still pending adoption, include legislation necessary to fulfill the requirements for the continuation of the IMF EFF. The 6 July session of the House was interrupted

due to a lack of quorum, leaving several items of legislation unaddressed. The House finally resumed the session two and a half months later, on 21 September, and managed to adopt the draft *Law on Income Tax* and the draft *Law on Contributions*, two key reform laws.

Proposed Non-Confidence Vote against Government

On 17 May in the Federation House of Representatives, delegates from the *Democratic Front* and *Social Democratic Party* submitted a proposal for a non-confidence vote against the Federation Government, noting that in March the Federation House of Representatives did not adopt the Federation Government's 2016 Work Report and also did not adopt the report on the execution of the 2016 Federation Budget, and accusing the ministers of not participating in parliamentary discussions. On 26 July, the House of Representatives rejected the non-confidence vote.

Education Issues in the Federation

In June, following protests by Bosniak and Croat students, parents and teachers, the Central Bosnia Canton authorities ended their effort to establish a new secondary school in Jajce municipality, a so-called "two schools under one roof" in which the students – who heretofore attended classes together – would have had to attend separate classes according to their national (i.e. ethnic) curricula. The protesting students in Jajce called for the abolishment entirely of all "two schools under one roof," of which there remain more than 50 throughout BiH.

In September, the Embassy of Israel sent a note to the BiH Ministry of Foreign Affairs protesting last year's controversial decision by the Sarajevo cantonal authorities to rename a local primary school after a World War II Bosniak intellectual who sympathized with the Ustasa regime, "especially considering the fact that the vast majority of the

Bosnian Jewish Community was brutally killed at the hand of the fascist and Nazi occupying forces with which Mr. Busuladzic identified himself.”

The Constitutional Status of Serbs in the Federation Cantons

On 15 September, I addressed a letter to the leadership of the Herzegovina-Neretva Cantonal Assembly, urging them to act to harmonize the canton’s constitution with the Federation Constitution in order to ensure the constitutional equality of all three constituent peoples, specifically the Serb people, as the cantonal Constitution does not explicitly reference Serbs as a constituent people or contain provisions providing for the use of Serb language as an official language or Cyrillic as an official script.

The Herzegovina-Neretva Canton has been obliged to amend its constitution in this regard since 2002, when the High Representative used his executive authorities to amend the Federation Constitution in the same manner. Similar obligations remain outstanding in the Posavina Canton, West Herzegovina Canton and Canton 10.

On a positive note, on 31 July the Sarajevo Cantonal Assembly amended its constitution, including provisions on the status of the Sarajevo City, and provisions ensuring that the three constituent peoples are each guaranteed minimum 20 percent representation in the Sarajevo City Council.

No Agreement to Enable Local Elections in Mostar

The responsible political parties continue in their failure to reach any political agreement to enact amendments to the BiH Election Law that would enable the holding of local elections in the City of Mostar, where there have been no local elections since 2008. Meeting in June 2017, the PIC Steering Board Political Directors called on the competent authorities in BiH to “*address the implementation of the decision of the BiH Constitutional Court on Mostar and thus enable the holding*

of elections in this city."

V. Republika Srpska

During the reporting period, the SNSD-led ruling coalition remained functional, with the RS Government meeting regularly. According to available information, the RS National Assembly held five regular sessions and one special session, and adopted 15 new laws and 15 sets of amendments to existing laws.

However, the first split in the ruling coalition emerged over the proposed privatization of an iron mine in Prijedor, which coalition partner *Democratic Peoples Alliance* (DNS) vehemently opposed. In a rare political loss for SNSD, the RSNA rejected the proposal in May. The ruling coalition, briefly shaken, eventually returned to normal.

Two major political trends persisted in the RS, each of which perpetuated the ongoing crisis in the country. The first was caused by rising tensions between Sarajevo and Banja Luka over the registration of defense property, the RS calling BiH's Euro-Atlantic path into question, and repeated calls for RS unity with Serbia. The second trend has been the constant political power struggle between the ruling RS coalition and the opposition parties gathered under the "Alliance for Change." The struggle culminated in September with the incident in the RSNA over the RS Supreme Auditor's report and his subsequent forced resignation.

On 29 August, the ruling coalition party presidents agreed that they would seek to suspend a 2005 RSNA Declaration on BiH's Euro-Atlantic path and replace it with conclusions advocating military neutrality of the country, in line with Serbia's declared military neutrality. They also indicated that the RSNA would adopt a new law that would prevent the registration of defense property under the ownership of the BiH State without prior consent from the RSNA.

On 17 October, the RSNA passed the *Resolution on the Protection of Constitutional Order and Military Neutrality of the RS*, which represents a serious shift in RS policy regarding NATO integration, abandoning the NATO/Partnership for Peace path to which RS representatives committed themselves via the 2005 RSNA conclusions, and to which BiH committed itself via the 2009 decision of the BiH Presidency to seek activation of the NATO Membership Action Plan (MAP) for BiH, which remains in force. It is the view of the High Representative that decisions of the BiH Presidency remain in force unless they are repealed or subsumed. Apart from declaring the RS in favor of military neutrality, the resolution targets the RS opposition by threatening sanctions against officials who do not comply with the policy established therein.

The RSNA adopted the resolution at the insistence of the ruling coalition, while opposition parties argued it was unnecessary. Under circumstances similar to the tumultuous 12-13 September RSNA session, the RSNA leadership prevented the opposition parties from being present during the voting.

Despite friction between the RS and state-level authorities, 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. On 4 October, the two governments held a joint session in Sarajevo and announced cooperative efforts to battle the gray economy in both entities.

Non-cooperation with the High Representative

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. 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.

On 18 October, the RS President took the unprecedented step of informing media that he had considered arresting the head of my office in Banja Luka due to her alleged presence and activities in the building of the RSNA during the session on 17 October. The comments were disturbing and unacceptable because my staff has immunity under the Vienna Convention and the authority under the GFAP to monitor sessions of parliament throughout the country, which are open to the public anyway. As a matter of standard practice and in line with the OHR mandate, designated OHR staff regularly monitors sessions of parliamentary bodies across the country. The comments were also untrue, as the OHR Head of Office was not present in the premises of the RSNA before, during, or after the session of 17 October.

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, and is preventing the adoption of a new *Law on BiH Courts*. A working draft included 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. An agreement was sought within the EU-led process of the Structured Dialogue on Justice and in July this year an updated version was offered that would preserve the state level jurisdiction to fight specific types of crime. However, this solution was not accepted. If work on this new piece of legislation continues, I remain 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.

Other Developments

In July, the criminal case against suspects in the case of the unconstitutionally conducted 25 September 2016 RS referendum – which violated two final and binding decisions of the BiH Constitutional Court – came to a halt. While it is a criminal offense under Article 239 of the BiH Criminal Code to fail to implement decisions of the BiH Constitutional Court, and the BiH Prosecutor's Office opened an investigation and questioned the RS President on his role, the ensuing indictment presented to the Court of BiH was brought only against members of the RS Referendum Commission. The Court of BiH rejected the indictment as not containing evidence that the persons charged therein could have prevented the referendum as the BiH Constitutional Court ordered, effectively closing the case.

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 RS authorities continue to ignore the BiH State Court's decision on a prospective defense property location in Han Pijesak, in the RS.

Domestic War Crimes Cases

On 9 October, the Court of BiH, in its first instance verdict, acquitted wartime commander of the Army of BiH forces in Srebrenica Naser Oric, along with fellow former Army of BiH officer Sabahudin Muhic, of war crimes against prisoners of war. Oric and Muhic were accused of participating in the killings of three Serb prisoners.

The International Criminal Tribunal for the former Yugoslavia (ICTY) previously tried Oric for command responsibility in relation to an incident in which several Serbs were allegedly detained in the Srebrenica police station and subjected to physical abuse, including instances of detainees being beaten

to death. After initially convicting and sentencing Oric in June 2006, the ICTY ultimately acquitted him two years later on appeal, and ordered his release.

The October acquittal by the Court of BiH sparked fierce reactions from a number of RS politicians, who heavily criticized the BiH judiciary for its handling of war crimes cases in which the victims were Serbs.[\[v\]](#) The RS President went further, calling on Serbs in the state judiciary to withdraw from the institutions and organizing a meeting with coalition partners in the RS where it was concluded, *inter alia*, that the option of holding a referendum in the RS on the state judiciary should remain in force.

Entity Anti-Corruption Efforts

The specific legislation in the Federation on a special prosecutor and court department for fighting corruption and organized crime, which was passed in 2014, 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. Tuzla Canton has yet to adhere to the basic standards of rule of law, refusing to implement the financial independence of the police, originally required in 2010, due to improper political influence. Sarajevo Cantonal authorities resisted implementation of the legal and financial independence of the Sarajevo Canton police until combined pressure from the international community ultimately unblocked the process in July 2017. Problems still remain in Sarajevo with possible legislative changes that would result in more political control over the police. The Una-Sana Canton needs to implement the legal and financial independence of the police in time for the 2018 budget year.

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 due to an ongoing court dispute. The appointment of the Federation Independent Board for police remains outstanding since 2015. The mandate of the Independent Board in Herzegovina-Neretva Canton ended in March 2017 and the procedure of appointing a new one remains stalled. In West-Herzegovina and Sarajevo Cantons, Independent Boards show signs of improper political interference. In May 2017, the Sarajevo Canton Government appointed a new police commissioner during the reporting period.

VIII. Economy

Available economic indicators for the first seven months of 2017 are encouraging when compared to the corresponding period in 2016. Early estimates show that economic growth of 2.7 percent has been sustained over the first three quarters of the year. Exports are up by 16.9 percent and imports are up by 11.8 percent. Industrial production increased by 2.6 percent. Of note are a 5.9 percent drop in unemployment at the end of June and a 28.7 percent increase in foreign direct investments in the first quarter of 2017. Other macroeconomic indicators such as inflation and average income show no major changes compared to the previous period.

These marginal improvements in economic indicators, while encouraging, should not be overestimated. The administrative unemployment rate is 39.4 percent, which translates into nearly half a million persons registered as unemployed. Of continued concern is the youth unemployment level, which the World Bank estimates at 54.3 percent. Even those with a steady income struggle to make ends meet, with the average monthly salary of BAM 851 (approximately Euro 425) and the average monthly pension of BAM 360 (approximately Euro 180), which fall well short of the monthly estimated consumer basket. This gives rise to brain-drain. Out of 137 economies subject to

analysis, the World Economic Forum ranks BiH as 135th by ability to retain talent and as 136th by capacity to attract talent. Of additional concern is the BiH Central Bank figure of 74,837 companies with one or more blocked accounts, which is the highest number to date and indicates serious liquidity problems in the BiH business community.

Economic ratings in the reporting period also indicate problems in several areas, as compared to other countries in the region. The UN Conference on Trade and Development's 2017 World Investment Report ranked BiH 4th by 2016 foreign direct investment inflows in Southeastern Europe. The Heritage Foundation's 2017 Index of Economic Freedom ranked BiH 92nd out of 180 countries and 36th out of 44 countries in Europe, by which BiH advanced into the ranks of the "moderately free" countries, although with a note that the overall entrepreneurial environment remains one of the region's most burdensome. The UNDP's 2016 Human Development Report ranked BiH 81st out of 188 countries in terms of human development. On 8 September, Standard & Poor's Ratings Services affirmed BiH's credit rating at "B with stable outlook."

The banking sector is assessed as generally stable and liquid. According to the entity banking agencies, the Federation and RS banking sectors' net profit in the first half of the year totals BAM 152 million and BAM 63 million, respectively. However, the RS President's calls to reorganize the BiH Central Bank raise serious concerns. Under the GFAP, the BiH Central Bank is the sole authority for issuing currency and for monetary policy throughout BiH. The *Law on the BiH Central Bank* additionally affirms the BiH Central Bank as a state-level institution and provides for its "full independence from the Federation, the RS and any other public agency or authority," and regulates the distribution of Central Bank net profits, including to the budget of BiH. Any attempt to

question the BiH Central Bank, its status and responsibilities represents a serious challenge to the State and its GFAP-defined competences and institutions. Moreover, it is a threat to the monetary and financial stability of the country.

Fiscal Issues

During the reporting period, BiH did not benefit from International Monetary Fund disbursements, as the authorities failed to complete all the measures required for the completion of the first review of BiH's performance under the IMF Extended Fund Facility arrangement. Budget stability was nonetheless maintained, mostly due to the sustained growth of indirect tax revenue (collection was 7.8 percent higher in the first eight months of 2017 than over the same period in 2016) and domestic borrowing. Of note is also the 8 August settlement of the Russian Federation's USD 125.2 million debt to BiH, stemming from the commodity exchange between the former Union of Soviet Socialist Republics and the former Socialist Federal Republic of Yugoslavia, which was apportioned to the state (10 per cent), the Federation (58 per cent), the RS (29 per cent) and the Brcko District (3 per cent). However, fiscal challenges are evident and likely to increase by the end of 2017.

While the financing of state-level institutions allows them to cover basic current expenditures, it is insufficient to allow for their full functioning and the fulfilment of their obligations. The budget for the state institutions has been locked at the same level since 2012, mainly due to the RS' political interest in weakening the state.

According to the RS Ministry of Finance Debt Management Unit, the RS total debt as of the end of May 2017 amounted to BAM 5.38 billion. On 18 August, as has happened often in the past, the RS Supreme Audit Office revealed higher deficits and debt than reported by the RS Government. In the absence of IMF disbursements, the RS Government continued to borrow from the

local capital market, raising BAM 290 million from the issuance of treasury bills and bonds in 2017. The 2017 total borrowing through the sale of government securities is planned at BAM 350 million. Since 2015, the RS Government has been negotiating a new loan to reschedule its debt to maintain budget liquidity, but all efforts to this end thus far have failed. The main challenges in the forthcoming period stem from the RS Budget's high debt burden and low liquidity, the RS corporate sector debt of over BAM 10 billion, and the RS health sector debt of over BAM 1 billion. The stability of the RS pension system also remains an issue of concern.

Based on its budget execution report, the Federation Government reported a surplus of BAM 60.8 million in the first half of 2017. To additionally affirm its ability to service the planned expenditures, the Federation Ministry of Finance canceled three planned auctions of Government securities of ca. BAM 70 million. However, considering that the bulk of foreign and domestic debt payments, as well as other expenditures (e.g. certain direct transfers), are due in the second half of the year, maintaining budget stability could be a significant challenge for the Federation Government, especially in the last quarter of the year when most of the expenditures are due. Fiscal pressures may also increase as a result of demands from 60,000-70,000 demobilized unemployed veterans for the regulation of their status and monthly allowances at the minimum pension level of BAM 326, for which the Government would need to provide BAM 280 million per annum. Pressure could also come from agricultural producers demanding the settlement of outstanding subsidies and damages caused by natural disasters. There is also a demand for a 10 percent increase of pensions to 408,000 Federation pensioners. As in the RS, maintaining the stability of the Federation pension system remains a challenge.

In the first half of the year, the cantons registered a total surplus of BAM 137.2 million and hopefully halted the trend of

increasing the accumulated cantonal deficit. However, financial constraints are still evident, and they increase the cantons' dissatisfaction with revenue allocation (including foreign debt payment) at the Federation level, creating political tensions amongst the cantons, and between the cantons and the Federation.

On 23 June, the Brcko District Assembly finally adopted the Brcko District 2017 Budget in the amount of BAM 232.3 million, a 12.6 percent decrease over 2016. Fiscal problems in Brcko result mainly from political party disputes over budget allocations and non-transparent and fiscally irresponsible spending.

International Obligations and Other Issues

On 1 April, the Energy Community reintroduced sanctions against BiH, originally introduced in October 2015 but suspended in October 2016, due to the country's failure to follow through on its agreement to adopt a state-level law addressing breaches of obligations arising from the Energy Community Treaty. BiH's outstanding obligations are likely to feature in the next Energy Community Ministerial Council meeting, scheduled for 14 December.

On 29 June, the Federation Government adopted a proposal to dismiss four Federation members of the Management Board of the Independent System Operator in BiH due to the expiration of their mandates and to replace them on a temporary, three-month basis. The proposed temporary appointments are in contravention of the relevant legislation at the state and Federation levels and the principle of continuity of office that guarantees unimpeded functioning of institutions in case of delayed appointments.

Further to the RS Government's 16 March conclusions 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 Corporation has been faced with financial constraints due to restricted financing by the RS. This is a worrisome trend that could pose a threat to the stability of the BiH Public Railway Corporation, which is the only corporation established thus far under Annex 9 and is crucial for proper railway sector coordination and harmonization.

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 rhetoric on the dissolution of BiH by RS authorities does not contribute to a conducive environment for the return and integration of refugees and displaced persons in this regard.

In addition, I remain concerned by ongoing difficulties returnees face in the field of education in several local communities throughout the country.

X. Media Developments

The BiH Public Broadcasting System (PBS) continues to face challenges to its financial sustainability and political independence. Two of the three public broadcasters have recently entered into contracts with a public electricity company, which allows the company to collect taxes for the PBS as part of citizens’ electricity bills. This is a modest step towards improving the financial situation for these two

broadcasters, and the model should be applied throughout BiH.

Full financial consolidation of the PBS will require a permanent solution to tax collection and serious restructuring of the entire system. Specifically, the three broadcasters which comprise the PBS should register as a joint legal entity and at a minimum jointly operate finances, technical equipment and digitalization. This would allow for cost savings and a reduction in employees (the three broadcasters currently employ a total of some 1,500 persons).

Biased and politically influenced reporting plagues public broadcasting. Radio-Television Republika Srpska (RTRS), in particular, has been sanctioned by the BiH Communications Regulatory Agency for not complying with the programming principles and having biased current affairs programs.

XI. Defense Matters

In mid-June, the BiH Council of Ministers discussed the report on implementation of the BiH Defense Review, according to which all planned activities are proceeding without significant delay. However, since implementation of the new force structure is contingent upon the activation of the NATO Membership Action Plan (MAP), there has been no actual concrete progress. Although the official view of the authorities is that activation of the NATO MAP for BiH is expected by the end of the year, lack of sufficient progress in certain areas – particularly the registration of prospective defense property – as well as the RS' move towards a declaration of military neutrality, raise questions about the likelihood of MAP activation in the near future.

XII. European Union Military Force

I welcome the EU Foreign Affairs Council's 16 October conclusion to continue the executive military role of the EU military mission in BiH (EUFOR) under a renewed UN mandate. EUFOR plays an ongoing 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 the stability and security of the country.

XIII. Future of the Office of the High Representative

The PIC SB Political Directors met in Sarajevo on 6-7 June 2017 to assess progress in implementing the GFAP, as well as to underline their unequivocal commitment to BiH's territorial integrity and sovereignty, and their full support to me as the High Representative in ensuring respect for the GFAP and carrying out my mandate in accordance with Annex 10 of the GFAP and relevant UN Security Council Resolutions. The PIC SB also reinforced the need to complete the 5+2 agenda, which remains necessary for the OHR's closure. The next meeting of the PIC SB is scheduled for December 2017 in Sarajevo.

My office continues its fiscally responsible approach to budget planning. Since the beginning of my mandate in March 2009, the OHR's budget has been reduced by over 53 percent and my staff by over 58 percent. Having in mind these significant cuts, it is important to highlight that given the realities of the situation on the ground and in accordance with Annex 10 of the GFAP, I must remain equipped with the budget and 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 18th regular report. I would be pleased to provide additional information should the UN Secretary-General or any UN Security Council member require it at any time. The next regular report to the UN Secretary-General is scheduled for April 2018.

Notes

[\[i\]](#) “As for the reactivation of Herzeg-Bosna, if the Election law is not amended by the end of the year, HSS will demand a return to an earlier arrangement, before the Washington and Dayton agreements, and that would be the Croat Republic of Herzeg-Bosna. We will also approach [the Croat People’s Assembly], asking them to make this their official position.” *Mario Karamatić, EuroBlic, 14 August 2017.* “What we request is that the Constitution of BiH be changed and that is being worked on both in BiH and much further from BiH. And in those solutions, all those areas that were protected by the HVO will be parts of the territory in which Croats will live in BiH. Have no doubt about that.” *Dragan Covic, TV1, 22 June 2017.*

[\[ii\]](#) “What state of Bosnia-Herzegovina? The state of Bosnia-Herzegovina does not exist. Bosnia-Herzegovina exists as foreseen in Dayton. That is not a state, it is a state union, or union of states. It is no kind of state.” *Milorad Dodik, RTRS, 18 October 2017.* “One hears more and more on the international scene and [from] many analysts, reporters and historians that BiH is a failed state. It may be time to start talking about a peaceful breakup in BiH...because this kind of BiH with massive interventionism by the international community has failed, as such, [and] it is obviously in the definition of failed states.” *Milorad Dodik speaking to journalists in Zvornik, FENA, 5 October 2017.* “And this is not the first time in this part of the world that there are two Serb states, like now there are Republika Srpska and Serbia...Our position in BiH is not finished. We are forced into it...Do I have to say again that we want to be again together with Serbia?...And I do not want to give up on my dream that the RS and Serbia are one...In the sense of a state, in the political sense and in the national sense.” *Milorad Dodik, at the opening event of “Days of the RS in Serbia” in Belgrade, 15 September 2017.* “I believe that in this century the Serb people will have the right to be one, because of their

suffering in the past. And that it is completely natural for us to be together. And when I say together, that means together in the territorial and state sense, to avoid any doubts. Because we are together anyway." *Milorad Dodik, FENA, 4 August 2017.*

[\[iii\]](#) We are aware of projects of various foundations, primarily Islamic, that have requested or just directed their money, so Muslims would return here along the Drina River, after the homeland war and thereby occupy the Drina again..." *Milorad Dodik, speaking to journalists in Bratunac, 7 July 2017.*

[\[iv\]](#) "We call on Serbs in BiH institutions to support their withdrawal until a new Law on the Court of BiH and Prosecutor's Office with clear competences is enacted, particularly when it comes to selection of judges and prosecutors whose selection would be conducted in legislative bodies at all government levels, until which time every decision-making at the level of BiH should be halted." *Milorad Dodik, SRNA, 14 October 2017.*

[\[v\]](#) "The Court and Prosecutor's Office cannot exist at the level of BiH since the Dayton Agreement was amended to the detriment of Serbs under the pressure of the [international community]." *Milorad Dodik, SRNA, 10 October 2017.*