



THE SECRETARY-GENERAL

3 November 2011

Dear Mr. President,

Pursuant to Security Council resolution 1031 of 15 December 1995, I have the honour to transmit the fortieth report on the Implementation of the Peace Agreement on Bosnia and Herzegovina, covering the period from 21 April to 15 October 2011, which I received from the High Representative for Bosnia and Herzegovina.

I should be grateful if you would bring this report to the attention of the members of the Security Council.

Please accept, Mr. President, the assurances of my highest consideration.

A handwritten signature in black ink that reads "Ban Ki-moon". The signature is fluid and cursive, with the first name "Ban" being the most prominent.

BAN/Ki-moon

His Excellency  
Mr. José Filipe Moraes Cabral  
President of the Security Council  
New York

*Dr. Valentin Inzko*  
*The High Representative for Bosnia and Herzegovina*

**H.E. Mr. Ban Ki-moon**  
Secretary-General  
United Nations Headquarters  
New York

2 November 2011

Dear Mr. Secretary-General,

Pursuant to Security Council Resolution 1031 of 15 December 1995, which requested the Secretary-General to submit to the Council reports from the High Representative in accordance with Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8-9 December 1995, I herewith present to you the fortieth Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina. I would kindly ask for this report to be distributed to the United Nations Security Council members for their consideration.

This is my sixth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina and European Union Special Representative on 26 March 2009. The present report covers the period from 21 April 2011 to 15 October 2011.

Should you or any Council member require any information beyond what is provided in the attached report or have any questions regarding its contents, I would be pleased to provide you with it.

Yours sincerely,



**FOURTIETH REPORT OF THE HIGH REPRESENTATIVE FOR  
IMPLEMENTATION OF THE PEACE AGREEMENT ON  
BOSNIA AND HERZEGOVINA  
TO THE SECRETARY-GENERAL OF THE UNITED NATIONS**

21 April 2011 – 15 October 2011

**I. SUMMARY**

1. This report covers the period from 21 April 2011 to 15 October 2011. On 1 September, I formally turned over my duties as European Union Special Representative to Peter Sørensen with whom I am cooperating closely. The consolidation of the EU presence in Bosnia and Herzegovina represents a welcome step forward by the EU to assume greater responsibility in guiding Bosnia and Herzegovina's (hereafter BiH) reform process in relation to the country's accession to the European Union. It also means that I will now be able to focus my energies solely on my mandate under Annex 10 of the General Framework Agreement for Peace (GFAP), including addressing ongoing challenges to the GFAP.
2. More than one year after the October 2010 general elections, BiH remains without a new state-level government, a fact which both reflected and contributed to the ongoing deterioration of the political situation during the reporting period. In the absence of agreement on a 2011 budget, the state institutions have been funded under a restricted temporary financing mechanism since January. In this context, international credit-rating agencies downgraded the country's outlook, specifically citing the negative political situation. In its annual Progress Report, on Bosnia and Herzegovina, the European Commission also noted the country's political problems.<sup>1</sup> On the economic front, registered unemployment at the end of June 2011 was estimated at approximately 43 per cent of the work force, while foreign direct investments in the first half of 2011 decreased by 19.5 per cent over the same period in 2010.
3. During the reporting period, legal and political actions from Republika Srpska (RS) challenging BiH state-level institutions, competencies and laws, and the authority of the High Representative under the GFAP and relevant resolutions of the UN Security Council have continued, as have other activities running contrary to the General Framework Agreement for Peace (in particular in relation to Annexes 2, 4 and 10). As I outlined in my Special Report to the Security Council on 6 May 2011, the RS National Assembly adopted conclusions in April and a decision to hold a referendum on the decisions of the High Representative, including those establishing the BiH Court and Prosecutor's Office, which formally disregard and/or reject the principles established under Annex 10 and Annex 4 of the GFAP, and thereby constitute a breach of the Dayton Agreement. Although the RS National Assembly's (RSNA) 13 April adoption of a referendum decision was repealed on 1 June, the controversial

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<sup>1</sup> "Overall, little progress was made by Bosnia and Herzegovina in improving the functionality and efficiency of all levels of government. One year after the general elections, a State-level Council of Ministers remains to be appointed. The political representatives lack a shared vision on the direction to be taken by the country. An effective coordination mechanism between the State, the Entities and Brcko District remains to be established as a matter of urgency regarding EU matters and the harmonisation of EU related legislation." Commission Staff Working Paper, Bosnia and Herzegovina 2011 Progress Report, p.10.

conclusions of the same date – many of which have not been explicitly repealed and remain problematic – have continued to influence RS policies vis-à-vis the institutions of BiH and the High Representative.

4. The use of inflammatory nationalistic rhetoric continued, including further statements by officials from the RS in support of state dissolution and chauvinistic comments directed against other ethnic groups. In this regard, I would like to express my deep concern about recent public statements that challenge the statehood of BiH by characterizing the country as a “state union” [*državna zajednica*], ignoring also the fact that BiH was admitted as a member state to the United Nations on 22 May, 1992, together with Slovenia and Croatia. These statements undermining the constitutional arrangements provided for under the GFAP need to be taken seriously, especially in light of other actions directly challenging the GFAP as set out in this and previous reports.
5. While the 26 May arrest of General Ratko Mladic and his 31 May transfer to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague brought good news, political leaders from the RS continued to challenge the rulings of the ICTY and the International Court of Justice (ICJ) that qualified the massacre of Bosniaks who had sought refuge in the United Nations-protected area of Srebrenica in July 1995 as genocide.
6. Some Federation politicians have also used unwelcome rhetoric, and some leaders of HDZ BiH and HDZ 1990 continue to press for a third entity with a Croat majority and have revived the Croat National Council. The two leading BiH Croat parties continue to question the legality and legitimacy of the incumbent Federation government, demanding that it be reshuffled to include them, as the “sole legitimate representatives of the Croat people.” In the Federation, some Bosniak political leaders escalated their rhetoric in response to statements from the RS leadership and warned of possible conflict, were there an attempt to divide the country. The former Federation President, now a delegate in the BiH Parliamentary Assembly, also made offensive statements, appearing to question the suitability of prosecutors from ethnically-mixed marriages to carry out their functions.
7. In spite of tensions and controversy surrounding its formation, the Federation government has functioned well during the reporting period. Three seats in the entity’s Constitutional Court remain vacant, preventing the court from ruling on vital national interest cases submitted to it, thereby affecting the protection of constituent peoples in the Federation. In addition, the Federation continues to be burdened by a large, expensive, and multilayered government apparatus.
8. None of the outstanding items from the five objectives and two conditions necessary for OHR’s closure was fulfilled during this reporting period. Due to the continued stalemate over government formation following the 3 October 2010 elections, the old Council of Ministers continues in a caretaker capacity. This stalemate has had a negative impact on the ability to address long-needed reforms, also including those needed for progress in Euro-Atlantic integration.
9. Through its continued presence, the European Union military mission in BiH (EUFOR) has continued to reassure citizens that the country remains safe and secure

despite the difficult political situation. The High Representative supports the extension of the executive mandate under Annex 1 and 2 of the GFAP.

## II. INTRODUCTION

10. This is my sixth report to the Secretary-General since assuming the post of High Representative for BiH. It provides a narrative description of progress made towards attaining the goals outlined in previous reports, registers factual developments, logs relevant citations during the reporting period, and provides my assessment of mandate implementation in key areas, including the objectives and conditions which must be met before the OHR can close. I have focused my efforts on facilitating progress in these areas, in line with my primary responsibility to uphold the civilian aspects of the GFAP, while also facilitating progress towards Euro-Atlantic integration. Regrettably, a substantial part of my efforts have been dedicated to addressing negative developments, in particular actions taken that challenge the GFAP and undermine the BiH institutions.

## III. POLITICAL UPDATE

### General Political Environment

11. The overall political environment was marked by stagnation, due in large part to the inability of the six largest political parties to form a state-level government. Opposition from the entities – in particularly the RS – continued to prevent the adoption of an adequate 2011 state-level budget. Consequently, State institutions have operated under restricted temporary financing since 1 January 2011, which has limited their capacity as well as their ability to meet their obligations.
12. A ray of hope emerged in September when the leaders of six parties (SDP, SNSD, SDA, SDS, HDZ BiH, and HDZ 1990) finally began to engage in serious negotiations on government formation and the adoption of reforms to unlock progress towards EU and NATO membership. The apparent readiness on the part of party leaders to consider backing off from maximalist positions in the direction of compromise solutions was a welcome change, but has so far not delivered concrete results.

### High Representative Decisions during the Reporting Period

13. In the wake of the arrest and transfer of General Ratko Mladic to the ICTY, I lifted all ICTY-related decisions enacted by my predecessors on 10 June. These included bans on 58 individuals, orders blocking the accounts of 34 individuals, and a requirement of the SDS party to provide the OHR with monthly financial reports.

### Five Objectives and Two Conditions for the Closure of OHR

14. The BiH authorities made no substantive progress during the reporting period towards meeting the State Property objective. As noted in my previous report, I suspended the application of the *Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban* (RS State Property Law) pending a review of its constitutionality before the BiH Constitutional Court. On 15 July, the BiH Constitutional Court announced that it will convene a public hearing in

November regarding the RS State Property Law, which was challenged in January by the Deputy Chair of the BiH House of Peoples.

15. On 22 August, the Bosniak member of the BiH Presidency submitted a request to the BiH Constitutional Court to review the constitutionality of the RS *Law on Cadastre*. As noted in my previous report, the RS *Law on Cadastre* has been the subject of some public criticism and continuing legal challenges since its adoption by the RS National Assembly in February. The application alleges, *inter alia*, that the law allows the RS to usurp the property rights of State institutions and non-resident owners. On 23 September the Constitutional Court adopted a decision on an interim measure suspending the law pending the final decision of the Court. In response, on 26 September, the RS government adopted the *Decree on the Maintenance of Immovable Property Records and Rights to Immovable Property*, which directs the RS authorities to continue registering property rights pursuant to various RS laws, including the RS *Law on Cadastre*, and thereby circumvents the BiH Constitutional Court's interim measure. This puts the Decree in direct violation of the BiH Constitution, which states that decisions of the BiH Constitutional Court are final and binding.
16. On 6 October, the Bosniak member of the BiH Presidency applied anew to the BiH Constitutional Court, alleging that the above-mentioned decree violates the court's Decision suspending the RS *Law on Cadastre*. However, on the same day, the RS government proposed new legislation – the RS *Law on Survey and Cadastre* - which eliminates many of the controversial provisions under challenge before the BiH Constitutional Court and, upon entry into force, would supersede the controversial *Law on Cadastre of RS*. The RS National Assembly adopted the new legislation in urgent procedure on 13 October, but it remains to be seen whether its entry into force will be halted or delayed in the RS Council of Peoples by a Bosniak objection on grounds of vital national interest. The new law, following its entry into force, could lead to a decision of the BiH Constitutional Court to terminate proceedings challenging the *Law on Cadastre of RS*.
17. The BiH Commission for State Property met twice during the reporting period, but did not discuss draft legislation or sustainable apportionment of State Property. Substantive discussion on these issues has been effectively suspended until the BiH Constitutional Court rules on the pending challenge to the constitutionality of the RS State Property Law. The Commission has focused on granting exemptions from the temporary prohibition on transfers of State Property. In its letter of 29 September, the Commission formally requested that I amend my 5 January Order to allow the Commission to grant exemptions to the temporary ban on ownership transfers of State Property situated in RS. I have not amended my Order; and while exemptions from the State Property transfer ban remain permissible at other levels of authority in BiH, no exemptions were granted during the reporting period.
18. Various parties have discussed aspects of an agreement addressing the Defense Property objective, but these discussions have thus far proven inconclusive.
19. Neither the Brcko District Supervisor nor I are able yet to conclude that all obligations under the Brcko Final Award have been fulfilled. RS authorities continue to send ambiguous, and potentially problematic, signals regarding various commitments under the Brcko Final Award, including the question of territorial

boundaries of the Brcko District. This also raises questions about its compliance with obligations under Annex 4 and Annex 2 to the GFAP. OHR continues to seek a dialogue with RS officials to resolve outstanding issues related to the territorial and other obligations stemming from the Final Award and other legal acts. To date, the Republika Srpska authorities have declined to provide assurances that they will fully honor Annex 2 of the GFAP and all aspects of the Brcko Final Award. The Federation provided such assurances in early 2011.

20. Some other entity obligations to the Brcko District are not yet fully met, including resolution of the issue of entity citizenship and voting rights for residents of the District. On a more positive note, a sound legal basis for the supply of electricity to the District could be complete once permanent licenses and tariffs for supply are in place.
21. Given Brcko District's strategic position, any future disagreement over implementation of the Final Award would potentially have negative consequences for the stability of the Brcko District and Bosnia and Herzegovina. OHR will continue, therefore, to take steps to ensure that both entities fully comply with their commitments under the Final Award. OHR will also continue to monitor whether the institutions inside Brcko District are functioning effectively and apparently permanently, as required by the Final Award as a precondition to the closure of the Arbitral Tribunal.

#### BiH State-level Institutions

##### *Constitutional Reform*

22. There was some limited progress in the area of constitutional reform during the reporting period in the context of the implementation of the 2009 Ruling by the European Court for Human Rights (ECtHR) in the "Sejdic-Finci" Case.<sup>2</sup> On 10 October, the BiH Parliamentary Assembly established an Interim Joint Committee to agree amendments to implement the ECtHR's ruling.<sup>3</sup> The Committee has met three times and agreed on its method of work. However, the views of the political parties on how to implement the ruling remain far apart.

##### *BiH Presidency*

23. The BiH Presidency continued to meet during the reporting period, holding five regular sessions and six urgent sessions. Cooperation within the BiH Presidency has improved compared to the previous composition, although disagreements continue. Such disagreements were witnessed during the presentation of my previous semi-annual report to the Security Council on 9 May, and also in disagreements between Bosniak and Croat members on whether BiH should endorse an independent investigation into illegal organ trafficking in Kosovo under the auspices of the

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<sup>2</sup> On 22 December 2009, the European Court of Human Rights issued a judgment in the case of Sejdić and Finci vs. Bosnia and Herzegovina, which found portions of the BiH Constitution to be discriminatory, in that citizens of BiH who do not declare themselves as one of the three constituent peoples (Bosniaks, Croats or Serbs) are not eligible to stand for elections to the BiH House of Peoples or the BiH Presidency.

<sup>3</sup> The deadline set by the BiH Parliamentary Assembly to prepare amendments to the Constitution is 30 November, while the deadline for amendments to the BiH Election Law is 31 December 2011.

Security Council. In both cases, the BiH Presidency failed to formulate a joint position.

24. The BiH Presidency extended the mandate for BiH Armed Forces members in the International Security Force (ISAF) in Afghanistan. It also adopted a decision on recognition of the Interim National Council of the Libyan Republic and a decision establishing diplomatic relations with the Republic of South Sudan.
25. The BiH Presidency looked into the matter of large quantities of explosives that went missing during the process of destroying surplus weapons and ammunition. It concluded that the missing explosives had not been destroyed as ordered by the Presidency, but were the subject of illegal trade between two named companies, and assigned the BiH Ministry of Defense to address the matter.
26. During the reporting period, the BiH Presidency continued to emphasize regional cooperation, participating in numerous regional visits including a trilateral meeting of heads of state of BiH, Serbia and Turkey on 26 April in Karadjordjevo, Serbia. On 14 October, the BiH Presidency Chair attended the 22<sup>nd</sup> session of the Igman Initiative to promote regional dialogue, in Belgrade.

#### *BiH Council of Ministers*

27. In June, the BiH Presidency nominated a candidate from the SDP to the Chair of the Council of Ministers, but his candidacy failed to secure the necessary parliamentary support to form a government. Consequently, the BiH Council of Ministers continued work in caretaker capacity, adopting and sending into parliamentary procedure only a handful of laws and amendments to existing legislation, as well as enacting a number of appointments. On 30 September, the Council of Ministers adopted a revised proposal for the distribution of 96.2 million Euros of financial assistance under the European Commission Instrument for Pre-accession Assistance, thereby securing funds that had been put at risk by a dispute between the entities.
28. On 5 October, a dispute between the Council of Ministers and the Communications Regulatory Agency culminated in a decision by the Council of Ministers to suspend further meetings until the matter was resolved. I intervened on the matter in order to facilitate a resolution to the dispute. The Council of Ministers returned to work on 10 October.

#### *BiH Parliamentary Assembly*

29. Months of unsuccessful negotiations and delays in the appointment of delegates from cantonal assemblies to the Federation House of Peoples delayed both the inauguration of the BiH House of Representatives and the appointment of Bosniak and Croat delegates to the BiH House of Peoples until 9 June. This delayed the formation of other working bodies of the BiH Parliamentary Assembly and the election of parliamentary delegations.<sup>4</sup> As a consequence of this significant delay in the formation of the BiH Parliamentary Assembly and ongoing political disputes within the parliament, very little legislation has been passed since the October 2010

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<sup>4</sup> The inauguration of the BiH House of Representatives was completed on 20 May and that of the BiH House of Peoples on 9 June 2011, while all working bodies were appointed at the end of June 2011.



elections. One year after the elections, the BiH Parliamentary Assembly has adopted only ten laws, amending existing legislation.

### Republika Srpska

30. Republika Srpska continues to combine legal and political actions challenging BiH state-level institutions, competencies and laws, and the authority of the High Representative under the GFAP and relevant resolutions of the UN Security Council, while some of its officials make statements challenging the statehood of Bosnia and Herzegovina.
31. High-ranking RS officials continue to use provocative, antagonistic rhetoric aimed at the state and the Bosniaks. Most recently, the RS President asserted that the Bosniak people can only build their identity by destroying that of others.<sup>5</sup> These statements drew the ire of Bosniak politicians, including the Bosniak member of the BiH Presidency, who in an open letter alluded to the possibility of future conflict should there be an attempt to divide the country.<sup>6</sup>

### *Aftermath of RSNA Referendum Decision and Conclusions*

32. Under strong international pressure, the RSNA voted on 1 June to repeal its 13 April decision to hold a referendum,<sup>7</sup> while adopting a series of conclusions intended to further interpret, amend and supplement the earlier conclusions of 13 April. The repeal of the referendum was justified by referring to a need to respect the verbal agreement reached between the EU High Representative for Foreign Affairs and Security Policy and the President of Republika Srpska, by which the RS authorities would repeal the referendum decision and review the 13 April conclusions and the EU would open a structured dialogue on justice. While the new conclusions explain why a referendum is not needed for the time being, they do not affect the entity's claim that it can organize future referenda in matters that fall within the jurisdiction of BiH or international organizations, including on the judiciary.
33. Despite the withdrawal of the planned referendum and the promise to review the conclusions of 13 April, these conclusions remain in force and were not altered by the 1 June conclusions. They appear to be shaping the policies of the RS authorities. For example, in June the RSNA appointed a judge from Republika Srpska to the BiH Constitutional Court without prior consultation with that body, as the rules of the BiH Constitutional Court require. This move seems to reflect the RS policy – as contained

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<sup>5</sup> "The Bosniaks are a people that exist only in Bosnia-Herzegovina and only declared themselves a people sometime around 1993...stubbornly trying to prove their national identity, which they can only do by destroying the nationality of others -- primarily, of the other constituent ethnic groups of Bosnia". RS President Milorad Dodik, 14 October 2011.

<sup>6</sup> "[T]rue patriots will defend the territorial integrity of BiH at any moment...Srebrenica, Bratunac, Kozarac, Brčko, Višegrad, Foča, Trebinje and other places where Bosniaks perished will never be outside the territory of Bosnia and Herzegovina." Bosniak member of the BiH Presidency Bakir Izetbegovic, 18 October 2011.

<sup>7</sup> The proposed referendum question had been the following: "Do you support the laws imposed by the High Representative of the International Community in Bosnia and Herzegovina, particularly those pertaining to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina, and their unconstitutional verification in the Parliamentary Assembly of Bosnia and Herzegovina?"

in the 13 April conclusions – to dispute the rules of the BiH Constitutional Court.<sup>8</sup> In addition, at its June session, the RSNA adopted a new Draft Law on Courts of RS containing provisions that directly attack judicial independence, subjugate the judiciary to the executive, and undermine the responsibilities of the High Judicial and Prosecutorial Council of BiH.<sup>9</sup>

34. While the immediate threat of a referendum was removed, officials from the RS continued to assert in the media the right of that entity to call a referendum, including on secession.<sup>10</sup> Officials from the Republic of Serbia also spoke about a hypothetical RS referendum on secession, also in the context of comments on the future of Kosovo.<sup>11</sup>

*BiH Flag Removed from in Front of RS Government Building*

35. The flag of Bosnia and Herzegovina was removed from in front of the RS government building on 10 May and replaced solely by the RS flag.

*RSNA Adopts Controversial Police Officials Law*

36. On 20 July 2011, the Republika Srpska National Assembly adopted amendments to the RS *Law on Police Officials*, despite written notification from OHR that certain provisions appear to call into question BiH's compliance with the United Nations Security Council Presidential letter of April 2007 (UNSC Presidential letter) on persons denied certification. Both the EU Police Mission (EUPM) and the OHR had also raised other concerns about the amendments in writing. Specifically, EUPM said that several amendments may be inconsistent with the core principle of a professional, reliable and efficient police organization that is transparent and accountable. However, at a meeting on 21 September with OHR, the RS Ministry of the Interior signaled willingness to demonstrate its continued compliance with the UNSC Presidential letter, which was followed by another positive meeting in October.

*Constitutional Amendment Increases RSNA Deputy Speaker Numbers*

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<sup>8</sup> Conclusion 22 of the 29 individual conclusions that were adopted together specifies that: "The RSNA states that it is unacceptable for any BiH judicial body to expand its competencies through its Book of Procedures."

<sup>9</sup> Conclusion 20 specifies that: "The RSNA demands that the Law on the HJPC of BiH be amended and harmonized with the BiH constitutional order and that every level of government in BiH have its own HJPC."

<sup>10</sup> "I am ready for it [RS independence] to happen after me, that isn't a problem, but I think that it will happen. I am convinced that it will happen, because it is impossible to build a country in which there is not any consensus, in which there is not any respect, in which there exists a desire for outvoting". RS President Milorad Dodik, 1 June.

<sup>11</sup> "If tomorrow, Republika Srpska decides in a referendum to take a decision about secession, what will they be? An independent state, or will they take a decision about joining Serbia and a common life with Serbia?" These remarks followed Serbian President Boris Tadic's 5 May remarks at a press conference that were widely carried in Serbia's media, in which he stated that: "Preservation of the integrity of Bosnia and Herzegovina is an issue that is also linked with the preservation of Kosovo." Serbia's Foreign Minister Vuk Jeremic told the Belgrade TV station B92 on 22 April that "I don't see why our support for democratically-made decisions of the institutions of RS – which are in harmony with the laws and constitution of BiH – represent a problem for anyone".

37. The RSNA adopted in June a constitutional amendment increasing the number of deputy speakers in the RSNA. Whereas previously there had been two deputy speakers, there will be between two and four. The constitutional amendment was a welcome step introduced to ensure ethnic balance among the speaker and deputy speakers.

#### Federation of Bosnia and Herzegovina

##### *Government Formation Crisis*

38. Following the formation of a new Federation government on 17 March by the "Platform" Coalition of parties (SDP, SDA, HSP, NSRzB), tensions remain between this group of parties and the HDZ BiH and HDZ 1990.<sup>12</sup> The HDZ parties were left out of the Federation government after rejecting a compromise package on government formation proposed by the international community. The HDZ parties declared for principled reasons their intention at that time to enter into opposition in the Federation. The March crisis in government formation had been precipitated by the refusal of the HDZ bloc parties in some cantons to appoint delegates to the Federation House of Peoples for several months after the constitutionally mandated deadlines had passed. The election of all delegates to the Federation House of Peoples was only completed in May, about a half a year after the deadline had passed. Tensions between these two blocs of parties were also reflected in some cantons within the Federation, and the HDZ parties continued to refer to the current Federation government as illegitimate.

##### *HDZs Revive Croat National Assembly*

39. The extra-institutional Croat National Assembly (HNS) convened on 19 April in Mostar and has served largely as a platform for the HDZ BiH and HDZ 1990. It was convened to express Croat dissatisfaction over the newly appointed Federation government, which – according to the HNS – lacked legitimately elected Croats. At that meeting, the HNS adopted a Resolution demanding constitutional reform, including the option of a federal unit (third entity) with a Croat majority. On 5 May, the HNS Presidency formed bodies charged with "coordinating the interests of the Croat people." At its 20 September session, the HNS called on the governments of cantons with Croat majorities not to accept and to challenge certain decisions by the allegedly "illegal" and "unconstitutional" Federation government. The HDZ 1990 President subsequently clarified that the HNS Presidency had ordered its members, who are also cantonal officials, to respect the Constitution, while challenging all government decisions – which they *a priori* deemed illegal – via the courts. Nevertheless, these events raise concerns about the risk of parallel governing structures eventually emerging. It is also worth noting that the HNS decided to establish its presence abroad via representative offices in major capitals.

##### *Cantonal Governments*

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<sup>12</sup> Details regarding the formation of the Federation government are available in the Thirty-ninth Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary General of the United Nations.

40. Three of the ten Cantons in the Federation have yet to form governments. In the Herzegovina-Neretva and Central Bosnia cantons, the SDP, SDA and HDZ BiH have seemed to come close to agreeing on terms that would enable coalition governments, although final agreement has remained elusive. In July, I intervened to ensure respect for the Constitutional order in the Central Bosnia Canton, after a new government took up office, despite the fact that vital national interest had been invoked by the Croat Caucus and the Federation Constitutional Court had not ruled on the matter. After my intervention the acting government returned to office and I believe this has also played a role in creating space for negotiations on a new government which are now well advanced. This is just one of many examples of how I have utilised the authority of my mandate to overcome disputes and to facilitate outcomes that are fully in accordance with the GFAP.
41. The third canton that remains without a government is Canton 10, where there is little sign of progress in reaching a political agreement, in large part due to a dispute between the HDZ BiH and HDZ 1990. Livno, the capital of Canton 10, has also been the scene of a dispute over the reconstruction of a mosque, which has the potential to raise inter-ethnic tensions in that town.
42. A Court decision is pending for Posavina Canton, where the new government does function but the Bosniak Caucus in the Assembly has submitted a vital national interest complaint over the fact that the new government is mono-ethnic and does not mirror the 1991 Census. A similar situation exists in Western Herzegovina Canton, where the Assembly decided to ignore the existence of Bosniak and Serb delegates, electing the Speaker of the Assembly in disregard of the required legal procedures.

*FBiH House of Representatives passes Draft Genocide Denial Law*

43. On 28 September, the Federation House of Representatives adopted a draft amendment to the Federation Criminal Code that would criminalize genocide denial. The draft amendment still has to undergo several steps before full adoption by the parliament. It envisages imprisonment of three months to three years in cases of denial of genocide, war crimes, crimes against humanity and other crimes under international law. A similar initiative was proposed at the state-level in August 2009, but was rejected.

*Federation Parliament's Response to RSNA Referendum Decision*

44. The Federation House of Representatives and House of Peoples held a special joint session on 27 April in order to define the Federation's position in relation to the RSNA's 13 April referendum decision and adopted a document entitled *Declaration on European and NATO Commitment*. In presenting the document, the Federation House of Representatives Speaker said that "[w]e underline that the Federation and the RS have the same status, i.e., that they are merely two entities in BiH, while the state of BiH carries sovereignty, territorial integrity and international status".

**IV. PUBLIC ADMINISTRATION**

45. Numerous senior civil service appointments remain long overdue at the state-level.<sup>13</sup> The BiH Public Administration Reform Coordinator's Office (PARCO) reported to the Council of Ministers that the BiH Public Administration Reform Strategy and its action plans have been revised and the implementation rate is now approximately 50 per cent.
46. Notwithstanding the 2010 rulings of the Federation Constitutional Court that certain articles of the Federation Law on Ministries and the entity's Law on Civil Service are not in compliance with the Federation Constitution, the Law on Civil Service has yet to be harmonized with the Constitutional Court Decision.

## V. ENTRENCHING THE RULE OF LAW

### National Justice Sector Reform Strategy

47. At the 6<sup>th</sup> Ministerial Conference for the implementation of *the Justice Sector Reform Strategy in BiH for the Period from 2008 to 2012 (JSRS)*, convened on 26 July 2011, stakeholders supported the initial recommendations of the EU-structured dialogue's first session. At that session, the European Commission had highlighted that the JSRS "addresses many issues that are relevant to the future European integration of BiH" and called upon all parties to reinforce their coordination and cooperation in implementing the strategy. The participation of the entities' Ministries of Justice in implementing the Strategy remains inadequate.
48. In terms of implementation of the JSRS, the overall breakdown includes a total of 204 activities (within 61 programs) that should have been implemented between January 2009 and June 2011. Of these, 45.1% were fully implemented, 31.9% partially implemented and 23% not implemented. However, these numbers are misleading as most of the claimed successes were either of lesser importance or were actually achieved by the High Judicial and Prosecutorial Council (HJPC).
49. This Conference noted that answers to the EU Structured Dialogue Questionnaire would be compiled in one document, but that it was agreed that this document would include separate positions of the RS. Separate positions of the RS will relate to state-level judicial institutions and the HJPC. This reflects the RS position that the state-level Court of BiH, and therefore also the state-level Prosecutor's Office of BiH are unconstitutional, and that the Court's present jurisdiction is unconstitutional. The RS continues to present this position, in spite of two rulings by the BiH Constitutional Court (2002 and 2009), confirming the constitutionality of the Court of BiH and its jurisdiction. The RS position on the HJPC is that the judicial council should be split from the prosecutorial council, and that such councils should be established at the entity level. The position seeking to reestablish entity level councils disregards the *Agreement on Transfer of Certain Entities' Responsibilities through Establishment of High Judicial and Prosecutorial Council of Bosnia and Herzegovina*, signed in March 2004 by the RS government, Federation government and BiH Council of Ministers.

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<sup>13</sup> Including the appointment of a new Head of the Communications Regulatory Agency (over three years overdue), members of the Communications Regulatory Agency Council (a year and a half overdue), and the General Manager of the Company for the Transmission of Electric Power in BiH (one year overdue). The Acting Head of the Indirect Tax Authority has been appointed on a temporary basis twice, in violation of applicable laws.

### War Crimes Prosecution Strategy

50. Implementation of the Strategy remains slow fueling public criticism of insufficient progress in prosecuting war crimes. On the positive side, a database has been established, and categorization and determination at which level – state or entity – identified war crimes cases shall be investigated and/or tried is under way.

### Other Rule of Law Issues

51. The Federation Constitutional Court still lacks three out of nine judges, which means that the Vital Interest Panel of the Federation Constitutional Court has been incapacitated for over three years thereby affecting the protection of constituent peoples in the decision-making process in the Federation. The High Judicial and Prosecutorial Council adopted its final proposal on the list of qualified candidates on 23 September 2011, and the procedure is now with the President of the Federation, who with the concurrence of the two vice-presidents needs to nominate candidates to the Federation House of Peoples for appointment.
52. Although the total number of international judges in the War Crimes Department of the Court of BiH was planned to drop from four to three, the mandate of one judge was prolonged until next year due to her involvement in a war crimes trial that cannot be completed sooner.
53. The integration of the Registries of the Court of BiH and of the Prosecutor's Office of BiH into domestic institutions continued to lack the necessary support of the BiH Ministry of Justice and Ministry of Finance and Treasury. Additional premises, updating of the computer system, regulating the status of the Court Police and completion of the integration in the BiH Ministry of Justice of the Criminal Defence Service remain essential steps that need to be addressed.

### High Judicial and Prosecutorial Council Working Group

54. The High Judicial and Prosecutorial Council's (HJPC) working group tasked to draft amendments to the *Law on the High Judicial and Prosecutorial Council of BiH* continues its work, concentrating on the composition of the council, election of its members, and appointment and discipline of judges and prosecutors. While there was no indication that the plan of the BiH Ministry of Justice to wait for the HJPC initiative on amendments and then to appoint a new, more restricted working group to prepare the final text of the amendments to be submitted to the Council of Ministers was changed, there are signs that the HJPC does not want to send the amendments into parliamentary procedure in the current political atmosphere.

### Fight against Corruption

55. The suspension by the HJPC of the BiH Chief Prosecutor amid a corruption scandal regarding the alleged illegal export of arms and ammunition, demonstrated the HJPC's capacity to react in disciplinary cases. However, the scandal may also have seriously undermined citizens' trust in the BiH judiciary. The suspension was pronounced on 1 July by the HJPC Disciplinary Commission and further confirmed after appeal on 8 July. In October, it was reported that the HJPC Disciplinary Counsel

had reached a plea agreement with the suspended Chief Prosecutor, by which he admitted previously denied contacts with certain individuals, in exchange for accepting a more junior position within the District Prosecutors' Office of Banja Luka in the RS.

#### New Obstacles to Judicial Independence

56. On 26 August, the RS President on his behalf and that of the Serb member of the BiH Presidency, sent an invitation to persons from the RS working in the state-level institutions to a meeting with the leadership of their political party, the Alliance of Independent Social Democrats (*SNSD*). The announced agenda of the meeting was "current political activities on the level of the joint authorities of BiH, trends and tasks during the mandate duration, realisation and deviations of the Dayton Peace Accord and the positioning of Republika Srpska." The list of invitees included judges and prosecutors in the HJPC coming from RS, as well as the President and a judge of the BiH Constitutional Court. The majority of the invited judges and prosecutors did not attend. This caused the RS President to threaten publicly that these state-level judicial officials would not be reappointed.<sup>14</sup>
57. At its June session, the RSNA adopted the new *Draft Law on Courts of RS* in the first reading. The draft contains provisions that undermine the independence of the judiciary from the executive. The HJPC, the RS Association of Judges and the OSCE have submitted comments to the law, expressing concerns.

#### Public Security and Law Enforcement

58. The on-going initiative to update current legislation on internal affairs at the FBiH and Cantonal levels has stalled due to disagreements between police authorities and Ministers of Interior. On 15 June, Cantonal Ministers of Interior prepared alternative draft legislation that appears to reintroduce unacceptable levels of political control over the work of the police. The Federation and Cantonal police commissioners want increased legal and budgetary independence for operational policing matters along the lines of the long-term reforms originally initiated by the UN International Police Task Force.
59. On 14 April 2011, the BiH Council of Ministers adopted amendments to the BiH *Law on Police Officials* to permit the Directorate for Police Coordination to employ active police officials directly from other police bodies in BiH until 31 December 2012 and forwarded the amendments to the BiH Parliamentary Assembly for procedure. This temporary exemption from normal employment procedures could result in accelerated recruitment of new staff in the Directorate.
60. In parallel to the process above, a working group composed of EUPM, OHR, ICITAP, and representatives of the state, entity, cantonal, and Brcko District authorities have reviewed the *Laws on Police Officials* currently in force at state, entity, cantonal and Brcko District levels. EUPM is preparing a report of the working

<sup>14</sup> "No one from the BiH High Judicial and Prosecutorial Council came, along with the Constitutional Court President. The President of the Constitutional Court was elected by the RSNA and a person elected by the RSNA must have responsibility towards the RS. In case they do not justify their absence from this meeting they will be considered as disqualified." RS President Milorad Dodik, 4 September 2011.

meetings for presentation to working group representatives at the next meeting tentatively scheduled for mid-October 2011. The RS Ministry of Interior did not officially join the working group but attended sessions in observer status.

## VI. ICTY COOPERATION

61. With the arrest of Ratko Mladic on 26 May, all ICTY indictees in relation to war crimes committed in Bosnia and Herzegovina have been apprehended. Mladic had been a fugitive since his indictment on 25 July 1995. A number of protest rallies were organized in the RS in response to Mladic's arrest. As Mladic was the last remaining ICTY fugitive accused of crimes related to the Bosnian war, I lifted all remaining bans on officials related to non-co-operation with the ICTY on 10 June. During the reporting period, BiH's cooperation with the ICTY remained satisfactory, although local institutions showed a less than dedicated approach to ensuring that individuals responsible for war crimes serve their sentences, as shown in four major cases of escape from the territory of BiH.<sup>15</sup>

## VII. REFORMING THE ECONOMY

### Economic indicators<sup>16</sup>

62. Certain economic indicators for the first six months of 2011 show signs of improvement. Compared to the same period in 2010, exports increased by 20.5 per cent and imports by 18.2 per cent, which has caused a 15.9 per cent increase in the total foreign trade deficit. Total industrial production in BiH rose by 7.7 per cent (5 per cent in the FBiH and 3.6 per cent in the RS). The average net salary in BiH amounted to 813 KM, an increase of 2.4 per cent compared to the same period in 2010, while the average pension amounted to 336 KM, a 0.9 per cent decrease. Annual inflation was estimated at 3.6 per cent. At the same time, unemployment and investments remain worrisome: registered unemployment at the end of June 2011 was estimated at over 527,000 people, approximately 43 per cent of the work force, while foreign direct investments in the first half of 2011 decreased by 19.5 per cent over the same period in 2010.
63. On 16 May, Moody's Investors Service lowered BiH's credit rating outlook from stable to negative, which could downgrade BiH's credit rating of B2 in the next 12 to 18 months. The decision is based on the assessment that the political situation in the country is deteriorating.<sup>17</sup> Standard & Poor's took a similar decision on 28 July.<sup>18</sup>

<sup>15</sup> Radovan Stankovic, sentenced to 20 years imprisonment by the Court of BiH for crimes against humanity committed in 1992 in Foca, escaped from prison in Foca in May 2007 with the assistance of local authorities. He remains at large. His case was the first to be transferred by the ICTY to the Court of BiH. Three other individuals sentenced for crimes against humanity by the Court of BiH remain at large. Two indictees, sentenced to 13 years and 17 years respectively, escaped in May 2009 and May 2010 while under prohibitive measures awaiting delivery of their final verdicts. In December 2010 a fourth accused escaped just before a first instance sentence of 27 years imprisonment for crimes against humanity against him was to be rendered.

<sup>16</sup> Sources: BiH Economic Planning Directorate, BiH Statistics Agency, BiH Foreign Trade Chamber, BiH Ministry of Foreign Trade and Economic Relations.

<sup>17</sup> Moody's assigned the first credit rating to BiH on 29 March 2004 (B3 with positive outlook), upgrading it on 17 May 2006 to B2 with stable outlook as a result of the 2004-2006 reforms and achievements strengthening BiH's political and economic stability. The Moody's decision of 16 May



## *Indirect Taxation System*

64. The Indirect Taxation Authority (ITA) Governing Board met four times in the past six months. Building on the 22 July meeting, which resulted in an agreement on new indirect tax revenue allocation coefficients applicable to the 3<sup>rd</sup> quarter of 2011,<sup>19</sup> the Governing Board made further progress at its 7 September session. At this session, the ITA Governing Board – on the basis of temporary rebalancing of the collected and distributed indirect tax revenue – agreed on debt settlement for 2008, 2009 and the first six months of 2010 and 2011. Under this agreement, which took effect on 14 September and will be implemented by the end of November 2011, the Federation would repay approximately 33.8 million KM to the RS.<sup>20</sup> While the second half of 2010 remains disputed and continues to cause tension between the Entities,<sup>21</sup> the issue will probably be addressed in the forthcoming period, following an additional analysis of the relevant data by the ITA Governing Board's Final Consumption Unit.
65. The RS continues to challenge the indirect taxation system, including the state's competence for indirect taxation. At the 10 May session of the ITA Governing Board, the RS Finance Minister called for the breakup of the Single Account and the introduction of Entity jurisdiction over indirect tax revenue collection. In meetings with the OHR on 10 June, the RS Prime Minister and Finance Minister both advocated a split of the Single Account into three parts – Federation, RS, Brcko District – and the financing of the State through lower-level transfers. On 9 September,<sup>22</sup> the RS Prime Minister repeated his demand for the creation of separate sub-accounts for the collection of indirect tax revenue. He also described the existing fiscal structure of BiH as unsustainable and called for a new one. In a 5 September interview, the RS President<sup>23</sup> stressed that the system of indirect taxation in BiH had been imposed contrary to the BiH Constitution and that the RS would “take decisions questioning the functioning of the system”.<sup>24</sup>

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2011 to change BiH's credit rating outlook from stable to negative is the first rollback in BiH's credit rating history as assigned by Moody's.

<sup>18</sup> Standard & Poor's assigned its first credit rating to BiH on 22 December 2008 (B+ with stable outlook), confirming it on 8 December 2009. The Standard & Poor's decision of 28 July 2011 to change BiH's credit rating outlook from stable to negative is, therefore, the first rollback in BiH's credit rating history as assigned by Standard & Poor's.

<sup>19</sup> This is only the second time in the last three years that the ITA Governing Board has complied with its obligation under the 24 June 2008 Rulebook on Coefficient Calculation and Payments to the Entities, which clearly states that new coefficients should be agreed on a quarterly basis.

<sup>20</sup> The debt results from the ITA Governing Board's failure to adjust indirect tax revenue allocation coefficients to the Entities' final consumption on a quarterly basis, as provided for in the 24 June 2008 Rulebook on Coefficient Calculation and Payments to the Entities. In the absence of the required adjustments, the coefficients agreed on 24 June 2008 were applied for over two years.

<sup>21</sup> The Federation requested an explanation for a significant increase in the RS final consumption in the second half of 2010, which led to the increase in the calculated allocation coefficient for the RS and thus to the amount claimed by the RS from the FBiH. Doubts over the data in question were also expressed by the ITA Governing Board's Final Consumption Unit. The Federation government expressed its willingness to settle any debt for this period following the data verification.

<sup>22</sup> *Glas Srpske* of 9 September 2011

<sup>23</sup> *OBN, Telering* program of 5 September 2011

<sup>24</sup> Contrary to these claims, the indirect taxation system was established in line with the BiH Constitution. The transfer of competence for indirect taxation to the State and the conclusion of the corresponding Transfer Agreement were approved by the RS National Assembly on 30 October 2003 and by the FBiH Parliament on 3 December 2003. Following this approval, the two Entity Prime

## Challenges to the Fiscal Sustainability of State Institutions

66. Entity disputes within the ITA Governing Board have spilled over to the BiH Fiscal Council, which had not met since February before finally convening on 12 October. A Global Framework of Fiscal Balance and Policies in BiH for the Period 2011-2013 has still not been adopted.<sup>25</sup> In its absence, international financial disbursements, including the EU Macro-Financial Assistance, remain on hold. This increases pressure on the Entities and forces them to seek alternatives - such as resorting to borrowing - to cover budget deficits and meet their financial commitments. In addition to this, the RS Prime Minister reiterated on 26 July<sup>26</sup> his earlier claims<sup>27</sup> that the RS is one of the two cofounders of the Central Bank of BiH and that it has a right to its profits and called for Central Bank profits to be split between the RS and the Federation and not paid to State institutions, as the State "had not contributed to the initial founding capital of the Central Bank of BiH and was therefore not its founder".<sup>28</sup>
67. On 14 July, the 2011 state budget proposal failed to receive the required entity majority from delegates elected from the RS and was rejected by the BiH House of Representatives. The BiH Ministry of Finance and Treasury revised the previous budget proposal and submitted it to the BiH Presidency for a new procedure. Although the proposal takes into account the interests of both the State and the Entities and is in line with the principles agreed at the 13 July joint meeting of the State and Entity Finance Ministers in Vlasic (attended by OHR and EU representatives), it has not been considered to date due to indications that the RS will continue to oppose it. In the absence of a budget, the state institutions are forced to remain on restrictive temporary financing, which not only affects their ability to meet their legal obligations and integration requirements, but also jeopardizes their financial sustainability.
68. Statements by senior RS officials indicate that they will continue to oppose budget proposals which would secure the State institutions the revenues needed at least to maintain the same budget level and the same level of operations as in 2010.

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Ministers signed the Transfer Agreement on 5 December 2003 and then both Houses of the BiH Parliamentary Assembly adopted the Law on Indirect Taxation System on 29 December 2003. Any challenge to the existing system of indirect taxation would, therefore, represent a rollback on a previously agreed reform that could negatively affect the financing of the state - since it would make it *de facto* dependant on entity transfers as in the pre-indirect taxation system reform state of affairs. Such changes would also affect the financing of Brcko District, which is dependant on the existing system of indirect taxation on the basis of the High Representative's Decision of 4 May 2007.

<sup>25</sup> Although this document should have been adopted by the end of May 2010 to allow for the preparation of 2011 budgets at all levels, it has not been agreed to date due to a disagreement between the Entities and the State on the State's share in indirect tax revenue in 2011.

<sup>26</sup> Media statement by RS Prime Minister Aleksandar Dzombic on 26 July 2011, as reported by SRNA.

<sup>27</sup> Media statements by RS Prime Minister Aleksandar Dzombic reported, among others, by ONASA on 30 April 2011, SRNA on 9 May 2011, BLIC on 12 May 2011.

<sup>28</sup> The Central Bank of Bosnia and Herzegovina was explicitly provided for in Annex 4 of the GFAP as the sole authority for issuing currency and for monetary policy throughout BiH, whose responsibilities shall be determined by the BiH Parliamentary Assembly. The 1997 Law on the Central Bank of BiH further specifies that the Central Bank shall be entirely independent from the F BiH, the RS, any public agency and any other authority in the pursuit of its objective and the performance of its tasks, while the 2005 Amendments to the Law regulate the manner of the allocation of Central Bank net profits, including payments on this basis to the State Budget.

Federation officials have also declined so far to support the state's requested share of disbursements from the single account for the 2012 budget. It has also been announced that a report on the financial aspects of functioning of the BiH institutions is being prepared by the RS government for debate by the RS National Assembly. In light of these developments, there is growing concern that the budget is being used to challenge the institutions and competencies of the State. In line with my mandate, this is a matter I take very seriously.

Ongoing Obstruction of the BiH Electricity Transmission Company (TRANSCO/Elektroprenos BiH)<sup>29</sup>

69. The entities continued to disagree on issues related to the management of TRANSCO - which is still grappling with the problems following from two earlier attempts by RS authorities and representatives in the company to unilaterally dissolve it (in 2008 and 2009).
70. The State Electricity Regulatory Commission warned TRANSCO about the ongoing stalemate in the adoption of investment plans (since 2008) and the absence of investment despite TRANSCO investment funds accumulating to over 200 million KM. It also warned TRANSCO about its refusal to connect new customers to the transmission network and the negative consequences of employee lawsuits triggered by the General Manager's non-compliance with the company's statute. As a consequence of the latter, the company has thus far paid 17.4 million KM in damages, which makes about 83 per cent of TRANSCO's total debt (21 million KM).<sup>30</sup> New appointments are also blocked, and all of the company's management and most of its Management Board are still in a caretaker mandate (the General Manager since September 2009). Moreover, the company no longer has an Audit Board. This, among others, affects the Company's audit for 2010, as the TRANSCO statute calls for completing an independent audit within 120 days of the end of the previous fiscal year (end of June) and the auditor for 2010 was selected only at the end of July 2011.
71. In addition, threats of unilateral action reemerged on 12 October, when the RS government reportedly adopted a conclusion announcing the establishment of an RS electricity transmission company if the problems in TRANSCO were not resolved by the end of the year. Regrettably, the RS authorities have so far failed to provide my office with the text of these conclusions.
72. Despite these problems, the electricity transmission network is being maintained and "the company is showing good business results."<sup>31</sup>

## VIII. RETURN OF REFUGEES AND DISPLACED PERSONS

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<sup>29</sup> TRANSCO was established by the *Law Establishing the Company for the Transmission of Electric Power in BiH*, which was adopted by the BiH Parliamentary Assembly in 2004 following the 2003 agreement between the two entity Prime Ministers on the basis of Article III.5(b) of the BiH Constitution.

<sup>30</sup> 10 August 2011 Report, as sent to the BiH Ministry of Foreign Trade and Economic Relations by Transco Acting General Manager Dusan Mijatovic.

<sup>31</sup> 10 August 2011 Report, as sent to the BiH Ministry of Foreign Trade and Economic Relations by Transco Acting General Manager Dusan Mijatovic.

73. Implementation of the Annex VII Strategy remained slow during the reporting period. There is a particular need to address the living conditions of the remaining 8,600 internally displaced persons in collective centers and to create durable housing solutions. This is the most vulnerable group of the approximately 113,000 Internally Displaced Persons who remain.
74. A UNHCR envoy, appointed in early 2011 to work on the protracted displacement situation in the Western Balkans, visited BiH and the region numerous times in 2011 to support the governments in devising a regional program for durable solutions for the most vulnerable. BiH plays an important role in this process, with the Ministry for Human Rights and Refugees serving as the regional coordinator. The BiH component of the regional program complements the revised Annex VII Strategy, which will be presented at a 2012 Donors Conference. The OHR will continue to support the efforts of the UNHCR office in BiH to ensure full implementation of Annex VII.

#### **IX. MEDIA DEVELOPMENT**

75. There has been no progress implementing the public broadcasting legislation adopted in January 2006. On the contrary, the three public broadcasters constituting the system continue to disagree on the system's very structure. Consequently, the System Board of Governors failed to adopt the Statute to establish the Corporation, which is crucial for the switchover to the digital terrestrial signal, a task which BiH institutions hoped to complete in 2012. The BiH Parliamentary Assembly has not appointed new PBS governors, even though the mandate of several current governors is expired. The Communications Regulatory Agency is still functioning with an acting Director General and a Council whose mandate has expired. This situation is affecting the Agency's credibility and its operations.
76. From January until September 2011, attacks against the media increased 30 per cent compared to the same period in 2010. The Free Media Helpline, a service operating within the BiH Union of Journalists, registered 42 cases of threats and pressures, physical attacks, denial of information, mobbing, and one case of a death threat.

#### **X. MOSTAR**

77. The City authorities elected in 2008 continue to struggle to build on the progress made between 2004 and 2008 with OHR assistance in integrating the city. After a notable delay, a ruling of the BiH Constitutional Court requiring limited changes to the electoral system for Mostar finally entered into force on 16 June. The deadline for the BiH Parliamentary Assembly to adopt the necessary changes to the BiH Election Law expires on 16 December. No progress has been made on this issue during the reporting period. My Office will be working to facilitate agreement in the months ahead.

#### **XI. DEFENCE REFORM**

78. On 19 May, the Chair of the BiH NATO Coordination Team (NCT) tabled a proposal for the NCT's consideration, calling for the ownership and registration of prospective immovable defense properties on behalf of BiH. Although not required by the Law on Defense of BiH for the transfer of non-prospective defense properties to municipal authorities, the proposal was an attempt to reaffirm BiH's commitment

to fulfill all conditions for activation of NATO's Membership Action Plan. In spite of this proposal, there has been no breakthrough and the responsibility to act continues to rest primarily with the BiH Council of Ministers and Entity governments.

79. On 28 April, and in line with a request from both the BiH Presidency and the BiH Minister of Security, the US Embassy, OSCE and UNDP cosigned and forwarded a set of recommendations for improving the weapons export regime to the BiH Ministry of Foreign Trade and Economic Relations.<sup>32</sup> On 11 May, the Council of Ministers agreed to support an *Addendum to the Instruction on terms and procedure for the issuance of permits for foreign trade exchange of goods and services of strategic importance for safety of BiH*.<sup>33</sup>
80. The BiH Minister of Foreign Trade and Economic Relations has since inserted the Addendum to the *Law on Control of Foreign Trade Exchange of Goods and Services of Strategic Importance for Safety of BiH*. As a consequence, the BiH Presidency ban on weapons exports no longer applies.

## XII. INTELLIGENCE REFORM

81. The BiH Intelligence-Security Agency (OSA) came under severe public pressure on several occasions during the reporting period.
82. Of further concern, at its session on 18 August, the RS government decided to initiate the drafting of an *RS Law on Protection of Secret Data*. The *BiH Law on Protection of Secret Data* assigns exclusive authority for the protection of secret data with the state of BiH. An attempt by an entity authority to regulate this area would be difficult without conflicting with the state law and state-level institutions assigned to oversee its implementation.
83. On 25 August and 14 September, the BiH House of Representatives and the BiH House of Peoples respectively adopted the *Annual 2011 Intelligence-security Policy Platform*. The *Policy Platform* is a set of guidelines that are required for the effective planning, execution and delivery of OSA's legally prescribed tasks. This was the first such document to have successfully passed both the executive and legislative branches since OSA's establishment in 2004.

## XIII. EUROPEAN UNION MILITARY FORCE (EUFOR)

84. EUFOR continued to assist the OHR and other international organizations to fulfill their respective mandates. Preparations are underway to continue EUFOR's executive presence beyond 2011. I consider it important for a UN-mandated executive military presence to be retained.

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<sup>32</sup> As a reminder, on 17 March, the BiH Presidency passed a decision calling for revised criteria in the BiH licensing regime for export of weapons and ammunition following (unconfirmed) suspicions of arms exports to questionable recipients. This in effect halted all exports of weapons and ammunition from BiH.

<sup>33</sup> The Addendum requires the BiH Ministry of Foreign Trade and Economic Relations to request the BiH Intelligence and Security Agency (OSA) to conduct security checks of involved parties prior to an export approval. The CoM also requested closer cooperation between the institutions participating in the procedures of foreign trade of weapons and military equipment as well as appealing for appropriate training of relevant civil servants and industry employees.

#### **XIV. THE EUROPEAN UNION POLICE MISSION (EUPM)**

85. The European Union Police Mission (EUPM) has continued to support the development of BiH law-enforcement agencies in the fight against organized crime and corruption. The Mission has continued work harmonizing the legal framework for police and supported further implementation of the police reform laws of April 2008, through its mentoring of the Directorate for police coordination. The current mandate of EUPM expires on 31 December 2011. EU member states have carried out a review on the future of the mission and will decide in autumn 2011, how the EU can best continue to support BiH law enforcement and criminal justice sectors.

#### **XV. EUROPEAN UNION SPECIAL REPRESENTATIVE (EUSR)**

86. Between 1 May and 31 August, in my role as EUSR, I continued to coordinate the various EU missions on the ground. In line with my mandate as EU Special Representative, I have offered local political guidance to EUFOR and EUPM. Cooperation with the EU Delegation and the EU member states has also been intense. I handed over my mandate as EU Special Representative on 1 September to Peter Sorensen, the new head of the EU Delegation and new EUSR.

#### **XVI. FUTURE OF THE OFFICE OF THE HIGH REPRESENTATIVE**

87. The Peace Implementation Council Steering Board met at the level of political directors on 6 and 7 July. It once again expressed its concern over the political situation in the country, the failure to appoint a state government, as well as the ongoing failure to address the remaining objectives and conditions for the closure of the OHR. The next meeting is tentatively scheduled to take place on 13-14 December.
88. Due to the decoupling of EUSR from the OHR, 26 highly valuable staff have transferred to the EUSR office. In addition to this, the overall budget of the OHR has been reduced for the current budget year, the ninth such reduction in the last ten years.

#### **XVII. REPORTING SCHEDULE**

89. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Security Council resolution 1031 (1995), I herewith present my sixth regular report. Should the Secretary-General or any Security Council member require information at any other time, I would be pleased to provide an additional written update. My next regular report to the Secretary-General is scheduled for May 2012.