

**Sixth Report of Republika Srpska
to the UN Security Council**

November 2011

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I. Introduction and Executive Summary

1. Republika Srpska, a party to all of the annexes that comprise the Dayton Accords, respectfully submits this 6th Report to the UN Security Council. In this report, Republika Srpska, one of the two Entities that comprise BiH, outlines its three simple and reasonable goals with respect to the international community. These goals are:

- securing the constitutional system guaranteed by the Dayton Accords;
- advancing Bosnia and Herzegovina's integration with the European Union; and
- restoring constitutional and democratic governance to BiH.

Securing the Constitutional System Guaranteed by the Dayton Accords

2. The decentralized constitutional system established 16 years ago in the Dayton Accords is essential to Bosnia and Herzegovina's continued stability and viability as a state.

3. The BiH Constitution, which is Annex 4 of the Dayton Accords, created a framework that makes it possible for BiH's three Constituent Peoples—Serbs, Croats, and Bosniaks—to live together in a single state. As the U.S. Deputy Assistant Secretary of State observed earlier this year, "Dayton is not only what ended the war, it is the centerpiece of the agreement that has made Bosnia Herzegovina possible until now." An international consensus is building that BiH must retain its decentralized constitutional structure. In particular, the United States and the European Union have both recently underlined their support for the Dayton framework upon which BiH is built. Republika Srpska welcomes the recent words of support for BiH's Constitution and expects these words to be matched by deeds.

4. Decentralization enhances governmental efficiency—particularly, as academic research has shown, in states in which there are wide variations in political preferences between regions. BiH's decentralized constitutional structure is what gave Republika Srpska the freedom to enact reforms that have dramatically improved its economic performance and created the conditions for robust growth into the future. A recent World Bank report, *Doing Business in Southeast Europe 2011*, cited Banja Luka, Republika Srpska's largest city, as one of two cities in the region that had improved the most since 2008. As international observers have recognized, BiH's other Entity, the Federation of BiH ("Federation"), has failed to enact similar economic reforms, and its economic prospects have suffered. A more centralized BiH would jeopardize Republika Srpska's economic reforms because the policies and choices of the Federation, with its much larger population, would dominate.

5. More evidence of the dangers of centralization lies in the poor performance of the BiH government as it has accumulated greater powers. The High Representative's long campaign to centralize power in Sarajevo has led to appalling waste and inefficiency. Even an advisor to Ambassador Inzko, the current High Representative, wrote in a 2011 report that approximately 60% of the budget of the BiH government "is spent on the upkeep of nonfunctional or ineffective government apparatus." Government agencies in Sarajevo also lack transparency and accountability that requires that the citizens of BiH have comprehensive information about the

budgets of BiH institutions. Unfortunately, the International Budget Partnership's 2010 Open Budget Survey ranked BiH ranked 21st out of the 22 European countries evaluated.

Advancing Bosnia and Herzegovina's Integration with the European Union

6. Republika Srpska is working toward the goal of BiH's eventual membership in the European Union. There is no inconsistency between BiH's decentralized Dayton structure and membership in the EU. As a top EU official said earlier this year, "BiH must be in a position to adopt, implement and enforce the laws and rules of the EU. It is up to Bosnia and Herzegovina to decide on the concept which will lead to this result." The consistency of a decentralized system with the obligations of EU membership is demonstrated each day by longstanding EU members such as Germany and Belgium.

7. Republika Srpska is leading the way for BiH in enacting reforms designed to advance EU integration. As EU enlargement officials report, Republika Srpska has significantly outpaced the Federation in achieving the reforms required by the Stabilization and Association Agreement and Interim Agreement. The EU's 2011 Progress Report on BiH notes many reforms by Republika Srpska to help align its laws and regulations with the *acquis*. For example, the Report observes, "A harmonisation unit in charge of screening Republika Srpska laws with the EU *acquis* was established, while other units dealing with EU integration and donor coordination were also established within the same ministry. The administrative capacity of Republika Srpska to monitor EU-related laws improved." The Report, by contrast, criticizes the Federation for a "lack of capacity for coordination of EU-related matters within the Federation government."

8. As part of the EU integration process, Republika Srpska is currently participating in an EU-sponsored Structured Dialogue on judicial reform. Republika Srpska is working to ensure that the courts and judicial appointment system in BiH are consistent with European standards and BiH's Dayton structure are free from political interference—including interference by the High Representative.

9. The High Representative's pervasive interference with courts in BiH is a key barrier to EU integration. The High Representative has directly and indirectly dictated the outcome of court proceedings and continues to displace the lawful authority of the judiciary. In the one notable instance in which the BiH Constitutional Court challenged the High Representative's unlawful acts, the BiH High Representative nullified the court's decision and decreed that any proceeding "which challenges or takes issue in any way whatsoever with one or more decisions of the High Representative, shall be declared inadmissible unless the High Representative expressly gives his prior consent."

10. Another barrier to EU integration is the BiH's system of judicial appointment and discipline, which was largely imposed on BiH by the High Representative. The system's centralized appointment of judges and prosecutors—even for the Entities—conflicts with the nearly universal practice of democratic federal states in Europe and elsewhere. Moreover, by giving a single body jurisdiction over both judges and prosecutors, the system violates widely recognized European Standards.

Restoring Constitutional and Democratic Governance to BiH

11. In order to restore constitutional governance and the rule of law to BiH, Republika Srpska seeks the prompt termination of the position of High Representative.

12. The High Representative continues to exercise and assert powers that radically exceed the scope of his legal authority as defined by Annex 10 of the Dayton Accords. Anyone who has read Annex 10 understands that it authorizes the High Representative as a coordinator of activities by the international community and a mediator between local parties. Instead of following this mandate, the High Representative has continued to issue decrees nullifying the lawful actions of BiH's constitutional authorities. The High Representative also continues to assert the right to impose extrajudicial punishments against individuals by simple decree—without any hearing or opportunity for appeal. The High Representative has even recently been asserting that the BiH Constitution gives him the power to “resolve political and procedural conflicts.” Anyone who has read the BiH Constitution knows that it does not confer any powers on the High Representative.

13. The High Representative also wrongly claims that he is the final authority regarding implementation of the entire Dayton Accords. In reality, the Dayton Accords unambiguously limit the HR's interpretive authority to the interpretation “in theater” of Annex 10, entitled, “Agreement on the Civilian Implementation of the Peace Settlement.” Annex 10 says, “The High Representative is the final authority in theater regarding interpretation of *this Agreement on the civilian implementation of the peace settlement.*” Recently, the High Representative has claimed, specifically, that the High Representative was created to interpret the BiH Constitution. Again, the High Representative's claims are completely contrary to the law; the Constitution quite plainly gives interpretive powers to the Constitutional Court, not the High Representative.

14. Another reason the High Representative's position must be terminated is his continued undermining of consensus building among BiH's Constituent Peoples. The High Representative's corrosive effect on BiH politics is currently on display in the impasse over the formation of a new BiH Council of Ministers. The SDP, the largest Bosniak party, is making maximalist demands, apparently in hopes that the High Representative will come to its aid. These hopes are not unreasonable; when the SDP earlier this year led the creation of a Federation-level government that the BiH Central Election Commission (CEC) declared illegal, the High Representative intervened to nullify the CEC's decision.

15. After 16 years of peace, there is simply no justification for the High Representative's continued presence in BiH. The most recent report on the activities of EUFOR attests that the security situation “remained calm and stable throughout the reporting period.” The EU, in its 2011 Progress Report for BiH, observes that both civil rights and economic and social rights are broadly respected and that BiH has continued to maintain good relations with its neighbors. Given these facts, the EU has recently decided to reduce EUFOR to 500-600 personnel and to close the EU Police Mission in BiH.

16. The High Representative, who violates the human and democratic rights of BiH citizens, hampers economic development, holds back EU integration, and undermines domestic consensus building, must also now close his offices.

II. BiH must have a decentralized system as guaranteed by Dayton.

A. There is growing international acceptance of the need for strong Entities.

17. Many in the international community have come to acknowledge that BiH must retain the decentralized constitutional structure established under the Dayton Accords.

18. The United States, in particular, has made clear recently that it rejects calls for centralization. In June, Assistant Secretary of State Philip Gordon said:

[T]he United States has repeatedly reaffirmed our support for the Dayton framework – one state, two vibrant entities, three constituent peoples – to reassure all the peoples of the country that their future is secure within Bosnia and Herzegovina, and that the goal is a more functional – not a more centralized – country, capable of meeting European integration requirements.

19. In a recent speech, U.S. Under Secretary of State William Burns said the United States supports “robust entities” and the “decentralized government structure established in the Dayton Agreement.”¹ Another top U.S. State Department official said BiH should be “not a more centralized state but a more functional state with two strong entities capable of governing at those levels.”²

20. As explained in section III, below, the European Union has made clear that BiH’s Dayton structure is consistent with BiH’s EU integration. Even the High Representative has begun to acknowledge that strong Entities are consistent with a functional state. In September, Ambassador Inzko said, “I think strong entities can exist in a strong functional state.”³

21. The Republika Srpska welcomes these acknowledgements that BiH’s Dayton structure must remain, but they must not be empty words. The international community must respect the decentralized system established in the Dayton Accords and resist calls to pressure BiH into centralization.

B. A decentralized BiH is guaranteed by the Dayton Accords and is vital to BiH’s continued stability.

22. The BiH Constitution, Annex 4 of the Dayton Accords, created a state that is now 16 years old. The BiH constitutional structure is the result of agreement among the three Constituent Peoples of BiH, codified by treaty, which not only ended the war among them, but established a framework wherein they might live together as citizens of the same state. This decentralized structure, while perhaps not perfect, takes account of the realities of BiH.

23. BiH was constituted by three Constituent Peoples with widely diverging political preferences. The protections established in the Dayton Constitution give members of each of

¹ Under Secretary of State William Burns: U.S.-EU Unfinished Business in the Balkans, 8 July 2011.

² Deputy Assistant Secretary Tom Countryman, Media Roundtable, 8 Feb. 2011 (available at zagreb.usembassy.gov/root/pdfs/countryman.pdf) (“Countryman Speech”).

³ *Inzko: There can be strong entities in a strong state; New OHR BL head appointed*, TANJUNG, 20 Sept. 2011.

BiH's Constituent Peoples the crucial assurance that neither the state nor any single Constituent People or political party will trample over their interests. The existence and stability of BiH is grounded in these protections.

24. The Constitution proclaims that BiH "shall consist of two Entities" and allocates competencies in a manner that creates a decentralized structure. The Constitution also provides important safeguards to uphold this principle and ensure that the interests vital to each of the constituent Peoples are respected.

25. There is no suggestion in the treaties that comprise the Dayton Accords, including Annex 4, that the Parties intended the BiH Constitution to be only temporarily binding. Although it may be possible to improve certain aspects of governance by amendment to the Constitution, amendments cannot be imposed, but must be the result of a constitutionally specified process that represents a consensus of the Constituent Peoples. Moreover, any changes that may eventually be made to the Constitution must protect the federal structure and mechanisms established by the Dayton Accords to safeguard the vital interests of the Constituent Peoples.

26. As the U.S. Deputy Assistant Secretary of State observed earlier this year, "Dayton is not only what ended the war, it is the centerpiece of the agreement that has made Bosnia Herzegovina possible until now."⁴

C. A decentralized BiH enhances governmental efficiency.

1. Decentralization improves efficiency, especially in states like BiH.

27. Decentralization is beneficial to governmental efficiency, and it has been used successfully in many countries. Government agencies can usually deliver services to citizens most efficiently when they are organized at the governmental levels closest to the citizens they serve.

28. Academic research shows that decentralization improves efficiency, especially in countries—such as BiH—in which political preferences vary widely by region.

29. A 2009 study by BAK Basel Economics, a Switzerland-based independent research institute, determined that decentralization benefits economic performance. The study, commissioned by the Assembly of European Regions ("AER"), a network of regions from 33 European countries, found that "decentralisation, amongst other factors, has a significantly positive influence both on the level and the dynamics of economic performance of countries and regions: The higher (ceteris paribus) the decentralisation indicator, the higher the economic performance."⁵ As AER Secretary General Klaus Klipp said at the study's release, "Centralism hammers development of countries at the cost of its citizens."⁶

⁴ Countryman Speech.

⁵ *From Subsidiarity to Success: The Impact of Decentralisation on Economic Growth, Part 2: Decentralisation and Economic Performance* (May 2009) (researched and produced by BAK Basel Economics, commissioned and published by Assembly of European Regions), available at www.aer.eu/fileadmin/user_upload/PressComm/

30. The AER study emphasizes that benefits of decentralization are greatest in countries where policy preferences differ based on region. According to the study:

The demand for public goods can differ substantially between regions because the preferences of citizens are formed by regional traditions. . . . The bigger the differences in regional preferences within a country, the greater the potential benefits from decentralisation. By supporting decentralisation different preferences of the population can be better incorporated into policy. This helps to ensure that an individual's needs will be considered more adequately.⁷

31. Thus, the need for a decentralized state structure is particularly acute in BiH, which has vast differences in policy preferences between citizens in the RS and the Federation.

32. There are many examples of successful, decentralized states. Although the BiH scheme is not identical to other constitutional systems, similar mechanisms of regional autonomy and protections that safeguard the interests of constituent peoples are found in successful democracies both inside and outside Europe. Federal structures in EU member states along with other democracies have been successful forms of governance for states that consist of diverse peoples. Examples include Spain, Belgium, Italy, Switzerland, and Canada, among many others.

33. Switzerland, of course, is widely known for the effectiveness of its government institutions. It protects the interests of its diverse language and dialect groups in part by vesting broad autonomy in 26 cantons. The autonomy of Swiss cantons is so broad that they are entitled to conclude international treaties.⁸

34. More and more governments in Europe have determined that decentralization, not centralization, increases governmental efficiency.

2. The effective performance of the RS Government highlights the benefits of centralization.

35. The decentralized nature of BiH has enabled the RS Government to enact, in the past several years, far-reaching market reforms designed to create the conditions for strong and sustained economic growth. The RS Government will continue promoting economic growth by instituting further market reforms and adhering to sound fiscal policy. This is particularly important because of the global economic crisis, to which the citizens of the RS and BiH are not immune.

Publications/AER_Study_on_decentralisation/Studies/BAK-Part2-FINAL%2Bcover.pdf (“From Subsidiarity to Success”), p. 4.

⁶ Valentina Pop, *Centralised states bad for economy, study shows*, EUObserver, May 18, 2009.

⁷ From Subsidiarity to Success, p. 15 (citations omitted).

⁸ *Id.*

36. International experts have recognized the RS Government's rapid progress on economic reform, especially in comparison to the Federation. For example, the International Monetary Fund in 2009 wrote, "In recent years, policies have been diverging between the two Entities, with the RS making steady progress on reforms and the Federation finding it difficult to mobilize action on needed reforms."⁹ Also in 2009, a European Commission staff report said, "Due to a more ambitious privatisation and structural reform agenda, the fiscal space was larger in the Republika Srpska than in the Federation."¹⁰ The think tank International Crisis Group wrote, "[T]he RS government is more efficient than the [Federation's], consumes a much smaller percentage of GDP and is implementing reforms more quickly. RS has also privatised many more state enterprises, an area where the [Federation] lags."¹¹ In a June 2011 report, the US Congressional Research Service, wrote, "Observers have noted that the Republika Srpska has moved more quickly on economic reforms and has enjoyed higher economic growth than the Federation due to a less cumbersome governing structure in the RS."

37. The World Bank's recent report, *Doing Business in Southeast Europe 2011*, singles out Banja Luka, the RS's largest city (and the only RS city it studied), as one of two cities in the region that improved the most since 2008.¹² In Banja Luka, the report says, "[b]usiness reforms were implemented in all 4 areas measured, resulting in significant benefits in terms of time and cost savings for entrepreneurs."¹³ In particular, the report praises improvements in efficiency from RS's 2010 Law on Construction and Urban Planning, a 2010 reform to the RS Law on Courts, and a 2009 reform to the RS Law on Court Fees.¹⁴ According to the report, the time it takes to start a business in Banja Luka has been cut by 33 days since 2008; it now takes 21 days.¹⁵ By comparison, in Sarajevo, in the Federation, it takes 50 days.¹⁶ The *Doing Business* report says Banja Luka "deserves special mention for recent improvements in contract enforcement."¹⁷ According to the report, the costs of enforcing a commercial claim in Banja Luka are now the lowest in the region.¹⁸

38. The RS's reforms are continuing. For example, in April, the RS National Assembly approved a new law that liberalizes the foreign investment law, harmonizes it with BiH law, and simplifies foreign investment procedures. In September, Republika Srpska held an investment conference that brought together at least 420 participants from North America, Europe, and

⁹ International Monetary Fund, Request for Stand-By Arrangement, Bosnia and Herzegovina, June 17, 2009, p. 4.

¹⁰ Proposal for a Council Decision providing macro-financial assistance to Bosnia and Herzegovina, Oct. 29, 2009, SEC(2009) 1459, p. 4.

¹¹ *Id.*

¹² World Bank, *Doing Business in South East Europe 2011*, pp. 2-3.

¹³ World Bank, *Doing Business in South East Europe 2011*, pp. 2-3.

¹⁴ World Bank, *Doing Business in South East Europe 2011*, pp. 3, 21, 35

¹⁵ World Bank, *Doing Business in South East Europe 2011*, p. 16.

¹⁶ World Bank, *Doing Business in South East Europe 2011*, p. 16.

¹⁷ World Bank, *Doing Business in South East Europe 2011*, p. 35

¹⁸ World Bank, *Doing Business in South East Europe 2011*, p. 34

Asia.¹⁹ The conference showcased specific investment opportunities and highlighted Republika Srpska's commitment to work with investors and further strengthen the competitiveness of its economy.

39. The RS will continue to build on the success of earlier reforms, which have helped give the RS the highest economic growth rates, lowest unemployment, and most competitive economy in BiH. The RS's market reforms have fueled economic growth and pushed unemployment lower. From 2006 to 2010, the RS's per capita GDP grew 28% despite a contraction in 2009 due to the global economic crisis. From 2006 to 2010, according to the International Labor Organization, unemployment in the RS dropped by almost five percentage points.²⁰ The RS Government's market reforms have also helped to boost wages in the RS. From 2006 to 2010, average wages in the RS jumped 51 percent.²¹ After suffering the effects of the global economic crisis, the RS economy has resumed its growth. The RS economy emerged from recession in early 2010, and the latest data indicate that the recovery has gathered strength in 2011. The RS's GDP grew 0.8% in 2010 and registered year-over-year gains of 1.6% and 1.7% in the first and second quarters of 2011, respectively.

40. The RS could not have made and benefited from the reforms of the past several years without BiH's decentralized structure. The Federation has taken an entirely different course than the RS in recent years. It has chosen not to enact economic reforms, pursue privatization or impose fiscal restraint, and this has resulted in an ongoing financial crisis. The Federation's choice not to reform highlights the dangers of proposals to transform BiH into a unitary state with power centralized in Sarajevo. In a centralized state, the policies and choices of the Federation, with its larger population, would dominate, and the types of economic reforms the RS has enacted would be in grave jeopardy. It is the decentralized structure of the Dayton Constitution that has given the RS the freedom to enact its economic reforms and create the conditions for lasting economic prosperity.

D. The poor performance of the BiH government as it has accumulated greater powers highlights the dangers of centralization.

1. Joint BiH institutions are rife with waste, abuse, and inefficiency.

41. The High Representative's concerted effort to increase the power of the central government in Sarajevo has led to tremendous government waste and inefficiency. Donor and taxpayer funds have been used to create and fund unneeded BiH-level agencies that supervise and interfere in functions being performed at the Entity or Canton levels. BiH-level agencies imposed by High Representatives' decrees, such as the Indirect Taxation Authority, have been used to unfairly redistribute funds from the citizens of the RS to the citizens of the Federation and the salaries of unneeded BiH-level officials.

¹⁹ Republika Srpska Government, *Held Investment Conference*, (available at www.investsrpska.net/index.aspx?SP=newsComplete&ItemID=1051).

²⁰ Database of Economic Indicators of the Republika Srpska, Main Economic Indicators, Comparative Review, available at www.irbrs.net/statistika.aspx?tab=2&god=2009&lang=eng ("Comparative Review of Economic Indicators").

²¹ Comparative Review of Economic Indicators.

42. Even a 2011 report by an advisor to Ambassador Inzko says that approximately 60% of the budget of the BiH government “is spent on the upkeep of nonfunctional or ineffective government apparatus.”²²

43. BiH-level agencies refuse to share other key information with the RS. For example, SIPA often fails to share with the RS vital information about terrorist threats.

2. BiH-level agencies have operated without transparency or accountability.

44. In order for BiH to move toward EU accession, the joint institutions in Sarajevo need to dramatically improve their transparency. EU *acquis* standards require fiscal transparency, as they should. To ensure that the BiH government is accountable, the citizens of BiH must have comprehensive information about the budgets of BiH institutions. Unfortunately, the budgets of BiH government institutions are anything but transparent. In the International Budget Partnership’s 2010 Open Budget Survey, BiH ranked 21st out of 22 European countries evaluated.²³ This ranking was based solely on the amount of information the central BiH government provides about its budget and financial activities.²⁴ In its most recent report on BiH, the NGO said the BiH government’s policies make it “challenging for citizens to hold the government accountable for its management of the public’s money.”²⁵

45. This failure of transparency is also a breach of BiH’s affirmative legal obligations under international law. BiH is a signatory to the International Covenant for Civil and Political Rights (ICCPR) which builds on article 19 of the Universal Declaration of Human Rights (1948) in establishing the right to freedom of information.²⁶ The ICCPR is also specifically identified in the BiH Constitution as one of the human rights instruments by which the state’s founding was inspired and to which the government of BiH is bound.²⁷

46. The RS Government will work to improve transparency by BiH-level institutions in order to improve government accountability and move BiH forward on the path toward EU accession. The RS Government has a legal right to demand transparency and accountability from BiH government bodies. All existing BiH government agencies should transparently reveal how they are spending taxpayers’ and international donors’ funds. BiH agencies should disclose their finances and activities and submit to questioning regarding their effectiveness.

III. EU Accession

²² Freedom House 2011 Report

²³ http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-English.pdf

²⁴ <http://internationalbudget.org/wp-content/uploads/2011/04/Bosnia-OBI2010QuestionnaireFinal.pdf>

²⁵ http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-BosniaHerzegovina_1.pdf

²⁶ International Covenant for Civil and Political Rights, 999 UNTS 171 and 1057 UNTS 407/ [1980] ATS 23, art. 19 (1967) .

²⁷ General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Accords) Annex 4: Constitution, Preamble; Annex 1(7) (1995).

47. The RS Government supports BiH's European integration and is working toward the goal of BiH's eventual membership in the EU. Decentralized government is consistent with EU accession.

48. BiH's decentralized Dayton structure is entirely consistent with membership in the EU. As a top EU official said earlier this year, "BiH must be in a position to adopt, implement and enforce the laws and rules of the EU. *It is up to Bosnia and Herzegovina to decide on the concept which will lead to this result.*"²⁸ EU Special Representative Peter Sørensen, when asked recently whether BiH's Entities would need to give up their sovereignty, emphasized that the EU is "supporting BiH under the current constitutional order."

49. No EU member or candidate state has ever been required to restructure its government from a decentralized federal system to a centralized one in order to qualify for EU accession. Nor is BiH required to do so. The fact that decentralized systems are consistent with the obligations of membership in the EU is demonstrated each day by the current EU members, such as Germany, Spain, Belgium, and Italy.

50. BiH's decentralized structure also reflects the core EU principle of subsidiarity, according to which "decisions are taken as closely as possible to the citizen." Moreover, the decentralized structure of the BiH Constitution is consistent with the widespread trend of decentralization in the EU and worldwide.²⁹

51. In order to comply with its Stabilization and Association Agreement and Interim Agreement with the EU, it is essential that BiH amend its Constitution to comply with a 2009 decision of the European Court of Human Rights—the so-called "*Finci* decision". The Republika Srpska has repeatedly expressed its readiness to amend the Constitution for this purpose. It hopes an agreement on such an amendment can be reached without further delay.

52. With regard to more far-reaching Constitutional changes, Republika Srpska will be vigilant to ensure that the accession process is not misused by local and international parties as a pretext for making drastic changes that are unnecessary for accession and detrimental to the RS and BiH as a whole. The decentralized BiH structure established at Dayton is consistent with EU accession, as the EU has stated, and it must be protected and strengthened.

53. Any constitutional amendments that may be required for EU membership must be the result of a transparent and lawful process and a domestic consensus achieved without foreign interference. Moreover, any such constitutional changes must retain the fundamental protections for Entity autonomy and the equality of BiH's Constituent Peoples guaranteed by the BiH Constitution (Annex 4 of the Dayton Accords). The EU has affirmed that this is acceptable in

²⁸ Comments of Stefano Sannino, Deputy Director-General of EU Directorate General for Enlargement, Jan. 24, 2011, in NEZAVISNE NOVINE, *Stefano Sanino: Bh. lideri nemaju političku kulturu*, Jan. 24, 2011.

²⁹ See Committee on the Environment, Agriculture and Local and Regional Affairs of the Council of Europe Parliamentary Assembly, *Regionalisation in Europe*, Sept. 14, 2007. According to this Council of Europe study, "Most of the larger countries of Europe have a well-developed sub-state level of government formed of regions enjoying considerable autonomy and legislative powers." (p. 8) The study also noted, "Regional autonomy must be perceived as a means of enhancing democracy and giving it a firmer foothold in our countries, in parallel with the European unification process and against the background of globalisation." (p. 9)

terms of meeting EU accession requirements, bearing in mind the many forms of democratic governance structures that exist among EU members today.

A. Republika Srpska is leading the way on meeting the EU’s *acquis*; it is far ahead of the Federation.

54. As EU enlargement officials report, the RS has significantly outpaced the Federation in achieving the reforms required by the Stabilization and Association Agreement and Interim Agreement.

55. The EU’s 2011 Progress Report on BiH takes note of many reforms by Republika Srpska to help align its laws and regulations with the *acquis*. For example, the Report observes, “A harmonisation unit in charge of screening Republika Srpska laws with the EU *acquis* was established, while other units dealing with EU integration and donor coordination were also established within the same ministry. The administrative capacity of Republika Srpska to monitor EU-related laws improved.” The EU report also praises the RS National Assembly for having “improved the legislative process.”³⁰ The report goes on to note, “The EU Integration Committee is in place. Moreover, the Republika Srpska Constitution was amended to increase the number of Deputy Speakers at the RSNA up to four. This allows “others” in addition to the three Constituent People to be elected to this position.”³¹

56. By contrast, the EU’s Progress Report criticized the Federation for a “lack of capacity for coordination of EU-related matters within the Federation government.” “The lack of capacity for coordination of EU-related matters within the Federation government and between the Entities and the State-level remains an issue of concern.” The Progress Report cites many fewer steps toward compliance with the *acquis* by the Federation than by Republika Srpska.

B. Judicial Reform

57. In close cooperation with the EU, the RS Government is currently taking part in an EU-sponsored Structured Dialogue on judicial reform, which is an important part of the accession path. The judicial system of BiH, which was—for the most part—imposed by decrees of the High Representative, needs significant changes. As part of the Structured Dialogue, the RS Government is working with the EU to develop reforms that will ensure that the courts and the judicial appointment system meet European standards, respect BiH’s Dayton structure, and are independent of political interference—including interference by the High Representative.

1. Judicial Independence

58. Among the major barriers to EU integration is the lack of judicial independence caused by the High Representative’s pervasive interference with the justice systems of BiH and the Entities. The High Representative has directly and indirectly dictated the outcome of court proceedings and displaced the lawful authority of the judiciary. The High Representative’s

³⁰ EU 2011 Progress Report, p. 8.

³¹ EU 2011 Progress Report, p. 8.

undue influence over the judiciary is the result of a number of factors, including his assertion of the authority to dismiss unilaterally any judge or other official in BiH.

59. The High Representative's domination of the BiH Constitutional Court is reflected in the fact that although the Court has purported to review certain actions taken by the High Representative, these reviews have been conducted on the tacit understanding that the Court would always confirm the High Representative's acts. In the one notable instance in which the Constitutional Court held the actions of the High Representative to be unlawful (the summary dismissals of officials without any hearing or right of review), the High Representative prohibited enforcement of the decision and further decreed that henceforth:

any proceeding instituted before any court in Bosnia and Herzegovina, which challenges or takes issue in any way whatsoever with one or more decisions of the High Representative, shall be declared inadmissible unless the High Representative expressly gives his prior consent.

60. In addition, the High Representative has taken—and continues to take—actions that displace the lawful jurisdiction of the courts in BiH. For example, earlier this year the High Representative “suspended” the 2010 RS Law on State Property until such time as the BiH Constitutional Court rules on a challenge to the law. In so doing, he usurped the BiH Constitutional Court's authority to decide whether the law should be suspended during the pendency of the case.

61. In order to establish the independence of the judiciary in BiH, the RS Government is working with the EU to develop rules that would:

- Eliminate the power asserted by the High Representative to overrule a decision of any court of BiH or to prohibit the courts in BiH from hearing claims that challenge the legality of the High Representative's actions;
- Effectively protect judges in all courts in BiH from removal, demotion or other retaliatory actions by the High Representative;
- Prohibit the High Representative from taking actions that displace the lawful jurisdiction of the courts in BiH;
- Prohibit *ex parte* communication between the judges of any court and the High Representative or officials of the Office of the High Representative and establish a system for effectively eliminating such communications in practice; and
- Eliminate the High Representative's power to control or influence which individuals are appointed to judicial positions.

2. System of Judicial Appointment and Discipline

62. Another key barrier to EU integration is the inconsistency of BiH's regime of judicial appointment and discipline with European and other international standards. BiH's High Judicial and Prosecutorial Council ("HJPC"), which was created by the High Representative, must be reformed significantly in order for BiH to meet EU and international standards.

a) Background of the HJPC regime

63. The High Representative began imposing the HJPC regime on BiH almost 10 years ago and, ever since, has used it to undermine judicial independence. Through a series of extralegal decrees in 2002, the High Representative established nominally separate HJPCs for BiH, the Federation, and Republika Srpska. Again acting without any legal authority, the High Representative handed down decrees amending the Entity constitutions in order to hand power to the HJPCs he was creating. With another illegal decree, the High Representative appointed all of the original members of the HJPCs. Using still more extralegal orders, the High Representative fired all of the judges in BiH—including the many judges who had lifetime tenure. The High Representative then used his hand-picked HJPCs to fill the newly vacant judicial positions.

64. In 2004, a year in which the High Representative summarily banned from public employment 73 individuals—including members of the BiH Parliamentary Assembly—the High Representative compelled the Parliamentary Assembly to approve a law merging the three nominally separate councils into a single HJPC. Three days later, the High Representative issued yet another illegal decree that appointed almost all of the new HJPC's members. The High Representative continues to violate judicial independence through his influence on the HJPC, including his ongoing imposition of a foreign member on the HJPC, without any basis in law.

65. Apart from these abuses of the rule of law, the HJPC regime, as explained below, is inconsistent with European and other international standards. The regime must be reformed to correct these glaring inconsistencies.

b) International standards require Entity councils for Entity judges and prosecutors.

66. The most essential reform for the HJPC regime is for each Entity to have its own HJPC for the appointment and discipline of its own judges and prosecutors. The existing HJPC regime conflicts with the nearly universal practice of democratic federal states in Europe and around the world.

67. It is almost unheard of in a democratic federal state for a federal unit's own judges and prosecutors to be appointed by a central government institution. Throughout Europe and the world, virtually every democratic federal state rightly leaves to federal units the authority to appoint their own judges and prosecutors. In federal states such as Germany, the United States, and Australia, centralized appointment of judges would be unthinkable. It is even more outrageous in BiH, which was established under Dayton as a highly decentralized state. The HJPC's authority under the constitutions of the Entities is based solely on constitutional amendments that were illegally imposed by decrees of the High Representative.

68. Entity councils would be much better qualified to select judges and prosecutors for their Entities than is a centralized HJPC. Yet the HJPC regime denies Republika Srpska the authority to appoint its own judges and prosecutors. It does not even assign the appointment of Republika Srpska judges and prosecutors to individuals from Republika Srpska. Remarkably, the current regime also gives individuals from the Federation a dominant role in the discipline of Republika Srpska judges and prosecutors. The HJPC regime must be reformed to correct these indefensible defects, which conflict with the consistent practice of democratic federal states.

c) European standards require separate bodies for judges and prosecutors.

69. By giving a single body jurisdiction over both judges and prosecutors, the HJPC regime violates widely recognized European Standards. In its 2010 *Report on European Standards as regards the Independence of the Judicial System*, the Venice Commission wrote, “If prosecutorial and judicial councils are a single body, it should be ensured that judges and prosecutors cannot influence each others’ appointment and discipline proceedings.”

70. The nomination process as provided for in the HJPC law is completely inconsistent with the Venice Commission’s admonition. Because the same HJPC appoints both judges and prosecutors, the HJPC that appoints each judge has at least five prosecutors and the HJPC that appoints each prosecutor has at least five judges. Nomination sub-councils also include judges and prosecutors without regard to whether it is a judge or prosecutor that is to be nominated. The HJPC system, thus, ensures that judges and prosecutors will *always* influence each other’s appointment proceedings. Similarly, the HJPC disciplinary process includes prosecutors sitting in judgment of judges and vice versa. This system utterly fails to ensure, as the Venice Commission urges, “that judges and prosecutors cannot influence each others’ . . . discipline proceedings.” Moreover, the HJPC law, by treating judges and prosecutors alike, ignores what the Venice Commission’s 2010 Report on European Standards calls the “essential difference as to how the concept of independence or autonomy is perceived when applied to judges as opposed to the prosecutor’s office.”

d) European standards require changes to the composition of the HJPCs.

71. The HJPC’s extraordinary composition also violates European standards. On many occasions, bodies of the Council of Europe have emphasized the need for at least half of members of councils for the judiciary to be judges. Yet only six out of the HJPC’s 16 members are judges, and only five seats are reserved for judges.

72. The Council of Europe has also strongly counseled that a qualified majority should be required for parliamentary appointments to councils for the judiciary. Yet the HJPC law, again ignoring European standards, does not require a qualified majority for appointments to the HJPC by the BiH House of Representatives.

73. Another way in which the composition of the HJPC conflicts with European standards is the role of the foreign member who continues to be imposed on the HJPC through extralegal decrees of the High Representative. The rule of law is one of the three fundamental principles of

the Council of Europe and is a cherished principle in the European Union. The imposition of foreign HJPC members offends the rule of law not only because the High Representative lacks the legal authority to decree changes to BiH institutions, but also because such membership conflicts with the HJPC law's explicit provisions governing the HJPC's membership. The role of the HJPC's foreign member, imposed by a foreign diplomat in defiance of the European rule of law standards, must end.

IV. Restoring Constitutional and Democratic Governance

74. For the sake of BiH Sovereignty and constitutional governance and the rule of law, the RS Government urges the rapid closure of the Office of High Representative and termination of the position of High Representative.

A. The High Representative vastly exceeds its Dayton authority.

75. This year, the High Representative has continued to act unlawfully by dramatically exceeding his mandate under Annex 10 of the Dayton Accords and violating the human and political rights of BiH citizens. The High Representative's scope of authority under Annex 10, as summarized by Matthew Parish, a former OHR attorney, is to be "a manager of the international community's post conflict peace building efforts, and a mediator between the domestic parties."³² In defining the High Representative's legal authority, Annex 10 uses such verbs and phrases as "monitor," "promote," "coordinate," "facilitate," "participate in meetings," "report," and "provide guidance." Annex 10 does not include words such as "enact," "suspend," "nullify," "impose," "decree," "punish," "ban," or any other words that would suggest the authority to make decisions binding on BiH, the Entities, or their citizens—and certainly not decisions that violate human and political rights.

76. The so-called "Bonn powers" originate from a declaration made by the Peace Implementation Council ("PIC"), an *ad-hoc* collection of countries, at its conference in Bonn, Germany, held two years after Dayton. The PIC did not purport in its declaration to grant additional authority on the High Representative; nor could it, given its absence of legal authority. Rather, the PIC stated that it "welcomes the High Representative's intention to use his final authority in theatre regarding interpretation [of Annex 10] to make binding decisions" on certain issues. This self-serving, self-claimed expansion of power by the High Representative came to be known as the "Bonn powers." As Parish, the former OHR attorney, has recognized, the PIC's Bonn declaration "ran quite contrary to the spirit and text of Annex 10 to the [Dayton Accords], and was *legally quite indefensible*."³³ Neither the High Representative nor the PIC, as a matter of law, had authority to expand the High Representative's limited powers granted under the Dayton Accords.

77. The RS Government continues to urge everyone to read Annex 10 and confirm for themselves that there is no provision that conceivably could be interpreted to give the High

³² Matthew T. Parish, *The Demise of the Dayton Protectorate*, 1 J. INTERVENTION AND STATEBUILDING, Special Supp. 2007, p. 13.

³³ *Id.*, p. 14 (emphasis added).

Representative the extraordinary power to make laws or punish individuals by decree. Indeed, no official in any state governed according to the rule of law has such power.

78. The Bonn powers have so little legal credibility that even High Representative Inzko recently said, “I am not a great supporter of the Bonn powers.”³⁴ But that has not stopped him from exercising them and continuing to assert them. It is long past time for the international community to demand that the High Representative abandon claims to the Bonn powers and observe the limits of his Dayton authority.

B. The High Representative has no role under the BiH Constitution.

79. Faced with the stark reality that Annex 10 does not in any way support the Bonn powers, the High Representative appears to be casting about for new rationalizations.

80. The High Representative lately has claimed that his powers derive from the BiH Constitution itself. In an August speech in Tokyo, the High Representative argued, “[T]he constitutionally mandated role of the OHR remains essential” He explained, “Bosnia and Herzegovina is not a protectorate but a sovereign state that, for clear historical reasons, provides in its constitution for an institution [the OHR] that resolves political and procedural conflicts.”³⁵ Anyone who is familiar with the BiH Constitution knows that the High Representative is given no powers or responsibilities in the BiH Constitution, Annex 4 of the Dayton Accords.

C. The High Representative’s recent claims about his interpretive authority are without legal basis.

1. The High Representative’s interpretive authority begins and ends with Annex 10.

81. The Dayton Accords unambiguously limit the HR’s interpretive authority to the interpretation “in theater” of Annex 10, entitled, “Agreement on the Civilian Implementation of the Peace Settlement.” Annex 10 says, “The High Representative is the final authority in theater regarding interpretation of *this Agreement on the civilian implementation of the peace settlement.*” (emphasis added) In spite of the clarity of the Dayton Accords on this point, the HR, through dogged repetition, has persuaded some that he is the “final authority” regarding the Dayton Accords as a whole.

82. The High Representative must know this claim is false, but he nonetheless continues to repeat it. The plain language of Annex 10 and Security Council Resolution 1031 prove that that the High Representative has no interpretive authority over the Dayton Accords as a whole. To the contrary, the Dayton Accords designate other specific mechanisms for interpretation of many of its other provisions. For example, Annex 1A, the Agreement on the Military Aspects of the Peace Settlement, provides that “the IFOR Commander is the final authority in theatre regarding interpretation of this agreement on the military aspects of the peace settlement.” Other examples

³⁴ Xinhua, UN envoy refuses to force Bosnian politicians to form government, 16 Feb. 2011.

³⁵ Speech by High Representative and EU Special Representative Valentin Inzko at the Japan Institute of International Affairs, 23 Aug. 2011.

can be found in Annexes 1B, 2, 3, 4, 5, 6, 7, and 8. Thus, in addition to Annex 10, the rest of the Dayton Accords makes clear that the High Representative has no interpretive authority over the Dayton Accords outside of Annex 10.

2. The High Representative has no authority to interpret the BiH Constitution

83. The High Representative recently has been making the outlandish claim that the Dayton Accords created the High Representative to “interpret the constitution” of BiH. In a 10 May 2011 speech to the U.S. Institute of Peace in Washington, the High Representative described “negative outcomes” in BiH and argued:

The EU, or BiH for that matter, does not have the appropriate tools to deal with these kinds of difficulties. This is why we have had Annex 4 in Dayton, which is the constitution, but we also have Annex 10—the High Representative—to *interpret this constitution* because the authors of this constitution at Dayton were aware that the constitution has quite a few legal gaps; this is why the Office of the High Representative was also established.³⁶

84. This was no mere slip of the tongue. In an interview two days later, Envoy Inzko said the BiH Constitution “has its flaws. For instance, there is no supreme court. *That is why the office of the high representative was created: to act as a broker in order to interpret the constitution.*”³⁷

85. The High Representative’s attempt to unilaterally rewrite the Dayton Accords to appoint himself as interpreter of the BiH Constitution suggests a casual contempt for the rule of law. As the High Representative knows, the BiH Constitution, Annex 4 of the Dayton Accords, assigns the BiH Constitutional Court to “uphold this Constitution.”³⁸ The Constitution does not even mention the High Representative except for a single reference in its annex on transitional arrangements (The annex designated the High Representative to chair meetings of the Joint Interim Commission, a temporary body that was empowered to do nothing more than “discuss practical questions” and “make recommendations and proposals.”)³⁹ Plainly, the BiH Constitution gives interpretive powers to the Constitutional Court, not the High Representative. Even a cursory review of the Court’s jurisdiction in Article VI, Section 3, shows there is no basis for the High Representative’s judicial pretensions.

³⁶ High Representative Valentin Inzko, Speech to U.S. Institute for Peace, 10 June 2011 (emphasis added). An audio recording of Envoy Inzko’s speech and a question-and-answer session is available at <http://www.usip.org/newsroom/multimedia/audio/deep-political-crisis-in-bosnia-and-herzegovina-how-can-the-international->. The version of the High Representative’s 10 June 2011 speech found on the OHR website (http://www.ohr.int/ohr-dept/presso/presssp/default.asp?content_id=46018) omits these remarks.

³⁷ Deutsche Welle, UN envoy Inzko calls planned Bosnian Serb referendum a 'catastrophe', 12 May 2011 (emphasis added).

³⁸ BiH Constitution, Art.VI (3).

³⁹ BiH Constitution, Annex II(1).

86. Nor does Annex 10 even suggest that the High Representative could substitute or displace the Constitutional Court as in interpreter of the Constitution. In fact, Annex 10 does not so much as mention the Constitution. As explained above, the interpretive authority Annex 10 gives to the High Representative is explicitly limited to interpreting Annex 10, itself, and does not extend to any other part of the Dayton Accords.

3. The High Representative's authority to interpret Annex 10 is subject to law.

87. The High Representative also pretends that his interpretive authority in Annex 10 is not subject to the rule of law. In reality, the High Representative's authority to interpret Annex 10, which is an international treaty, or to take any other action is circumscribed by his mandate in Annex 10, general international law and other sources of applicable law. His authority is limited, for example, by his obligation under the Vienna Convention on the Law of Treaties to interpret Annex 10 "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

88. The High Representative violates this obligation of good-faith interpretation by claiming that Annex 10 makes him the final authority to interpret the whole of the Dayton Accords. The High Representative also breaches his good-faith obligation by continuing to claim that Annex 10 gives him autocratic powers. If one reads Annex 10, the conclusion is inescapable that it does not give the High Representative any legislative, executive, or judicial powers. It cannot, in good faith, be interpreted to empower the High Representative to decree laws, summarily punish individuals, or otherwise act as a foreign dictator over BiH and its citizens.

89. In addition to the international law obligation of good faith, the High Representative's interpretations of Annex 10 must be consistent with other sources of law, including the BiH Constitution and the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights, to which BiH is a signatory. The High Representative's assertion of the authority to rule BiH by decree is blocked, as a matter of law, by the democratic rights mandated by the BiH Constitution and the ICCPR. The High Representative's summary punishment of individuals without a hearing or appeal flagrantly violates the due process and other protections of the BiH Constitution, the ICCPR, and the European Convention.

4. The High Representative cannot be the final judge of his own conduct.

90. When the BiH Constitutional Court ruled unanimously that the absence of a remedy for citizens punished by the High Representative violated the European Convention, the High Representative issued a decree purporting to nullify the decision and ordering all judges to dismiss any proceeding that "challenges or takes issue in any way whatsoever with one or more decisions of the High Representative." This lawless decree, which the High Representative continues to enforce, illustrates what happens when a governing authority appoints himself as the final interpreter of the laws which govern his conduct. The High Representative's claim to be the final judge of his own powers will never be legally valid no matter how many times he repeats it.

D. The High Representative must abandon the claimed authority to hand down

extrajudicial punishments.

91. In June, the High Representative lifted some of the extrajudicial punishments that his predecessors had unilaterally imposed on individuals. This is a small, positive step, but it far from what is required to correct the High Representative's serious and continuing abuse of human rights and the rule of law.

92. The High Representative's June decisions don't undo the damage that these extrajudicial punishments have inflicted on the targeted individuals and their families. Many BiH citizens today remain banned from public life or continue to suffer under other illegally decreed punishments.

93. The High Representative continues to assert that he has the power to punish BiH citizens without hearing or appeal, simply by handing down a decree. This is unacceptable in a free society.

E. The High Representative has undermined the formation of the BiH Council of Ministers.

94. As in many democratic countries of late, politics at the BiH level are in something of a political deadlock. Unlike the problems of other countries, BiH's predicament is caused, in large part, by a foreign diplomat's illegal interference in its political system and the ever-present possibility that he will interfere again. After the October 2010 elections, the Republika Srpska soon formed a new coalition government, which has been governing effectively ever since. But at the levels of BiH and the Federation, government formation has been extremely difficult. A new BiH government has yet to be formed to replace the sitting one. The Federation has a new government, but it was declared to have been illegally formed by the BiH Central Election Commission (CEC), and it remains in place only because of an illegal intervention by the High Representative on behalf of his political allies. To understand why there is still no new BiH government, it is instructive to examine the formation of the Federation government.

95. After the October 2010 elections, representatives of the main Bosniak parties and the main Croat parties were unable to reach an agreement on a coalition to form the Federation government. The leaders of the SDP, the largest Bosniak-dominated party, knowing they had an ally in the High Representative, were apparently disinclined to compromise because they expected their ally, the High Representative, to come to their aid. They were right.

96. On March 17, the SDP, in the words of the International Crisis Group, "formed a Federation government in violation of the entity constitution and against the advice of the state-level Central Election Commission."⁴⁰ The Central Election Commission ("CEC"), consistent with its statutory authorization, annulled the illegal formation of the Federation government. The High Representative, however, without any legal authority, responded to the CEC's ruling by handing down a decree nullifying it. The High Representative's decree completely disregards the rule of law. As the President and CEO of the International Crisis Group wrote in a May 2, 2011, letter to EU officials:

⁴⁰ International Crisis Group, Bosnia: State Institutions Under Attack, 6 May 2011, p. 1.

The 27 March decision by the High Representative to suspend the ruling by the Central Election Commission that annulled formation of the Federation government, and the consequent interference with the right to appeal that ruling, *have undermined state bodies and the rule of law.*⁴¹

97. The Federation government that had been declared unlawful by the CEC remains in place today because of the High Representative's unlawful intervention on behalf of his allies.

98. The High Representative's intervention in the formation of the Federation government has drastically complicated the formation of the new BiH government. The major Serb and Croat parties are in general agreement on the distribution of ministerial posts in the new government. These parties would continue the allocation of ministerial posts according to a rotation principle. That means that the next chairman of the Council of Ministers would come from one of the Croat parties.

99. However, the largest Bosniak party, the SDP, is making maximalist demands and, once again, is showing little inclination to compromise. The most likely reason is that the SDP is hoping the High Representative will again come to its aid, much as it did during the formation of the Federation government. Without the High Representative looming, the parties would be in a position to reach agreement on the formation of a new government. Unfortunately, the High Representative's presence is continuing to warp politics and undermine coalition building in BiH.

F. The High Representative hampers economic development in BiH.

100. The High Representative, in addition to violating the human and political rights of BiH citizens, has had a corrosive effect on BiH's economy. By its very existence, the OHR deters foreign investment because it brands BiH as still being an unstable post-conflict state, with little legal certainty because laws can be changed simply by decree. The High Representative frequently gives speeches and interviews in which he denigrates BiH and the Dayton system as dysfunctional. For example, the High Representative's August speech in Tokyo outlined at length BiH's perceived faults and the Dayton Constitution's alleged dysfunction.⁴² Exaggerating political problems in BiH makes sense, from the High Representative's perspective, because as long as he can convince the international community that BiH—despite its well-established democratic institutions—is incapable of governing itself, his position is secure.

101. In addition to the negative image created by the OHR, the OHR's actions and policies retard economic growth, market reform, and foreign investment throughout BiH. The OHR has caused considerable economic loss and damage to BiH, its Entities and citizens.

⁴¹ Letter from Louise Arbour, President and CEO of International Crisis Group to PIC Steering Board Ambassadors, 2 May 2011 (emphasis added).

⁴² Speech by High Representative and EU Special Representative Valentin Inzko at the Japan Institute of International Affairs, 23 Aug. 2011.

102. A recent example is a debacle caused by a series of OHR decrees regarding the sale of electricity to the Brčko District of BiH. The decrees, which anti-competitively tried to divide up the district's electricity market, directly caused a major electricity price increase in Brčko. OHR then used Brčko public money to defray the unnecessary electricity price increase caused by OHR. The European Commission condemned the electricity decrees as violating the Energy Community Treaty, BiH's Stabilization and Association Agreement with the EU, and other EU standards.

103. The High Representative has also undermined economic growth by continuing his ban on transfers of state property and forbidding the BiH State Property Commission from granting exemptions to the ban in the RS, even while exemptions are permitted in the Federation. In September, the Commission, a joint body with representatives from BiH and the Federation, and Republika Srpska, wrote to the High Representative asking him to amend his January 2011 decree that had suspended the 2010 RS Law on State Property. The Commission asked for an amendment that would address his decree's unequal treatment of the Federation and the RS by allowing the Commission to grant exemptions in the RS to the High Representative's earlier ban on ownership transfers of state property. Such exemptions are allowed in the Federation and Brčko, but have been forbidden in the RS since the High Representative's January 2011 decree. Despite a direct request from a joint BiH institution, the High Representative declined to amend his decree. His new report to the Security Council takes note of this denial but fails to make any attempt to justify it.

G. The High Representative's prevents EU integration.

104. The High Representative's continued presence in BiH retards BiH's progress toward EU integration. The EU has repeatedly stated that even application for EU membership cannot occur until after OHR closure. The OHR remains the major obstacle to fulfillment of the Copenhagen Criteria for EU accession. Its actions are contrary to applicable human and political rights treaties and economic treaties. The RS Government thus seeks OHR's closure in order to further progress in accession to the EU.

H. There is no justification for the High Representative's continued role in BiH.

105. BiH has been at peace for 16 years. There is no basis for the continued presence of the High Representative, especially a High Representative who asserts the Bonn Powers.

106. Military assessments continue to refute any suggestion that the situation in BiH is a threat to international peace and security. According to the latest report on the activities of EUFOR submitted by the EU to the Security Council, "[t]he overall security situation in BiH remained calm and stable throughout the reporting period. Although nationalistic rhetoric persisted it had no impact on the safe and secure environment."⁴³ Earlier reports, likewise, have consistently emphasized the stable and calm security situation in BiH.

⁴³ Report by the High Representative of the Union for Foreign Affairs and Security Policy on the activities of the European Union Military Mission (EUFOR) in Bosnia and Herzegovina (BiH), 14 March 2011 (covering the period of 1 September 2010 to 28 February 2011) at para. 9.

I. The EU's 2011 Progress Report for BiH observes that both civil and political rights and economic and social rights "are broadly respected." The report also notes, "Overall, Bosnia and Herzegovina's cooperation with the ICTY has continued to be satisfactory and a number of significant steps have been taken to process war crimes and to find the missing persons from the 1992-1995 conflict. The country has continued to participate actively in regional cooperation and to maintain good neighbourly relations."

107. The EU's recent decisions reflect its appreciation of BiH's longstanding stability. Last month, EU foreign ministers agreed to dramatically reduce the size of the EU-led military force in BiH (EUFOR). Meeting in Luxembourg, the EU ministers agreed to cut the size of the force from its current level of approximately 1,300 to 500-600.⁴⁴ Swedish Foreign Minister Carl Bildt, a former High Representative in BiH said that reducing the size of the mission would not destabilize BiH.⁴⁵ He told reporters, "I don't think the problem in Bosnia is of a military nature; it is of a political nature."⁴⁶ The EU foreign ministers also agreed to shift the focus of EUFOR to capacity building and training.⁴⁷ In addition, the EU in July decided to bring the EU Police Mission in BiH to a close.⁴⁸

I. Conclusion

108. The RS Government will continue working for the long-overdue departure of the High Representative. In the meantime, the RS Government's duty to observe the BiH and RS Constitutions and domestic and international law compels it not to recognize or enforce decisions by the High Representative that conflict with applicable law or the Government's responsibility to RS citizens.

V. Conclusion to the Sixth Report.

109. Republika Srpska is committed to the goals outlined in this Report. It will be steadfast in ensuring that BiH has the decentralized constitutional system guaranteed by the Dayton Accords. It will work diligently toward the advancement of EU integration for BiH. Finally, Republika Srpska will not falter in its commitment to restoring constitutional and democratic governance to BiH by achieving the end of High Representative's unlawful dominion.

⁴⁴ EU agrees to cut down troop numbers in Bosnia military mission, DPA, 11 Oct. 2011.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Council of the European Union, Council Conclusions on Bosnia and Herzegovina, 10 Oct. 2011.

⁴⁸ Toby Vogel, *A high-stakes game in the Balkans*, EUROPEAN VOICE, 3 Nov. 2011.