



REPUBLIC OF SRPSKA
PRESIDENT OF THE REPUBLIC

Bana Milosavljevića 4, Banja Luka, tel: 051/248-101, fax: 051/248-161, e-mail: info@predsjednikrs.net

H.E. Mr. Ban Ki-moon
Secretary General
United Nations Headquarters
New York
8 May 2012
01-010-1435/12

Dear Mr. Secretary-General,

In a light of the upcoming discussion in the United Nations Security Council on Bosnia and Herzegovina, I herewith present to you the Seventh Report of Republika Srpska to the UN

Security Council. As you know, Republika Srpska is a party to all of the annexes that comprise the General Framework Agreement for Peace in Bosnia and Herzegovina. I would ask for that the Report be distributed to the Security Council members for their consideration.

Should you or any Council member require any information beyond what is provided in the Report or have any questions regarding its contents, I would be pleased to provide a response.

Yours sincerely,



PRESIDENT

Milorad Dodik



РЕПУБЛИКА СРПСКА
ПРЕДСЈЕДНИК РЕПУБЛИКЕ

Бана Милосављевића 4, Бања Лука, тел: 051/248-101, факс: 051/248-161, e-mail: info@predsjednikrs.net

Њ.Е. Г-дин. Бан Ки-моон
Генерални Секретар
Сједиште Уједињених нација
8. мај 2012.
01-010-1435/12

Поштовани господине Генерални секретару,

У свјетлу предстојеће дискусије о Босни и Херцеговини која ће се одржати пред Савјетом безбједности Уједињених нација, у наставку Вам достављамо Седми извјештај Републике Српске УН.

Као што знате, Република Српска је страна потписница свих анекса који чине саставни дио Општег оквирног споразума за мир у Босни и Херцеговини. Замолићу Вас да овај Извјештај доставите свим чланицама Савјета безбједности, на њихово упознавање.

Ако бисте Ви, или било која чланица Савјета требали било какве додатне информације поред оних које су наведене у Извјештају или буду имали било каквих питања везаних за његов садржај, биће ми задовољство да Вам доставим одговор.

С поштовањем,

ПРЕДСЈЕДНИК
Милорад Додик



Republika Srpska's Seventh Report to the UN Security Council

May 2012

Republika Srpska's Seventh Report to the UN Security Council

Contents

I.	Introduction and Executive Summary	1
II.	BiH's Elected Leadership is making rapid progress on longstanding controversies.....	4
A.	A string of breakthroughs by BiH's elected leaders	5
B.	The absence of foreign intervention enabled BiH's recent progress.	7
III.	Sovereignty, Democracy, and Human Rights.....	8
A.	The High Representative must respect his Dayton mandate, and the OHR must be promptly closed.....	8
1.	The High Representative vastly exceeds his Dayton authority.	9
2.	The PIC's 5+2 agenda for OHR closure is being fulfilled.	10
3.	The High Representative's international support is dwindling.	11
B.	Justice requires redress for OHR's extrajudicial punishments.....	13
C.	The High Representative should not try to predetermine Srebrenica's election results.	16
1.	Background.....	16
2.	A radical, anti-democratic proposal.....	17
3.	Rigging Srebrenica's election would violate human rights and the Constitution	18
4.	Rigging Srebrenica's election would be destabilizing	20
IV.	BiH must be governed under the decentralized system established by the Dayton Accords.	20
A.	There is growing international acceptance of the need for strong Entities.	20
B.	A decentralized BiH is guaranteed by the Dayton Accords and is vital to BiH's continued stability.....	21
C.	A decentralized BiH enhances governmental efficiency.	22
1.	Decentralization improves efficiency, especially in states like BiH.	22
2.	The effective performance of the RS Government highlights the benefits of BiH's decentralized structure.	23
D.	The poor performance of the BiH government as it has accumulated greater powers highlights the dangers of centralization.	26
1.	Joint BiH institutions are rife with waste, abuse, and inefficiency.	26
2.	BiH-level agencies have operated without transparency or accountability.....	27
E.	The RS Government gives high priority to the fight against terrorism.....	27
V.	The RS Government is working toward BiH's EU Integration.....	28
A.	Republika Srpska is leading the way on meeting the EU's <i>acquis</i>	28
B.	BiH's elected leaders are working cooperatively toward EU integration.....	29

C.	BiH's decentralized Constitution is consistent with EU membership.	30
D.	The RS Government is vigorously pursuing judicial reform.	31
1.	EU Structured Dialogue on Justice.....	31
2.	The mishandling of the Dobrovoljačka Street case highlights the urgency of judicial reform.....	36
E.	International Commission on Missing Persons (ICMP)	37
VI.	The Security Council should forgo reference to Chapter VII.....	38
VII.	Conclusion	40

I. Introduction and Executive Summary

BiH's Elected Leadership is making rapid progress on resolving longstanding controversies

- Since December, the elected leadership of Bosnia and Herzegovina (BiH) has worked successfully together to advance BiH's Euro-Atlantic integration and address other key objectives. Among the issues resolved since December are the composition of the BiH Council of Ministers, the disposition of state and military property, the BiH budget, and new laws on the census, state aid, and identification cards. It has not been international impositions or pressure that made these agreements possible; it has been their absence. Also helpful has been the constructive approach of EU Special Representative Peter Sørensen, who has encouraged agreements but refrained from interfering in BiH's domestic affairs.

BiH is most efficiently governed under the decentralized system established by the Dayton Accords.

- 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. In September 2011, High Representative Inzko said, "I think strong entities can exist in a strong functional state." As the U.S. Deputy Assistant Secretary of State observed last year, "Dayton is not only what ended the war, it is the centerpiece of the agreement that has made Bosnia Herzegovina possible until now."
- Academic research shows that decentralization improves efficiency, especially in countries—such as BiH—in which political preferences vary widely by region. 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. More and more governments in Europe have determined that decentralization, not centralization, increases governmental efficiency.
- The RS could not have benefited from the reforms of the past several years without BiH's decentralized structure. 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." 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." The 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. In a May 2011 report, the US Congressional Research Service (CRS), 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." In a February 2012 report, CRS

wrote that implementation of International Monetary Fund plans for budget cuts “has been more difficult in the Federation” than in the RS.

The RS Government gives high priority to the fight against terrorism.

- October’s terrorist attack on the U.S. embassy in Sarajevo is only the most recent reminder of the danger that terrorists inspired by Islamic radicalism poses to BiH citizens, whether they are Bosniak, Serb, or Croat. In 2010, terrorists bombed a police headquarters in the town of Bugojno in central Bosnia, killing one police officer and injuring six others. The perpetrators of many terrorist acts around the world have spent time in BiH.
- The RS takes an active role in the fight against terrorism both in BiH and abroad. In February, for instance, the RS Ministry of the Interior joined with the EU to organize a two-day seminar on cyberterrorism including police and prosecutorial officials from BiH, Serbia, Croatia, and Montenegro.
- Unfortunately, the leadership of BiH’s central security agencies often dismisses or minimizes the threat of violent extremism to BiH citizens. The leaders of these central agencies have also sometimes refused to share important information about terrorist threats with the RS.

The High Representative should not try to predetermine Srebrenica’s election results.

- The municipality of Srebrenica is best known for the horrendous war crime that took place there in July 1995. Today Bosniak and Serb citizens of Srebrenica live in peace. They are working together to build inter-ethnic trust and improve economic opportunities. Unfortunately, outsiders are seeking to provoke ethnic tension and use Srebrenica as a political tool. The High Representative been urged to change BiH’s electoral law to guarantee that an ethnic Serb is not elected mayor of Srebrenica. More than 16 years after the war’s end, it is illegal and destabilizing to impose collective punishment on the people of Srebrenica by legislatively rigging their elections.

The RS Government is vigorously pursuing judicial reform.

- 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.
- 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 asserts the authority to dismiss unilaterally any judge or other official in BiH.
- The RS continues to fully support bringing to justice those responsible for war crimes, regardless of their ethnicity. A 2011 OSCE report, for example, praises the contribution of RS courts and prosecutors to the investigation, prosecution, and adjudication of war crimes. The prosecution of war crimes, of course, must take place without regard to the ethnicity of

the accused or their victims. Unfortunately, the BiH Court and BiH Prosecutor's Office have discriminated against Serbs, generally declining to investigate or prosecute those accused of war crimes against Serbs.

- The latest incident tending to bear out these conclusions is the recent decision by a foreign BiH prosecutor to halt the investigation of former high-level officials' links to the 1992 Dobrovoljacka Street Massacre. In January 2012, a foreign prosecutor who was appointed by a decree of the foreign High Representative tried to dismiss the case prematurely. Meanwhile, the High Representative—who ought to have nothing to do with the prosecution of such matters—has misrepresented the case in the media and tried to delegitimize the grievances of the RS government over the Prosecutor's and Court's treatment of the case.

The Security Council should forgo reference to Chapter VII.

- For the UN Security Council to act under Chapter VII of the UN Charter, it must “determine the existence of any threat to the peace, breach of the peace, or act of aggression.” BiH has been at peace for more than 16 years. As the German ambassador to the United Nations, Peter Wittig, recently observed, neither EUFOR ALTHEA nor its predecessor missions, SFOR and IFOR, ever had to intervene to maintain peace.
- Apart from the deeply rooted peace, BiH has made tremendous progress during the years since the war. BiH, its Entities, and their political subdivisions have held numerous elections, consistently certified by international observers as free and fair. In recent years, BiH has served as a member of the Security Council, satisfied the requirements for a NATO Membership Action Plan, participated in NATO operations and UN peacekeeping, been admitted to the Council of Europe, and signed a Stabilization and Association Agreement as an important step toward EU membership. BiH's economy has grown in 15 out of the 16 years since the war.
- 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.” A peacekeeping contingent from the BiH Armed Forces participates in the NATO-led International Security Assistance Force in Afghanistan.

II. BiH's Elected Leadership is making rapid progress on longstanding controversies

1. Since December, the elected leadership of BiH has worked successfully together to resolve controversies that have long stood in the way of EU integration and other key objectives. The leaders of BiH's six main political parties have been meeting regularly to negotiate solutions to many of the most difficult issues that have been dividing them. Among the issues resolved since December are the composition of the BiH Council of Ministers, the disposition of state and military property, the BiH budget, and new laws on the census, state aid, and identification cards.

2. It has not been international impositions or pressure that made these agreements possible; it has been their absence. Indeed, BiH's rapid progress only began after it had become clear that the High Representative would not intervene forcefully on behalf of the Bosniak parties, as he had done during last year's formation of the government of the Federation. Also helpful has been the constructive approach of EU Special Representative Peter Sørensen, who has encouraged agreements but refrained from interfering in BiH's domestic affairs.

3. The progress forged by BiH's elected leaders has earned international praise. In February, for example, U.S. Deputy Secretary of State William J. Burns said, "Progress in forming the Council of Ministers and completing some EU-required reforms shows that leaders can put aside personal differences and narrow political interests, and work on practical solutions that can deliver positive results for this country and its citizens."¹ Later that same month, U.S. Ambassador Patrick S. Moon also hailed BiH's political progress, saying, "Over the last few weeks we have seen a new energy and optimism in this country that gives us hope for the future."²

4. In March, Štefan Füle, European Commissioner for Enlargement and European Neighbourhood Policy, told the European Parliament, "[T]here is now a new positive momentum on the European Union agenda in Bosnia and Herzegovina."³ European Parliament Rapporteur Doris Pack said, "In six weeks, more has happened than we could have expected in Bosnia and Herzegovina."⁴ On March 13, the European Union issued a statement welcoming "recent positive developments, . . . which show that progress could be achieved through constructive and meaningful dialogue."⁵

5. In April, former High Representative Carl Bildt said, "BiH politicians in recent months have shown that they can go forward without interference from international actors."⁶ Also in April, the International Crisis Group reported that BiH has an "improved situation."⁷

¹ Deputy Secretary of State William J. Burns, Press Statement, Feb. 18, 2012.

² Speech by U.S. Ambassador to BiH Patrick S. Moon to Sarajevo Economics Faculty, Feb. 29, 2012.

³ Štefan Füle, European Commissioner for Enlargement and European Neighbourhood Policy, Address at the plenary debate on Bosnia and Herzegovina, March 14, 2012.

⁴ European Parliament, *Iceland, former Yugoslav Republic of Macedonia and Bosnia and Herzegovina*, March 14, 2012.

⁵ EU Statement on Bosnia and Herzegovina: Committee of Ministers' Deputies 1137th meeting, March 14, 2012.

⁶ Onasa, *Karl Bildt u Sarajevu: Bh. političari su pokazali "da mogu" ići naprijed bez vanjskog uplitanja*, DNEVNI AVAZ, April 5, 2012.

6. Even the High Representative has recognized the recent progress. In a March op-ed, he wrote, “[A]ll of the coalition parties are committed to tackling the economic crisis and getting the country back on the road to Euro-Atlantic integration. There are grounds to believe that among the main parties and the main party leaders the political will now exists to turn a new page, to stop looking backwards and to start solving the real problems that BiH citizens face.”⁸ In a May 5, 2012, speech, the High Representative said, “in the last few months Bosnia and Herzegovina has been able to remove serious long-standing obstacles from its path forward.”

7. The continuation of today’s fast rate of progress cannot be taken for granted, of course. Partisan infighting among the Bosniak parties lately has been slowing the implementation of some agreements. In addition, any resurgence of OHR intervention into BiH’s internal affairs would jeopardize the progress being forged by BiH’s constitutional leadership.

8. However, BiH’s rapid advances since December prove that its elected leaders can find common ground when the international community respects BiH’s sovereignty and gives its leaders political space.

A. A string of breakthroughs by BiH’s elected leaders

9. In December, BiH’s six major Serb, Bosniak, and Croat parties ended a deadlock that had lasted more than a year by agreeing on a new BiH Council of Ministers. The principal sticking point in the talks on the BiH Council of Ministers was the Bosniak-dominated Social Democratic Party’s refusal to allow the next chairman of the Council to come from one of the Croat parties, as dictated by the rotation principle. The agreement on the Council of Ministers rightly gave the chairmanship to a member of one of the major Croat parties. The new chairman of the Council of Ministers, economist Vjekoslav Bevanda, assumed office on January 12 and has since performed ably.

10. As in any freely negotiated agreement, no party got everything it wanted. Still, the agreement was a victory for everyone who wants the BiH envisioned in the Dayton Accords to work. Because the agreement was freely negotiated by leaders elected by the people of BiH, the new Council of Ministers enjoys the legitimacy it needs to govern effectively.

11. At the same time the leaders agreed on the Council of Ministers, they also resolved two key disputes that had long held back BiH’s EU integration progress. First, they agreed on a new law on state aid, which prohibits aid by the BiH Government that would distort international trade. Second, they agreed on a census law, which will soon allow BiH to hold its first census since 1991. In December, the leaders also agreed on BiH’s 2011 budget, which the BiH Parliamentary Assembly promptly approved.

12. Since the December agreements, the six parties have continued to talk frequently and have made steady progress on issues that long divided them.

⁷ International Crisis Group, *CrisisWatch No. 104*, April 1, 2012.

⁸ High Representative Valentin Inzko, *The Politics of Recovery Can Be Built In Srebrenica*, NEZAVISNE NOVINE, March 30, 2012.

13. On February 1, the BiH House of Peoples adopted the Census Law, which had already been adopted in 2010 by the House of Representatives, the Parliamentary Assembly's other chamber. Two days later, both chambers of the BiH Parliamentary Assembly approved the Law on State Aid. EU Special Representative Sørensen praised the state aid legislation as "fully compatible with the EU 'acquis'" and noted that it was "prepared with substantial support from the European Commission."⁹ A spokesman for the EU Delegation to BiH and the EU Special Representative welcomed the adoption of the two new laws, calling them "crucial for the next steps of the country on its EU integration path."¹⁰

14. In a joint article, German Foreign Minister Guido Westerwelle and British Foreign Secretary William Hague also praised this progress, writing:

Bosnia and Herzegovina's Parliament has passed State Aid and Census Laws. This means that the only remaining task to be completed before the Stabilisation Agreement can be brought into force is the credible effort we called for last March to resolve the incompatibility of the country's constitution with the ruling of the European Court of Human Rights.¹¹

15. On February 29, the Parliamentary Assembly overcame yet another long deadlock to approve a law providing for a new biometric identity card.

16. On March 9, the six parties reached agreement on the highly charged and longstanding controversies over disposal of state and military property. The parties are working to implement these agreements, which would fulfill the last two remaining elements of the Peace Implementation Council's ("PIC") 5+2 formula for supporting closure of the Office of the High Representative.

17. In addition, the agreement on military property clears the way for BiH's NATO Membership Action Plan. As German Foreign Minister Guido Westerwelle and British Foreign Secretary William Hague wrote in a joint article in April, "We . . . welcome recent agreement to a process which should resolve the issue of defence property, one of the key obstacles to progress towards NATO."¹² On April 11, NATO Secretary General Fogh Rasmussen told the Chairman of the BiH Presidency: "[I]n March, you reached an agreement on the questions of immovable defence properties which has hampered your progress towards NATO for so long. I very much welcome these agreements. And I look forward to the decision on defence properties being implemented swiftly and smoothly."¹³

⁹ EU Delegation to BiH, Interview with Ambassador Peter Sorensen for Infokom magazine of the BiH Foreign Trade Chamber, Jan. 18, 2012.

¹⁰ EU Delegation to BiH, *EU Delegation to BiH/EUSR on State Aid Law and Census Law*, Feb. 3, 2012.

¹¹ Guido Westerwelle and William Hague, *From Words to Action*, EU Delegation in Bosnia and Herzegovina, April 3, 2012.

¹² Guido Westerwelle and William Hague, *From Words to Action*, EU Delegation in Bosnia and Herzegovina, April 3, 2012.

¹³ NATO, Joint Press Point, April 10, 2012.

18. With BiH's approval of the census and state aid laws, the only task remaining before the Stabilization and Association Agreement with the EU can be brought into force is for the EU to assess that BiH has made the requisite effort toward implementation of the European Court of Human Rights' *Sejdic and Finci* decision. On March 9, the six parties agreed on basic principles for bringing BiH into compliance with *Sejdic and Finci*. The RS is committed to implementing the decision and hopeful that the parties will reach an agreement soon.

19. On March 14, BiH adopted a Global Fiscal Framework for 2012 to 2014. The framework's adoption allows the BiH Ministry of Finance to draft a full 2012 budget and enables BiH to begin talks on new IMF loans. At its 5th session, held on 18 April 2012, the BiH Council of Ministers adopted by majority vote the Draft Bill on the Budget of BiH Institutions and BiH International Commitments for the Year 2012, whereupon it was submitted to further procedure; its approval by the BiH Parliament is pending.

B. The absence of foreign intervention enabled BiH's recent progress.

20. What has made this string of breakthroughs possible has been the absence of impositions from the High Representative or other international actors. The absence of foreign intervention has given BiH's elected leaders the political space to strike difficult bargains and develop a culture of compromise.

21. The parties reached agreement on the formation of a new government and these other vexing issues only after it had become clear that the High Representative would not impose a solution, as he had during last year's formation of the Entity government of the Federation of Bosnia and Herzegovina. In March 2011, following the failure of OHR-hosted talks, the largest Bosniak party, the SDP, formed a Federation government in brazen violation of the Federation Constitution. The illegally formed government excluded the two largest Croat parties and gave positions reserved for Croats to either to Bosniak parties or fringe Croat parties such as the extremist HSP-BiH.

22. The BiH Central Election Commission promptly declared the formation of the Federation government unlawful and annulled it. The High Representative, however, without any legal authority, responded by handing down a decree overruling the CEC's decision. The High Representative's March 2011 decree, as the President of the International Crisis Group wrote, "undermined state bodies and the rule of law."¹⁴ Even Bosniak parties blasted the decree; the Social Democratic Union said it "egregiously violated the principle of legality and legitimacy of the institutions of the state." The Federation government, having been illegally formed and surviving solely because of a foreign diplomat's unlawful decree, continues to suffer from a severe deficit of legitimacy.

23. The March 2011 decree also badly undermined efforts to form of a new BiH Council of Ministers. The High Representative's forceful intervention on behalf of the SDP signaled to the SDP that it could expect similar help in the BiH-level negotiations, emboldening it to eschew compromise. The High Representative's intervention to prop up a Federation government in

¹⁴ Letter from Louise Arbour, President and CEO of International Crisis Group, to PIC Steering Board Ambassadors, May 2, 2011.

which the Bosniak parties had marginalized the Croats also threatened the Croats' constitutional status as one of BiH's three Constituent Peoples. This exacerbated tensions between the major Croat and Bosniak parties, further crippling the negotiations on the formation of a new BiH Council of Ministers.

24. The arrival in September of EU Special Representative Peter Sørensen marked a turning point. The EU's separation of its Special Representative from the High Representative suggested a shift away from the High Representative's illegal intervention in BiH's internal affairs and toward partnership in helping BiH meet the conditions for greater EU integration.

25. Since the High Representative's disastrous March 2011 decree, he has not handed down any new decrees that intervene directly in the governance of BiH and its Entities, although other illegal OHR practices, such as the vetting of elected and appointed officials and threats to intervene, continue to impede the spirit of compromise among elected leaders as well as effective governance more generally. It is notable, however, that international support for the illegal, so-called "Bonn Powers" has sharply declined. It is to be hoped that the High Representative himself has realized that such intervention is illegal and counterproductive.

26. What is clear is that, after the threat of foreign meddling receded, BiH's elected leadership began to negotiate effectively and strike compromises benefitting all BiH citizens. By December, it must have become clear to the SDP that the High Representative was unlikely to intervene on the Bosniak parties' behalf as it had done so disastrously in March during the formation of the Federation Government. This realization, combined with Ambassador Sørensen's constructive approach, made the December agreement possible.

27. Since December, the international community has generally refrained from interfering directly in the governance of BiH, while expressing its views through bilateral diplomatic channels, as is appropriate. The results, as outlined in Section II-A, above, speak for themselves. The lesson for the international community is to respect BiH sovereignty. Renewed OHR intervention in BiH's constitutional political processes would jeopardize the spirit of compromise that BiH's parties have forged.

III. Sovereignty, Democracy, and Human Rights

A. The High Representative must respect his Dayton mandate, and the OHR must be promptly closed.

28. BiH is a full and equal sovereign member of the United Nations, and it must be treated as one. BiH has been at peace for more than 16 years. As explained in section VI, below, BiH has made tremendous strides during this period, including a long succession of elections certified as free and fair. More than 1 million people displaced during the war have returned to their homes.¹⁵ Moreover, as outlined in section II-A, above, BiH's constitutional leadership is working together successfully to resolve longstanding differences that have impeded progress. There is simply no excuse for OHR's continued existence, let alone the illegal and dictatorial powers the High Representative claims.

¹⁵ Valentin Inzko, *The Right to Return*, OSLOBODENJE, April 24, 2012.

29. For the sake of BiH sovereignty, constitutional governance, the rule of law, and human rights, the RS Government urges the Security Council to support the prompt termination of the position of High Representative. During whatever time the High Representative remains in BiH, he must not claim or use powers that exceed the authority provided to the High Representative under Annex 10 of the Dayton Accords.

1. The High Representative vastly exceeds his Dayton authority.

30. The High Representative continues to assert powers that dramatically exceed his mandate under Annex 10 of the Dayton Accords and violate 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."¹⁶ 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.

31. The so-called "Bonn Powers" originate from a declaration made by the 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 to the High Representative; nor could it, given its own 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*."¹⁷ 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.

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

33. In his memoirs, former High Representative Paddy Ashdown wrote that it was "extremely frightening to have so much power in a country about which I knew so little."¹⁸ He recalled:

¹⁶ Matthew T. Parish, *The Demise of the Dayton Protectorate*, 1 J. INTERVENTION AND STATEBUILDING, Special Supp. 2007, p. 13.

¹⁷ *Id.*, p. 14 (emphasis added).

¹⁸ PADDY ASHDOWN, A FORTUNATE LIFE 347 (2009).

In this job, I could interfere in anything and get swallowed up in everything if I wanted to.

And to help me interfere in everything if I wanted to, I had a staff in the Office of the High Representative (OHR) of approximately 800 and a budget of some €36 million. And to make interfering in other people's business even more fun, I had an array of formidable powers called the 'Bonn Powers'¹⁹

34. The Bonn powers have so little legal credibility that even High Representative Inzko last year said, "I am not a great supporter of the Bonn Powers."²⁰ But that has not stopped him from continuing to assert and (without legal authority) to exercise them. It is long past time for the international community to demand that the High Representative abandon internationally illegal exercise of "executive powers" and observe the limits of his Dayton authority.

2. The PIC's 5+2 agenda for OHR closure is being fulfilled.

35. As explained in section III-A-1, above, and in the RS's earlier reports to the Security Council, the PIC lacks the legal authority to determine how long OHR is to remain open or to set conditions for its closure. Nonetheless, it is noteworthy that the March agreements on state and military property as well as the steps already undertaken have helped address the remaining issues required to fulfill the PIC's so-called 5+2 agenda for OHR closure.

36. In February 2008, the PIC Steering Board identified five objectives and two conditions that it considered needed to be fulfilled before the closure of OHR.²¹ It is clear that the last two unfulfilled elements of the 5+2 agenda were agreements on the disposal of state property and military property. In its March 30, 2011, communiqué, the PIC Steering Board specified just two elements of the 5+2 agenda that remained for BiH to meet: resolution of state property and resolution of defense property.²² Since that communiqué, the PIC has not specified any other element of the 5+2 agenda that remains unfulfilled.

37. In a March 2012 resolution, the European Parliament called on the international community to

consider the necessity of, and find solutions for, the implementation of the 5+2 Agenda of the Peace Implementation Council Steering Board to pave the way for the dissolution of the Office of the High Representative (OHR) in order to allow for more local ownership and responsibility for BiH's own affairs, bearing in mind that any such step should not impact negatively on the stability of the country or the pace and outcome of much-

¹⁹ *Id.*

²⁰ Xinhua, UN envoy refuses to force Bosnian politicians to form government, 16 Feb. 2011.

²¹ Declaration by the Steering Board of the Peace Implementation Council, Feb. 27, 2008.

²² Peace Implementation Council Steering Board Communiqué, March 30, 2011.

needed reforms; *recalls that the BiH authorities must in this context resolve the outstanding issues of state property and defence property;*²³

38. On March 9, 2012, BiH's elected leadership reached agreements on the disposal of state and military property. The March agreements on state and military property are leading towards fulfilling of the last two remaining elements of the 5+2 agenda. When the PIC Steering Board next meets on May 22 and 23, the RS Government expects it to recognize BiH's fulfillment of the 5+2 agenda and support the dissolution of the OHR.

3. The High Representative's international support is dwindling.

39. Support for the High Representative—and particularly for his claimed “Bonn Powers” to rule and punish by decree—is dwindling both inside and outside BiH.

40. The RS, for the reasons outlined above, has long rejected the Bonn Powers and called for the closure of OHR. But the RS is far from alone. On February 13, BiH Council of Ministers Chairman Bevanda, a Croat, said:

[T]he international community needs to withdraw all of the decisions which it has imposed contrary to the Constitution and laws of BiH. We primarily need an agreement of the local actors, and to have the international community present as someone who can be of help to us, and not hinder and create problems by taking incoherent moves. The suspension of the decision of the Central Election Commission (regarding the election of the Government in the Federation) is disastrous. . . . I believe that the only thing we need to do is stick to the laws and the constitution, nothing more.²⁴

41. A growing number of international observers are also realizing that the High Representative cannot and should not continue. The “Bonn Powers,” under which the High Representative claims the authority to rule and punish by decree, have always been founded not in law but in the support or acquiescence of key members of the international community. That foundation is cracking. The international community, at last, is coming to understand the need to end the Bonn Powers and put BiH's future in the hands of its citizens and elected leadership.

42. In its February 2012 Report on BiH, the US Congressional Research Service writes:

Many observers in and outside of Bosnia believe that OHR retains little credibility in Bosnia, and therefore should be eliminated in the near future. On the other hand, some countries, including the United States, do not want to eliminate OHR before the objectives

²³ European Parliament Resolution of 14 March 2012 on the 2011 progress report on Bosnia and Herzegovina (2011/2888(RSP)).

²⁴ *'Međunarodna uprava treba poništiti sve nametnute odluke, a ne da nam odnemaže nesuvislim potezima'*, DNEVNIK.BA, Feb. 13, 2012.

and conditions are met, perhaps for fear of suffering a blow to their own credibility.²⁵

43. In April, former High Representative Carl Bildt said, “BiH politicians in recent months have shown that they can go forward without interference from international actors.”²⁶

44. The High Representative’s diminishing support among key members of the international community was evident at November’s UN Security Council meeting on BiH. German Ambassador Peter Wittig made clear his country’s view that the High Representative impedes reform and that the OHR regime as we know it must come to an end. He criticized the international community’s continued “close monitoring” and “far-reaching supervision” of BiH, explaining:

[T]hat approach has not succeeded in creating incentives for local politicians to choose the route of compromise over advancing their nationalist agendas. In fact, the international community’s approach at times serves as an impediment to political leaders’ accountability to their electorates and to their assumption of ownership of the reform process.

We should not continue that way. Our focus should be on employing instruments that are better suited to initiate positive developments. Obsolete approaches should be discontinued.²⁷

45. Ambassador Wittig continued:

Decoupling the High Representative and the EU Special Representative and endowing the latter with a sound mandate was an important step. Further steps must follow. The European Union and Bosnia and Herzegovina’s EU perspective *should become the only game in town*. That will include the continued reconfiguration of EUFOR and Operation Althea. In addition, we are of the view that the Office of the High Representative should be downsized and relocated abroad. Its staff levels should be commensurate with its remaining tasks.²⁸

46. The European Union’s statement at the Security Council meeting—with which France, Portugal, and Croatia associated themselves—also recognized the need to end the OHR status quo. The EU, the statement said, “looks forward to the discussions with the international

²⁵ Steven Woehrel, *Bosnia: Current Issues and U.S. Policy*, Congressional Research Service, Feb. 29, 2012, p. 6.

²⁶ Onasa, *Karl Bildt u Sarajevu: Bh. političari su pokazali "da mogu" ici naprijed bez vanjskog uplitanja*, DNEVNI AVAZ, April 5, 2012.

²⁷ UN Security Council, 6659th Meeting, Nov. 15, 2011, S/PV.6659, p. 6.

²⁸ *Id.* (emphasis added).

community on the reconfiguration of the international presence, including its downsizing and the possible relocation of the Office of the High Representative in the appropriate forum.”²⁹

47. Russia’s criticisms of the current OHR regime were more explicit. Ambassador Vitaly Churkin called for the “transfer of responsibility for the future of the country to Bosnians themselves,” including by “abolishing the Office of the High Representative.”³⁰

48. As Serbia’s representative at the Security Council meeting said, “Only the institutions of Bosnia and Herzegovina and the citizens of that country can define its policy, and there are no powers on the basis of which these functions could be taken over by international presences.”³¹ He added:

Serbia is of the opinion that the process of closing the Office of the High Representative and of cancelling the so-called Bonn powers should be embarked upon because the legitimately elected representatives of all peoples and entities have the ability and capacity to assume responsibility for the independent conduct of the affairs of State and the initiation of reform processes.³²

49. The Bonn Powers have no foundation in the Dayton Accords or other sources of law. Their use has resulted from the support, indeed insistence of certain members of the international community for imposition of laws and policies of their preference upon BiH. Such imposition is contrary to international law and the loss of support in the international community for the High Representative and his interventions reflects the Community’s increasing reluctance to continue a policy so inimical to the rule of law and so harmful to the progress of BiH as a sovereign and democratic state.

B. Justice requires redress for OHR’s extrajudicial punishments.

50. 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.

51. Last June, Ambassador Inzko lifted some of the illegal punishments that his predecessors had extrajudicially imposed on individuals. The High Representative’s June 2011 decisions lifted 58 bans on public employment and political activity that earlier High Representatives had imposed—unilaterally and without any form of due process—against BiH citizens.

52. Although Ambassador Inzko’s June 2011 decisions were a small, positive step, they are far from what is required to correct the High Representative’s grave and continuing abuse of human rights and the rule of law. The decisions do not acknowledge fault and do nothing to

²⁹ UN Security Council, 6659th Meeting, Nov. 15, 2011, S/PV.6659, p. 9.

³⁰ UN Security Council, 6659th Meeting, Nov. 15, 2011, S/PV.6659, p. 15.

³¹ *Id.* at p. 20.

³² *Id.*

allow for compensation for grievous damage that these extrajudicial punishments have inflicted on the lives of the banned individuals. Moreover, many BiH citizens remain banned from public life or continue to suffer under other illegally decreed sanctions. Remarkably, Ambassador Inzko continues to assert that he has the power to punish BiH citizens simply by handing down a decree.

53. Since 1998, the High Representative has removed and banned nearly 200 citizens of BiH, including democratically elected presidents, legislators and mayors, as well as judges, police officials, university professors, and public company executives. The High Representative has also issued other decrees blocking bank accounts and seizing travel documents, indefinitely. Despite the serious injuries such decrees inflict upon the punished individuals and their families, the High Representative allows the victims no notice of the specific charges or evidence against them, no right to confront their accusers, no hearings or opportunity to contest the charges, and no appeal.

54. When the BiH Constitutional Court ruled unanimously that the absence of a remedy for citizens punished by the High Representative violated the European Convention on Human Rights, the High Representative issued a decree nullifying the decision and ordering judges to dismiss any proceeding that “challenges or takes issue in any way whatsoever with one or more decisions of the High Representative.”³³

55. The High Representative’s summary punishment of individuals flagrantly violates the due process and other protections of the BiH Constitution and the European Convention on Human Rights. It also violates the “General Principles” set forth in Article 2 of BiH’s Stabilisation and Association Agreement with the European Union. Obviously, the High Representative’s simultaneous pose as a prosecutor and judge radically exceeds his limited mandate in Annex 10 of the Dayton Accords. These actions are an affront to the principles of international law, the sovereignty of BiH and the rule of law.

56. The High Representative’s practice of imposing extrajudicial punishments against BiH citizens has earned sharp international condemnation. In a 2004 resolution, the Parliamentary Assembly of the Council of Europe said, “[T]he Assembly considers it irreconcilable with democratic principles that the High Representative should be able to take enforceable decisions without being accountable for them or obliged to justify their validity and without there being a legal recourse.”³⁴ In a March 2005 opinion, the Council of Europe’s Venice Commission said of the OHR’s extrajudicial punishments:

The termination of the employment of a public official is a serious interference with the rights of the persons concerned. In order to meet democratic standards, it should follow a fair hearing, be based on serious grounds with sufficient proof and the possibility of a legal appeal. The sanction has to be proportionate to the alleged offence. In cases of dismissal of elected representatives,

³³ Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, March 23, 2007.

³⁴ Parliamentary Assembly of the Council of Europe, Res. 1384 (2004), June 23, 2004.

the rights of their voters are also concerned and particularly serious justification for such interference is required.

* * *

The main concern is . . . that the High Representative does not act as an independent court and that there is no possibility of appeal. *The High Representative is not an independent judge and he has no democratic legitimacy deriving from the people of [Bosnia and Herzegovina]. He pursues a political agenda As a matter of principle, it seems unacceptable that decisions directly affecting the rights of individuals taken by a political body are not subject to a fair hearing or at least the minimum of due process and scrutiny by an independent court.*

* * *

The continuation of such power being exercised by a non-elected political authority without any possibility of appeal and any input by an independent body is not acceptable.³⁵

In 2009, the Committee on Legal Affairs and Human Rights of the European Parliament issued a report entitled, “The state of human rights in Europe: the need to eradicate impunity.” According to the report, some international actors “commit mistakes, even crimes, which have victims that deserve justice. . . . Rather than making it even more difficult to hold perpetrators of human rights violations responsible where these occur during operations under international mandate, the international community should set a positive example of transparency and accountability.”³⁶

57. Also in 2009, the Commissioner for Human Rights of the Council of Europe wrote about the need for international organizations acting as quasi-governments to be held accountable for their actions, citing the OHR as an example.³⁷ He wrote: “When international organisations exercise executive and legislative control as a surrogate state they must be bound by the same checks and balances as we require from a democratic government. . . . No-one, especially an international organization, is above the law.”³⁸

58. The individuals summarily punished by the High Representative can never recover the lost years and the good reputations that were taken from them. Even so, the international

³⁵ European Commission For Democracy Through Law (Venice Commission), *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, adopted by the Venice Commission at its 62nd plenary session, paras. 94, 96, 98 (March 11-12, 2005) (emphasis added).

³⁶ Report, Committee on Legal Affairs and Human Rights, Parliamentary Assembly, Council of Europe, *The state of human rights in Europe: the need to eradicate impunity*, para. 6, 3 June 2009 (Doc. 11934).

³⁷ Viewpoints of the Council of Europe Commissioner for Human Rights, *International Organizations acting as quasi-governments should be held accountable*, 6 June 2009, at www.coe.int/t/commissioner/Viewpoints/090608_en.asp.

³⁸ *Id.*

community has a responsibility to correct this injustice. All remaining extralegal sanctions against individuals, of course, must be lifted. The international community should renounce any support for the High Representative's claim to authority to punish individuals by decree. But these steps are not enough. Those who were wronged by the High Representative's violations of human rights are entitled to legal redress.

C. The High Representative should not try to predetermine Srebrenica's election results.

59. The municipality of Srebrenica is best known for the horrendous war crime that took place there in July 1995. Today, however, Bosniak and Serb citizens of Srebrenica live in peace. They are working together to build inter-ethnic trust and improve economic opportunities. Unfortunately, outsiders are seeking to provoke ethnic tension and use Srebrenica as a political tool. The High Representative has been urged to change BiH's electoral law to guarantee that an ethnic Serb is not elected mayor of Srebrenica. More than 16 years after the war's end, it is illegal and destabilizing to impose collective punishment on the people of Srebrenica by legislatively rigging their elections.

1. Background

60. Among the cruel elements of BiH's 1992-1995 war were its widespread forced migrations. Ethnic cleansing was perpetrated by all of BiH's ethnicities against all BiH's ethnicities; it devastated communities across BiH. One such community is Srebrenica, which was 75% Muslim in the 1991 census taken on the eve of the war. The municipality today retains a large Bosniak population, but it is estimated to be much lower than before the war. Another example of such a community is Sarajevo, which was approximately 30% Serb before the war,³⁹ but just 5% Serb by 1998, according to the UN High Commission on Refugees. Few of the roughly 150,000 Serbs driven out of Sarajevo have returned.

61. BiH election law makes extraordinary accommodations for those who were driven from their communities during the war. Displaced persons are entitled to vote—in person or by absentee ballot—in the municipality in which they lived in 1991. Members of the Diaspora who maintain their BiH citizenship have the same right.

62. In Srebrenica, a power-sharing legal regime prevents a single ethnic group from monopolizing power. Srebrenica law provides that the mayor and the chairman of the Municipal Assembly may not come from the same ethnic group. Thus, if a Serb were elected as mayor of Srebrenica, the chairmanship of the Municipal Assembly would be shifted from a Serb to a Bosniak.

63. Republika Srpska is committed to ensuring that the rights of everyone in Srebrenica are protected, regardless of their religion or ethnic identification. President Dodik has expressed his openness to considering new ways to ensure that the rights of members of all ethnicities in Srebrenica are respected.

³⁹ According to unofficial results of the 1991 census, in Sarajevo, out of the total population of 525,980, there were 157,526 Serbs and 56,048 Yugoslavs, the majority of whom were of the Serb ethnic background.

64. When Srebrenica's Bosniak Mayor, Osman Suljic, died in March, Srebrenica's Serb Municipal Assembly President, jointly with its Bosniak Deputy Mayor, declared a day of mourning and held a special commemorative service at which Serb and Bosniak alike paid their respects. Among those mourning at the service were an RS Government delegation, led by Minister of Public Administration and Local Self-Government Layla Rešić. Municipal Assembly President Radomir Pavlović praised the late mayor as a man of trust.⁴⁰

65. Regardless of the ethnicity of Srebrenica's next mayor, the victims of the Srebrenica atrocities will continue to be properly honored and remembered. President Dodik has consistently condemned the July 2005 atrocities at Srebrenica as a "huge war crime" and supported the perpetrators being brought to justice. In cooperation with other law enforcement agencies, Republika Srpska provides a large police presence to ensure that annual commemorations and other activities are able to proceed in peace and security. International observers have complimented the RS Ministry of Interior on its professionalism in maintaining security at these events. EU Police Mission Commissioner Stefan Feller said of last July's commemoration, "The joint efforts of the police agencies and the organizers provided for a dignified and peaceful atmosphere for tens of thousands of attendees."⁴¹ Feller said the RS Police and other law enforcement agencies "together with the organiser have again shown the required maturity and seriousness."⁴²

2. A radical, anti-democratic proposal

66. As noted above, displaced persons in BiH and members of the Diaspora are already entitled to vote in the elections of the municipality where they lived in 1991. Although these accommodations significantly increase the number of Bosniaks voting in Srebrenica's elections, they are not sufficient to guarantee that a Serb will not be elected as Srebrenica's mayor. In order to guarantee that a Serb is not elected, some Bosniak politicians and foreign officials are pushing for BiH to adopt a law that would permanently let thousands of *non-displaced* former residents of Srebrenica vote in the municipality's elections. Under the proposal, any person who lived in Srebrenica in 1991 but has established residency elsewhere in BiH during the 21 intervening years would have the right to vote in Srebrenica's elections, regardless of when or why that person left Srebrenica.

67. The High Representative is being urged to impose a decree changing BiH's electoral law to guarantee that an ethnic Serb is not elected mayor of Srebrenica. Although the High Representative has said it would be "ideal" if there were an "agreement between Bosniaks and Serbs," he has not ruled out imposing a new law by decree. The High Representative should publicly rule out such a decree, which would impose an illegal and anti-democratic law through illegal and anti-democratic means.

⁴⁰ Z. Hadžić, *U Tuzli ukopan načelnik Općine Srebrenica Osman Suljić*, DNEVNI AVAZ, March 29, 2012.

⁴¹ Feller: "Professional Police Operation Provided for Dignified and Peaceful Atmosphere during Srebrenica Commemoration," EU Police Mission, July 11, 2010.

⁴² *Id.*

68. Despite the widespread nature of the forced migrations that took place during the 1990s, this radical scheme's advocates are pushing it only with respect to Srebrenica. Since the July 1995 atrocities, Srebrenica has undoubtedly become a symbol. But Srebrenica's residents, whether Bosniak or Serb, do not live in a symbol; they live in a city. If BiH is to uphold human rights and its Constitution, Srebrenica's residents must be allowed to freely choose their own representatives instead of participating in sham elections engineered by foreigners.

3. Rigging Srebrenica's election would violate human rights and the Constitution

69. The proposed scheme to prevent a Serb mayor of Srebrenica is manifestly contrary to human rights protections in the BiH Constitution. It also violates the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights, and the BiH Constitution.

70. The ICCPR, to which BiH is a party, provides, at Article 25:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

71. Allowing persons who have established residency elsewhere in BiH to vote in Srebrenica's elections takes away the right of Srebrenica's residents to freely choose their municipality's own representatives. It allows citizens of other municipalities to block the free choice of Srebrenica's citizens.

72. Article 25 further gives every citizen the right to "vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." A municipal election whose result is preordained by extending the franchise to persons who are citizens of other municipalities would not be a genuine election; it would be a sham. By diluting the votes of Srebrenica's residents in municipal elections, such an election would also take away their right of "equal suffrage" because it would make the vote of a Srebrenica resident less valuable than the vote of a citizen in another municipality.

73. The proposed law, moreover, would breach the European Convention on Human Rights, which applies directly in BiH and has "priority over all other law."⁴³ Protocol 12 of the European Convention, to which BiH is a party, provides at Art. 2:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social

⁴³ BiH Const. art. II (2).

origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

74. In *Sejdic and Finci*, the European Court of Human Rights held that the BiH Constitution's reservation of the three-member Presidency for BiH's three Constituent Peoples discriminates against ethnic minorities in violation Protocol 12. The proposed law for Srebrenica is a more egregious case of discrimination because it is designed to reserve the position of Srebrenica mayor for one ethnic group—Bosniaks—and exclude Serbs. It also discriminates against all of the citizens of Srebrenica because it dilutes their votes with the votes of citizens of other municipalities.

75. For the same reasons, the proposed law would violate Article II (4) of the BiH Constitution, which is very similar to Article 1 of Protocol No. 12. Article II (4) provides that BiH must secure to everyone in BiH the enjoyment of all rights provided for in the ICCPR (among other agreements) “without discrimination on *any ground*” Thus, BiH may not discriminate against Srebrenica residents with respect to their rights to “take part in the conduct of public affairs, directly or through freely chosen representatives” or to “vote and to be elected at genuine periodic elections.”

76. In a 2010 decision (case no. U 9/09), the BiH Constitutional Court held that the election system in the City of Mostar breached Article II (4) of the BiH Constitution (in conjunction with ICCPR Article 25) because the system devalued the votes of residents of certain parts of the city in comparison to the votes of residents of other parts.⁴⁴

77. The proposed Srebrenica scheme, in much the same way, discriminates against Srebrenica citizens because it makes Srebrenica the only municipality whose citizens' votes are diluted in municipal elections. As noted above, allowing citizens of other municipalities to vote in Srebrenica municipal elections prevents Srebrenica citizens from freely choosing their representatives because it allows citizens of other municipalities to negate those choices. The scheme also means that Srebrenica's elections, unlike those of other BiH municipalities, are not genuine.

78. The BiH Constitutional Court has held that such differential treatment is unlawful unless it is “objectively reasonable and justified,” which requires that there be (1) “a legitimate aim”; and (2) “a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.”⁴⁵ One need not reach the second part of this test because the aim of the scheme is wholly illegitimate; it is to prevent the election of a Serb mayor. Some proponents of the scheme have tried to camouflage its true purpose, such as by claiming that it is to prevent a mayor who does not characterize the Srebrenica atrocities as genocide. But even these purposes

⁴⁴ Klub izaslanika hrvatskog naroda u Domu naroda Parlamentarne skupštine Bosne i Hercegovine, case no. U 9/09, Const. Court of Bosnia and Herzegovina, Nov. 26, 2010 (“Mostar Decision”).

⁴⁵ Mostar Decision at para. 55.

are illegitimate; Article 2 (4) of the Constitution specifically forbids discrimination based on “political or other opinion.”

For these and other reasons, the election-rigging proposal is legally indefensible.

4. Rigging Srebrenica’s election would be destabilizing

79. Changing BiH election law to create special rules to prevent a Serb from being elected mayor of Srebrenica would inflame inter-ethnic tensions in Srebrenica and throughout BiH. Bosniak political parties often exploit the suffering of Srebrenica’s wartime victims in order to whip up anti-Serb sentiment and mobilize their supporters. These parties have agitated for Srebrenica’s secession from Republika Srpska, a position that is obviously destabilizing and a fundamental attack on the Dayton Accords. In 2007, the Bosniak-dominated municipal council, prodded by the BiH-level Bosniak parties, approved a resolution calling for Srebrenica to declare independence from Republika Srpska. This year, Sulejman Tihic, the leader of one of BiH’s two main Bosniak parties, is openly calling for Srebrenica to have a “special status” akin to Mostar or Brčko, which is a district not governed by either entity.⁴⁶ Making a special electoral law for Srebrenica will embolden the Bosniak parties to demand even more radical anti-Dayton forms of special treatment, including separation from Republika Srpska.

80. Thus, apart from being illegal, the proposed scheme to prevent a Serb from becoming Srebrenica’s mayor would be destabilizing. The High Representative must rule out any intervention in this issue.

IV. BiH must be governed under the decentralized system established by the Dayton Accords.

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

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

82. The United States has made clear that it rejects calls for centralization. For example, In November 2011 testimony before a House of Representatives committee, Assistant Secretary of State Philip Gordon said: “We support robust entities and the decentralized government structure established in Dayton, under which Republika Srpska is and must remain a constituent part of Bosnia and Herzegovina. This construct has been the cornerstone of peace for over 16 years.”⁴⁷

83. Similarly, in a December 2011 speech, U.S. Ambassador to BiH Patrick Moon said, “While cooperation between the entities will be essential to progress, Bosnia and Herzegovina can move forward as a decentralized country, with state-level institutions having the capacity to

⁴⁶ *Tihic: Srebrenici dati specijalni status kakav imaju Brčko ili Mostar*, VIJESTI.BA, 23 Feb. 2012, at www.vijesti.ba/vijesti/bih/74170-Tihic-Srebrenici-dati-specijalni-status-kakav-imaju-Brcko-ili-Mostar.html.

⁴⁷ Assistant Sec. of State Philip H. Gordon, Statement before the House Foreign Affairs Subcommittee on Europe and Eurasia, Nov. 15, 2011.

coordinate as necessary the work of both entities to achieve a necessarily shared set of goals.”⁴⁸ Last year, then-Deputy Assistant Secretary of State Thomas M. Countryman said BiH should be “not a more centralized state but a more functional state with two strong entities capable of governing at those levels.”⁴⁹

84. In April, British Prime Minister David Cameron also reaffirmed his country’s commitment to the BiH Constitution when he said, “[A]ny unpicking of the Dayton agreement will not be tolerated.”

85. As explained in section V-C, below, the European Union has made clear that BiH’s decentralized 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 2011, Ambassador Inzko said, “I think strong entities can exist in a strong functional state.”⁵⁰

86. The RS welcomes these acknowledgements that BiH’s decentralized Dayton structure must and should 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

87. 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.

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

89. 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.

90. 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

⁴⁸ U.S. Embassy in Bosnia and Herzegovina, *Ambassador Moon talks about BiH’s path forward with students and civic activists*, Dec. 15, 2011.

⁴⁹ Deputy Assistant Secretary Thomas M. Countryman, Media Roundtable, 8 Feb. 2011 (“Countryman Speech”).

⁵⁰ *Inzko: There can be strong entities in a strong state; New OHR BL head appointed*, TANJUNG, 20 Sept. 2011.

be possible to improve certain aspects of governance by amendment to the Constitution, amendments cannot be imposed, but must be the result of the constitutionally specified process and represent 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.

91. As the U.S. Deputy Assistant Secretary of State observed last year, “Dayton is not only what ended the war, it is the centerpiece of the agreement that has made Bosnia Herzegovina possible until now.”⁵¹

C. A decentralized BiH enhances governmental efficiency.

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

92. 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.

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

94. 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.”⁵² As AER Secretary General Klaus Klipp said at the study’s release, “Centralism hammers development of countries at the cost of its citizens.”⁵³

95. 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

⁵¹ Countryman Speech.

⁵² *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/Publications/AER_Study_on_decentralisation/Studies/BAK-Part2-FINAL%2Bcover.pdf (“From Subsidiarity to Success”), p. 4.

⁵³ Valentina Pop, *Centralised states bad for economy, study shows*, EUObserver, May 18, 2009.

preferences of the population can be better incorporated into policy. This helps to ensure that an individual's needs will be considered more adequately.⁵⁴

96. 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.

97. 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.

98. 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.⁵⁵

99. 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 BiH's decentralized structure.

100. 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.

101. 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."⁵⁶ 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."⁵⁷ The International Crisis Group wrote, "[T]he RS government is more efficient than the [Federation's], consumes a much smaller percentage of

⁵⁴ From *Subsidiarity to Success*, p. 15 (citations omitted).

⁵⁵ *Id.*

⁵⁶ International Monetary Fund, Request for Stand-By Arrangement, Bosnia and Herzegovina, June 17, 2009, p. 4.

⁵⁷ Proposal for a Council Decision providing macro-financial assistance to Bosnia and Herzegovina, Oct. 29, 2009, SEC(2009) 1459, p. 4.

GDP and is implementing reforms more quickly. RS has also privatised many more state enterprises, an area where the [Federation] lags.”⁵⁸ In a May 2011 report, the US Congressional Research Service (CRS), 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.”⁵⁹ In a February 2012 report, CRS wrote that implementation of International Monetary Fund plans for budget cuts “has been more difficult in the Federation” than in the RS.⁶⁰

102. The World Bank’s 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 2008.⁶¹ 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.”⁶² 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.⁶³ 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.⁶⁴ By comparison, in Sarajevo, in the Federation, it takes 50 days.⁶⁵ The *Doing Business* report says Banja Luka “deserves special mention for recent improvements in contract enforcement.”⁶⁶ According to the report, the costs of enforcing a commercial claim in Banja Luka are now the lowest in the region.⁶⁷

103. This year, the RS is continuing to move aggressively to improve its business environment. In February 2012, RS Minister of Finance Zoran Tegeltija signed a Memorandum of Understanding with other Western Balkans governments on an international system for certification for business-friendly municipalities.⁶⁸

104. On February 28, the RS Government issued an invitation for tenders for a motorway project connecting Banja Luka and Doboje. In March, the European Bank for Reconstruction and Development (EBRD) approved a 150 million euro loan for the project, which EBRD Transport Director Sue Barret called “an important milestone for the development of transport

⁵⁸ *Id.*

⁵⁹ Steven Woehrel, *Bosnia: Current Issues and U.S. Policy*, Congressional Research Service, May 2, 2011, p. 6.

⁶⁰ Steven Woehrel, *Bosnia: Current Issues and U.S. Policy*, Congressional Research Service, Feb. 29, 2012, p. 5.

⁶¹ World Bank, *Doing Business in South East Europe 2011*, pp. 2-3.

⁶² *Id.*

⁶³ *Id.* at pp. 3, 21, 35

⁶⁴ *Id.* at p. 16.

⁶⁵ *Id.*

⁶⁶ *Id.* at p. 35

⁶⁷ *Id.* at p. 34

⁶⁸ *Minister of Finance Zoran Tegeltija Signed Memorandum on Municipal Certification in Belgrade*, InvestSrpska.net, Feb. 24, 2012.

infrastructure in Republika Srpska.”⁶⁹ Pierre Mirel, Director for the Western Balkans in the European Commission Directorate General for Enlargement, said that project has great regional significance.⁷⁰ Construction is scheduled to begin in the near future, as soon as the RS has signed an agreement with one of 12 international consortia fulfilling the requirements of the tender.

105. The RS National Assembly in March adopted a Regulatory Reform Strategy for 2012-2015.⁷¹ The measure establishes a mechanism for improving the RS’s regulatory environment, including by removing administrative barriers. It also introduces a regulatory impact assessment procedure and strengthens institutional capacities for regulatory reform.⁷² The regulatory impact assessment procedure is modeled after methods used by the EU and EU member states to improve the quality of regulations and minimize any burdens on business.⁷³ Also in March, the RS National Assembly adopted the RS’s Energy Development Strategy until 2030.⁷⁴ The Strategy was incorporates principles of best practices as well as EU standards.⁷⁵ On the same day, the RS National Assembly approved a law that provides tax relief to companies that invest in their own production.⁷⁶

106. 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. Growth resumed in 2010 and accelerated slightly in 2011,⁷⁷ though the RS economy, like those of its neighbors, is currently being weighed down by Europe’s economic turbulence. Despite the economic crises buffeting Europe and the world in the last few years, unemployment in the RS fell by 4 percentage points between 2006 and 2011.⁷⁸ The RS’s unemployment rate in 2011, while still high, was five points lower than that of the Federation. In 2011, the RS’s industrial production increased at a rate of 4.7%, a rate more than 2 percentage points better than the Federation’s. The RS Government’s market

⁶⁹ *EBRD lays foundation for road PPP in Western Balkans*, Emg.rs, April 30, 2012.

⁷⁰ *Mirel: “Autoput Banja Luka-Doboj od regionalnog značaja,”* 24sata.info, April 18, 2012.

⁷¹ *National Assembly of the Republic of Srpska Adopted Proposal RS Regulatory Reform Strategy*, InvestSrpska.net, March 16, 2012.

⁷² *A Draft Strategy of Regulatory Reform Adopted*, InvestSrpska.net, Dec. 15, 2011.

⁷³ RS Government, Government of Republic of Srpska held 52nd Session, Feb. 16, 2012, available at http://www.vladars.net/eng/vlada/ic/ns/Pages/Government_of_Republic_of_Srpska_held_52nd_Session.aspx (“Summary of RS Government 52nd Session”).

⁷⁴ *National Assembly of the Republic of Srpska Adopted Proposal Srpska’s Energy Development Strategy*, InvestSrpska.net, March 16, 2012.

⁷⁵ Summary of RS Government 52nd Session.

⁷⁶ National Assembly of the Republic of Srpska Adopted Draft Law on Amendments to the Law on Profit Tax, InvestSrpska.net, March 16, 2012.

⁷⁷ *Economic Monitor - March 2012*, Republika Srpska Investment-Development Bank.

⁷⁸ Database of Economic Indicators of the Republika Srpska, Main Economic Indicators, Comparative Review, available at www.irbrs.net/statistika.aspx?tab=2&god=2011&lang=eng (“Comparative Review of Economic Indicators”).

reforms have also helped to boost wages in the RS. From 2006 to 2011, average wages in the RS jumped 56%,⁷⁹ an improvement more than 14 percentage points better than that of the Federation.⁸⁰ In 2011, the RS significantly expanded its role in international trade, increasing its exports by 17% and its imports by 13%.⁸¹ The Federation, by comparison, increased its exports by 14% and its imports by 14%.⁸²

107. 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.

108. The OHR's concerted effort, over the years, 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. According to updated statistics, the unfair distribution of VAT revenues has increased the Federation's debt to the RS, which currently stands at BAM 37 million.

109. 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."⁸³

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

⁷⁹ Comparative Review of Main Economic Indicators.

⁸⁰ Monthly Statistical Review of the Federation Of B&H, Feb. 2012, available at www.fzs.ba/Bilten0212.pdf.

⁸¹ Summary of RS Government 52nd Session.

⁸² Monthly Statistical Review of the Federation Of B&H, Feb. 2012, available at www.fzs.ba/Bilten0212.pdf.

⁸³ Jasna Jelusic, *Bosnia and Herzegovina* in FREEDOM HOUSE, NATIONS IN TRANSIT 2011, 125, 126.

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

111. 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.⁸⁴ This ranking was based solely on the amount of information the central BiH government provides about its budget and financial activities.⁸⁵ 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."⁸⁶

112. 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.⁸⁷ 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.⁸⁸

113. 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.

E. The RS Government gives high priority to the fight against terrorism.

114. October's terrorist attack on the U.S. embassy in Sarajevo is only the most recent reminder of the danger that terrorists inspired by Islamic radicalism poses to BiH citizens, whether they are Bosniak, Serb, or Croat. Unfortunately, within BiH the RS alone treats the threat of these violent extremists with the seriousness it deserves. Further centralization of BiH security agencies would undermine the ability of both BiH and the RS to fight terrorism.

⁸⁴ Int'l Budget Partnership, Open Budget Survey 2010, available at http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-English.pdf.

⁸⁵ Int'l Budget Partnership, Questionnaire for Bosnia and Herzegovina, Sept. 2009, available at <http://internationalbudget.org/wp-content/uploads/2011/04/Bosnia-OBI2010QuestionnaireFinal.pdf>.

⁸⁶ Open Budget Survey, 2010 Report on Bosnia and Herzegovina, available at http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-BosniaHerzegovina_1.pdf

⁸⁷ International Covenant for Civil and Political Rights, 999 UNTS 171 and 1057 UNTS 407/ [1980] ATS 23, art. 19 (1967).

⁸⁸ General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Accords) Annex 4: Constitution, Preamble; Annex 1(7) (1995).

115. In the 1990s, Radical Islamic organizations and fighters came from around the world to BiH to fight in the war, and their legacy continues to haunt BiH. The embassy attack isn't the only recent terrorist attack that BiH has suffered. In 2010, terrorists bombed a police headquarters in the town of Bugojno in central Bosnia, killing one police officer and injuring six others. The perpetrators of many terrorist acts around the world have spent time in BiH.

116. The RS takes an active role in the fight against terrorism both in BiH and abroad. In February, for instance, the RS Ministry of the Interior joined with the EU to organize a two-day seminar on cyberterrorism.⁸⁹ At the seminar, police and prosecutorial officials from BiH, Serbia, Croatia, and Montenegro learned from EU experts about how to more effectively thwart the use of information technology by terrorist organizations. Other RS agencies and officials have been active in international anti-terrorist organizations and programs.

117. If BiH is to protect innocent civilians against the terrorist threat, all of its police and security agencies must face up to the threat's existence. Unfortunately, the leadership of BiH's central security agencies often dismisses or minimizes the threat of violent extremism to BiH citizens. The leaders of these central agencies have also sometimes refused to share important information about terrorist threats with the RS. Unfortunately, continuing to concentrate power in these same agencies will weaken—not strengthen—the fight to protect all BiH citizens against terrorism.

V. The RS Government is working toward BiH's EU Integration

118. The RS Government fully supports BiH's European integration. It will work with determination toward BiH's accession to the EU while protecting the decentralized constitutional system established in the Dayton Accords.

A. Republika Srpska is leading the way on meeting the EU's *acquis*

119. The RS has embraced the opportunity afforded it by the EU accession process and taken advantage of the country's decentralized structure to move as quickly as possible to advance the reform and development necessary to become a fully functioning and contributing part of Europe. Because of BiH's decentralized constitutional structure, the great majority of harmonization of laws and regulations with the EU's *acquis communautaire* must be performed at the Entity level. 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.

120. Since the end of 2007, Republika Srpska has been steadily and systematically harmonizing its laws and regulations with the EU's *acquis*.⁹⁰ Since that year, the RS Government has subjected more than 600 laws and regulations to this procedure.⁹¹ In 2012, the RS Government plans to put an additional 49 laws and 100 regulations through this harmonization

⁸⁹ RS Ministry Of Interior Organizes Seminar On Fight Against Cyber Terrorism, EU Police Mission, Feb. 7, 2012, available at www.eupm.org/Detail.aspx?ID=3761&TabID=9.

⁹⁰ Summary of RS Government 52nd Session.

⁹¹ *Id.*

procedure.⁹² The BiH Government and the Federation Government are much less advanced in their EU harmonization efforts. The RS hopes that that its laws, regulations, and processes can serve as a model for BiH's other governments as they harmonize their laws and regulations with the *acquis*.

121. 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."⁹³ The EU report also praises the RS National Assembly for having "improved the legislative process."⁹⁴ 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."⁹⁵

122. 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 Progress Report cites many fewer steps toward compliance with the *acquis* by the Federation than by Republika Srpska.

B. BiH's elected leaders are working cooperatively toward EU integration.

123. As explained in section II-A, above, BiH's leadership is working diligently and effectively to resolve issues that have been holding back progress on EU integration. BiH's leadership recently negotiated agreements resolving two of the three difficult issues that had been standing in the way of the Stabilization and Association Agreement (SAA) being brought into force. In February, the BiH Parliamentary Assembly followed up on these agreements by enacting the BiH Law on Census and the BiH Law on State Aid. Now the only task remaining before the SAA may be brought into force is to for BiH to make the requisite efforts toward implementing the European Court of Human Rights' *Sejdic and Finci* decision.

124. The RS and its leaders are committed to implementing the *Sejdic and Finci* decision. This is a complicated and delicate task, however, because it requires amending power-sharing provisions of the BiH Constitution while, at the same time, ensuring that the equality of BiH's Constituent Peoples is maintained. Still, the RS is confident that BiH's elected leaders will succeed in negotiating a solution soon.

⁹² *Id.*

⁹³ European Commission, Bosnia and Herzegovina 2011 Progress Report, Oct. 12, 2011, p. 10 ("EU 2011 Progress Report").

⁹⁴ *Id.* at p. 8.

⁹⁵ *Id.*

125. The RS will also continue working cooperatively with the EU and BiH's other governments to develop coordination mechanisms that will facilitate EU integration while maintaining BiH's decentralized constitutional structure.

C. BiH's decentralized Constitution is consistent with EU membership.

126. The EU has made clear that BiH's decentralized Dayton structure is entirely consistent with membership in the EU. As a top EU official said in 2011, "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.*"⁹⁶

127. In a February Speech, Special Representative Sørensen said:

Bosnia and Herzegovina has a complex constitutional structure, enough words have been said about that. But there are internal arrangements in EU member states that can also be considered very complex. As I have said many times before: the EU fully respects the security, territorial integrity and constitutional order of Bosnia and Herzegovina.⁹⁷

Similarly, in an interview in January, Sørensen said, "I should underline that the EU recognises that Bosnia and Herzegovina has a specific constitutional order. We support this, and please remember that there are also different types of internal structure within many of the existing Member States."⁹⁸

128. 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.

129. 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.⁹⁹

⁹⁶ 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 (emphasis added).

⁹⁷ EU Delegation to Bosnia and Herzegovina, Speech delivered by Head of EU Delegation to BiH and EU Special Representative, Ambassador Peter Sorensen at Krug 99 session, Feb. 26, 2012.

⁹⁸ EU Delegation to BiH, Interview with Ambassador Peter Sorensen for Infokom magazine of the BiH Foreign Trade Chamber, Jan. 18, 2012.

⁹⁹ 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

130. As noted in section II-A, above, in order for BiH's Stabilization and Association Agreement and Interim Agreement with the EU to go into effect, BiH must make progress toward implementing the European Court of Human Rights' 2009 *Sejdic and Finci* decision. The RS has repeatedly expressed its readiness to amend the Constitution for this purpose, and it hopes an agreement on such an amendment can be reached without further delay.

131. 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.

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

D. The RS Government is vigorously pursuing judicial reform.

133. The judicial system of BiH, which was—for the most part—imposed by decrees of the High Representative, needs significant changes if BiH is to continue moving forward toward EU membership. As the European Parliament urged in a March 2012 resolution, BiH should “ensure the establishment of an independent, impartial and effective judicial system in line with EU and international standards.”¹⁰⁰ 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.

1. EU Structured Dialogue on Justice

134. As part of the EU Structured Dialogue on Justice, the RS Government is working with the EU to develop reforms that will ensure that the BiH judicial system meets European standards, respects BiH's Dayton structure, and is independent of political interference—including interference by the High Representative. Some of the RS Government's key goals for the Structured Dialogue are outlined below.

a) Judicial independence

135. 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

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).

¹⁰⁰ European Parliament Resolution of 14 March 2012 on the 2011 progress report on Bosnia and Herzegovina (2011/2888(RSP)).

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 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.

136. 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.¹⁰¹

137. In addition, the High Representative has taken—and continues to take—actions that displace the lawful jurisdiction of the courts in BiH. For example, in 2011 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.

138. In order to establish the independence of the judiciary in BiH, the RS Government is working, as part of the Structured Dialogue, 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

¹⁰¹ Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, March 23, 2007.

- Eliminate the High Representative’s power to control or influence which individuals are appointed to judicial positions.

b) The BiH Court and Prosecutor’s Office

139. The Court of BiH and the Prosecutor’s Office of BiH as now established are in violation of the BiH Constitution. The Constitution assigns no such functions or powers to BiH, but instead allocates the authority purportedly conferred upon the Court and the Office to BiH’s two Entities. The establishment of such a court or prosecutor’s office at the BiH level requires amendment of the Constitution based on agreement of the Entities. Although the Constitutional Court ruled that the Court of BiH as established was not in contravention of the BiH Constitution, that decision is fatally flawed because it was the product of a “tacit consensus” that the Court would always confirm legislation imposed by the High Representative.

140. In addition to their lack of a constitutional basis, the Court of BiH and the Prosecutor’s Office of BiH as now constituted fall short of European and international standards in many respects. The provision for appellate review of decisions of the Court of BiH solely by that Court itself does not comply with the BiH Constitution or international standards. The control by the President of the Court of BiH in the assignment of judges to divisions, panels and cases is inconsistent with the requirement of an independent and impartial tribunal as recognized in the European Convention on Human Rights.

141. The power of the Court of BiH to impose binding legal interpretations and practice directions on other courts violates the principle of independence within the judiciary and the BiH Constitution. The power of the Court of BiH to oust the jurisdiction of Entity Courts violates the rights of the Entities under the BiH Constitution and also the rights of defendants under Article 6 of the ECHR to an independent and impartial tribunal. The actions of the Prosecutor’s Office of BiH show an evident bias against Serbs and Croats and in favor of Bosniaks. No valid justification exists for the continued presence of foreign judges on the Court of BiH and foreign prosecutors in the Prosecutor’s Office of BiH.

142. The Court of BiH and the Prosecutor’s Office of BiH must be replaced with institutions that meet the requirements of the BiH Constitution and European standards. First, in order to meet the requirements of the BiH Constitution, any Court of BiH or Prosecutor’s Office of BiH must be instituted in line with amendments of the Constitution of BiH passed in a formal procedure based on agreement of the Entities. In addition, the following changes at a minimum must be made to correct the existing defects:

- The Court of BiH and the Prosecutor’s Office must have expressly defined jurisdiction limited to matters that it is appropriate and necessary for institutions of BiH rather than the Entities to handle.
- The Court of BiH must have no power to oust the jurisdiction of Entity courts in cases based on acts that are crimes under Entity laws.

- The Prosecutor’s Office of BiH must be required to institute a transparent and even-handed procedure for determining which charges to pursue and for prosecuting the cases.
- The Court of BiH and the Prosecutor’s Office of BiH must be staffed solely by citizens of BiH, without foreign “advisors.”
- The Court of BiH must have no power to prescribe for other courts binding interpretations on the application of BiH law and international treaties, nor may the Court have jurisdiction to impose “practice directions” on other courts for the application of the substantive criminal law.
- The Court of BiH should not be permitted to apply retroactively the 2003 BiH Criminal Code.

c) Judicial appointment and discipline

143. BiH’s regime of judicial appointment and discipline is inconsistent 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.

(1) Background of the HJPC regime

144. 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.

145. 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.

146. 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.

(2) International standards require Entity councils for Entity judges and prosecutors.

147. 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.

148. 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.

149. 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.

(3) European standards require separate bodies for judges and prosecutors.

150. By giving a single body jurisdiction over both judges and prosecutors, the HJPC regime violates widely recognized European Standards. In its January 2011 *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."¹⁰²

151. 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

¹⁰² European Commission on Democracy through Law (Venice Commission), *European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service*, CDL-AD(2010)040, Jan 2, 2011, p. 17.

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.”

(4) European standards require changes to the composition of the HJPCs.

152. 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.

153. 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.

154. 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.

2. The mishandling of the Dobrovoljačka Street case highlights the urgency of judicial reform.

155. The RS continues to fully support bringing to justice those responsible for war crimes, regardless of their ethnicity. For years, international observers have recognized the RS’s commitment to this principle. A 2011 OSCE report, for example, praises the contribution of RS courts and prosecutors to the investigation, prosecution, and adjudication of war crimes.

156. The prosecution of war crimes, of course, must take place without regard to the ethnicity of the accused or their victims. Unfortunately, the BiH Court and BiH Prosecutor’s Office have discriminated against Serbs, generally declining to investigate or prosecute those accused of war crimes against Serbs. A statistical analysis by the RS Government confirms the anti-Serb bias of these institutions.

157. The latest incident tending to bear out these conclusions is the recent decision by a foreign BiH prosecutor to halt the investigation of former high-level officials’ links to the 1992 Dobrovoljacka Street Massacre. In January 2012, a foreign prosecutor who was appointed by a decree of the foreign High Representative tried to dismiss the case prematurely. Meanwhile, the High Representative—who ought to have nothing to do with the prosecution of such matters—has misrepresented the case in the media and tried to delegitimize the grievances of the RS government over the Prosecutor’s and Court’s treatment of the case.

158. On May 3, 1992, a Yugoslav National Army (JNA) convoy, despite a guarantee of safe passage, was attacked by Bosniak Territorial Defense Forces (TDF). According to the Commander of the UN forces in BiH, Major General Lewis MacKenzie, TDF soldiers first blocked the road in the middle of the convoy, splitting the column of vehicles in half. The soldiers then began shooting into some of the vehicles, killing and wounding a number of JNA personnel. Following the attack, General Jovan Divjak reported that the TDF captured and removed from the convoy 15 JNA vehicles and 215 JNA soldiers, more than half the total number of soldiers in the convoy. The attack ended after negotiations between Izetbegovic and the TDF commanders on the scene, but the captured soldiers and property were not returned.

159. Under the “Rule of the Road” procedure established for prosecution of war crimes under the 1996 Rome Agreement, local authorities in BiH were required to submit files to the International Criminal Tribunal for the Former Yugoslavia (ICTY) before making any arrests in cases such as this one. The RS government submitted files on nine suspects in the Dobrovoljačka ambush to the ICTY in July 2002; however, no suspect from the ambush was ever tried by the ICTY. After the Rules of the Road procedure ended in 2004, the local courts were granted the discretion to proceed with any cases, such as the Dobrovoljačka Street Case, that were not tried by the ICTY.

160. The BiH Prosecutor’s Office has been investigating this case since 2005 but has not proceeded with any trials, even though sources within the Prosecutor’s Office indicate that investigators have found evidence of war crimes. Nevertheless, in January of this year, Jude Romano, a foreign prosecutor within the BiH Prosecutor’s Office, decided unilaterally to terminate investigations. RS authorities have insisted that the case be reopened, and the RS Ministry of Interior has even provided additional evidence in the case to encourage the BiH Prosecutors to resume their investigation. In the meantime, the High Representative has made public statements attempting to delegitimize the request for a thorough and objective investigation into this matter.

161. The BiH Court’s perceived discrimination against Serbs was an impetus for the launching of the EU Structured Dialogue process. RS authorities have every right to question the actions of the State Court and Prosecutor, through the Structured Dialogue and by other means. It is not lawful for the High Representative to intervene in these processes, or to attempt to influence the decisions of the Court and Prosecutor’s Office. Judicial independence is a fundamental tenet of stable democracy. Nearly two decades after the events on which this case centers, BiH is still being denied a justice system free of political intervention, not because it is incapable of handling war crimes cases, but because the OHR continues to want to dictate their outcome.

E. International Commission on Missing Persons (ICMP)

162. War victims who are of the Serb ethnic background have been long pointing out the fact that Serb victims have been discriminated against on various grounds as regards establishing transitional justice in BiH. Such discrimination is also evident in the process of searching for missing persons who are of the Serb ethnic background.

163. Of the total number of missing persons in BiH, 20% are of the Serb ethnic background. Over the past four years, in its DNA laboratories, the ICMP has identified only 3% of Serb

victims, i.e. missing persons sought by Serb families. At the same time, the ICMP has been implementing projects, for years now, the focus of which has been on the missing persons of the Bosniak ethnic background only. These projects include the PIP (Podrinje Identification Project) and KIP (Krajina Identification Project). Although the title of the first project refers to Podrinje, the project covered exclusively the persons of the Bosniak ethnic background who were considered to have gone missing in the period 10 – 19 July 1995 in the course of the events in and around Srebrenica. The situation with the KIP project was similar.

164. Another obvious example of how war victims are manipulated for political purposes is the case of Avdo Palić, a Bosniak military officer who died during the war. In 2001, the remains of Palić and eight other persons were exhumed by the Federation of Bosnia and Herzegovina's Commission for Missing Persons at the site of Vragolovi, Rogatica Municipality. By 2005, five out of nine bodies exhumed there had been identified, two of whom had gone missing with Palić.

165. Yet for eight years after Palić's exhumation, the RS was exposed to tremendous pressure from the international community, including a succession of High Representatives, to produce Palić's remains—remains that had been in the possession of the ICMP all along. Republika Srpska incurred great expense in its efforts to resolve the case. It established two multi-ethnic commissions dedicated to the case's resolution and paid compensation to Palić's family. In July 2009, the High Representative was still demanding that Republika Srpska to "fulfill its obligations" regarding Palić.¹⁰³

166. Jasmin Odobašić, a member of the RS Government's Commission for the Case of Avdo Palić, who exhumed Avdo Palić's body on behalf of the FBiH Commission on Missing Persons, wrote to the ICMP on two occasions demanding that the DNA taken from Palić's skeletal remains be compared to the DNA profiles obtained from the blood given by Palić's sister and daughters in 2000 and 2002. It was only more than two years after the second letter, on 5 August 2009, that the ICMP issued positive findings for Avdo Palić, proving that the years of pressure and accusations toward Republika Srpska were wrong.

VI. The Security Council should forgo reference to Chapter VII.

167. For the UN Security Council to act under Chapter VII of the UN Charter, it must "determine the existence of any threat to the peace, breach of the peace, or act of aggression." The situation in BiH does not remotely meet any of these criteria and, thus, does not warrant the Security Council to continue to act in BiH under Chapter VII.

168. BiH has been at peace for more than 16 years. Military assessments continue to refute any suggestion that the situation in BiH is a threat to international peace and security. The EUFOR ALTHEA mission in BiH has long reported that the situation in the country is "calm and stable." As the German ambassador to the United Nations, Peter Wittig, recently observed,

¹⁰³ OHR Calls for RS Government to Fulfill its Obligations Regarding Avdo Palić, Office of the High Representative, July 27, 2009.

neither EUFOR ALTHEA nor its predecessor missions, SFOR and IFOR, ever had to intervene to maintain peace.¹⁰⁴

169. In March, Commissioner Füle told the European Parliament that the EUFOR/ALTHEA Mission “now confirms on a regular basis that there is no threat to the safe and secure environment.”¹⁰⁵ Commissioner Füle noted that “in light of improvements in law enforcement we have . . . been able to decide on terminating the European Union Police Mission in June this year.”¹⁰⁶ In April, Journalist Tim Judah observed, “For all the lingering resentments and differences between the communities, disputes have remained within the political realm since 1995. They have never spilled back into violence.”¹⁰⁷

170. The EU’s recent decisions reflect its appreciation of BiH’s longstanding stability. In October 2011, EU foreign ministers agreed to dramatically reduce the size of EUFOR. Meeting in Luxembourg, the EU ministers agreed to cut the size of the force from approximately 1,300 to 500-600.¹⁰⁸ Swedish Foreign Minister Carl Bildt, a former High Representative in BiH said that reducing the size of the mission would not destabilize BiH.¹⁰⁹ He told reporters, “I don’t think the problem in Bosnia is of a military nature; it is of a political nature.”¹¹⁰ The EU foreign ministers also agreed to shift the focus of EUFOR to capacity building and training.¹¹¹

171. Apart from the deeply rooted peace, BiH has made tremendous progress during the years since the war. As Judah wrote, BiH’s “transformation since [the war] has been almost miraculous.”¹¹² BiH, its Entities, and their political subdivisions have held numerous elections, consistently certified by international observers as free and fair. In recent years, BiH has served as a member of the Security Council, satisfied the requirements for a NATO Membership Action Plan, participated in NATO operations and UN peacekeeping, been admitted to the Council of Europe, and signed a Stabilization and Association Agreement as an important step toward EU membership. BiH’s economy has grown in 15 out of the 16 years since the war. Moreover, the flurry of recent political progress shows that BiH’s constitutional leadership is capable of finding common ground and resolving thorny issues through negotiation and compromise.

172. In a March speech, EU Special Representative Sørensen said:

¹⁰⁴ Permanent Mission of Germany in United Nations, Statement by Ambassador Wittig on Bosnia and Herzegovina in the Security Council, Nov. 15, 2011.

¹⁰⁵ Štefan Füle, European Commissioner for Enlargement and European Neighbourhood Policy, Address at the plenary debate on Bosnia and Herzegovina, March 14, 2012.

¹⁰⁶ Štefan Füle, European Commissioner for Enlargement and European Neighbourhood Policy, Address at the plenary debate on Bosnia and Herzegovina, March 14, 2012.

¹⁰⁷ Tim Judah, *Bosnia’s Come a Long Way, Don’t Be Fooled by War Memories*, BLOOMBERG, April 8, 2012.

¹⁰⁸ EU agrees to cut down troop numbers in Bosnia military mission, DPA, 11 Oct. 2011.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Council of the European Union, Council Conclusions on Bosnia and Herzegovina, 10 Oct. 2011.

¹¹² Tim Judah, *Bosnia’s Come a Long Way, Don’t Be Fooled by War Memories*, BLOOMBERG, April 8, 2012.

Bosnia and Herzegovina has managed to come a long way since those days in the early 90s. A majority of the refugees have returned, there is no ethnic violence, and the economy is slowly improving. Bosnia – to be frank – resembles more or less any other country in the Western Balkans with similar problems and advantages.¹¹³

173. The EU's 2011 Progress Report for BiH observes that both civil and political rights and economic and social rights "are broadly respected."¹¹⁴ 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."¹¹⁵ A peacekeeping contingent from the BiH Armed Forces participates in the NATO-led International Security Assistance Force in Afghanistan.

174. After all of these years of calm, stability, and progress, there is not a shred of justification for a determination that the situation in BiH constitutes a threat to international peace and security. Misuse of Chapter VII powers damages Security Council credibility and weakens the long-term viability of Chapter VII itself. The Security Council should forego further reference to Chapter VII with respect to the situation in BiH.

VII. Conclusion

175. BiH's elected leaders are striking the difficult compromises necessary to move BiH forward. BiH's rapid progress since December has come not because of OHR intervention but because of the relative absence of it. After 16 years of peace and progress, there is no justification for OHR to remain in BiH, and there is particularly no excuse for the High Representative to assert and use dictatorial powers that radically exceed his Dayton mandate. The RS is committed to protecting the constitutional structure established in the Dayton Accords, which has enabled the RS to pursue its aggressive program of economic reforms. The RS is working diligently toward BiH's EU accession, including by aligning its laws with the *acquis* and participating in the EU's Structured Dialogue on Justice. Given BiH's deeply-rooted peace and dramatic progress since the war, it is the Security Council should not refer to Chapter VII of the UN Charter with respect to BiH.

¹¹³ Address of the EU Special Representative to BiH, Meeting with the Joint Committee on European Affairs, The House of the Oireachtas (Irish Parliament), March 28, 2012.

¹¹⁴ EU 2011 Report on BiH, p. 17.

¹¹⁵ *Id.*, p. 23.