



REPUBLIC OF SRPSKA
PRESIDENT OF THE REPUBLIC

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No: 01-010-1442/13

Banja Luka, 8 May 2013

**His Excellency Ambassador Kodjo Menan of Togo,
President of the Security Council
Permanent Mission of Togo to the UN
112 East 40th Street
New York, NY 10016-1740**

Dear Mr. President:

To assist the Security Council in its upcoming debate on Bosnia and Herzegovina (BiH), Republika Srpska, a party to all of the annexes that are integral and implementing parts of the General Framework Agreement for Peace in Bosnia and Herzegovina, known as the Dayton Accords, presents the attached Ninth Report to the UN Security Council.

The Report describes how the RS Government is working to improve the economic condition of its citizens by pursuing economic and judicial reforms, advancing European integration, and respecting the decentralized constitutional BiH structure regulated by the Dayton Accords and guaranteed by the signatures of the witnesses – USA, Russian Federation, Germany, United Kingdom, France and the EU. Integral to--and the most important part of--the Dayton Accords is its Annex 4, the BiH Constitution.

Although BiH's elected leaders have continued to reach important agreements, legislative implementation of these agreements has been extremely slow, mainly because of deep political and national divisions within the other BiH entity, the Federation of BiH. It also reflects the dysfunction of BiH institutions, created mainly by interventions of the High Representative, outside the provisions of the BiH Constitution and the Dayton Accords, which direct the RS to

preserve BiH, established by an international agreement. Respectful of BiH's decentralized structure, the RS seeks to progress on reforms to improve its economic competitiveness and harmonize its laws with EU standards. The RS is also working, through the EU Structured Dialogue on Justice, to reform the ineffective, unaccountable justice system imposed by the High Representative. The RS, moreover, continues to call for an end to the High Representative's unlawful and counterproductive role in BiH. The Report, finally, notes that BiH's firmly rooted peace leaves no justification for the Security Council to continue acting under Chapter VII of the UN Charter.

As I submit this Report, I would also like to comment briefly on the High Representative's new semiannual report to the UN Secretary-General. The High Representative's report is striking for its overwhelming focus on current issues of BiH politics rather than the subject matter on which the High Representative's strictly limited mandate under Annex 10 of the Dayton Accords instructs him to report: progress in the civilian implementation of the Dayton Accords. It must be emphasized that the High Representative is only authorized to interpret Annex 10 and not other parts of the Dayton Accords, as claimed.

The High Representative's report concedes that RS institutions "functioned far more efficiently than those of the Federation" and observes, "In contrast with the Federation government, the RS government has continued to meet regularly as it seeks to tackle the many economic and social challenges it is facing" The report is modest and vague in its criticism of Federation officials—particularly Bosniak party leaders—for actions that have deepened the Federation's crisis and continue to have detrimental consequences throughout BiH. For the government crisis occurring in the Federation of BiH, the main responsibility lies with the High Representative himself, who illegally intervened to prevent implementation of the decision of the Central Election Commission, the only authorized institution.

Yet the High Representative devotes much of his report to condemning certain RS leaders—not for their actions—but for their free expression of opinions, beliefs, and ideas. Such condemnations, issued by a diplomat who claims illegal authority to remove elected officials by unilateral decree, must be understood as an effort to suppress freedom of expression in disregard of the European Convention on Human Rights and other international human rights instruments.

The RS is dedicated to respecting the Dayton Accords, including the BiH Constitution's division of competencies between the Entities and BiH. Since the late 1990s, high representatives have degraded BiH's decentralized constitutional order through pressure, compulsion, and autocratic decrees. To this day, the RS must constantly defend against attempts by the High Representative and others to further expand BiH-level competencies in defiance of the BiH Constitution's clear limits—or to scrap BiH's constitutional order altogether in favor of a more centralized system.

Nothing in the Dayton Accords suggests that the agreement is to be implemented by shifting competencies constitutionally belonging to the Entities to the BiH level. Yet the High Representative takes the view that expansion of BiH-level competencies beyond those specified in the BiH Constitution is "implementing the Peace Agreement" which is entirely illegal and incorrect. Thus, the High Representative's report tries to delegitimize RS efforts to restore the constitutional division of competencies between the Entities and BiH as attempts to "roll back" implementation of Dayton. This misinterpretation turns reality on its head.

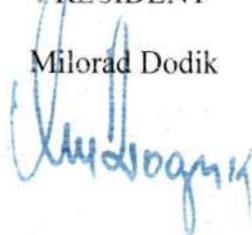
The High Representative's only significant criticism of an *action* of the RS Government is over the RS's decision to temporarily issue identification numbers to newborn children after BiH had stopped issuing them. As explained in section II-C-4 of the RS's Report to the Security Council, the RS's move to issue identification numbers is a temporary "bridge" to prevent infants' health care from suffering because of a political dispute at the BiH level. The High Representative's report acknowledges that BiH's failure to resolve the situation "created serious complications for ordinary citizens with newborn children," yet his commitment to centralization is so strong that he denounces even a temporary RS measure to stop these hardships while the dispute at the BiH level is being resolved.

I would ask that this letter and the attached Report be distributed to the Security Council's members. Should you or any Security Council member require information beyond what is provided in the report or have any questions regarding its contents, I would be pleased to provide you with it.

Yours sincerely,



PRESIDENT
Milorad Dodik



Republika Srpska's Ninth Report to the UN Security Council

May 2013

Republika Srpska's Ninth Report to the UN Security Council

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Republika Srpska's Ninth Report to the UN Security Council

Introduction and Executive Summary

Republika Srpska (RS), a party to all of the annexes that comprise the Dayton Accords, respectfully submits this 9th Report to the UN Security Council. The report examines developments since the 8th Report and outlines the RS Government's views on some key issues facing Bosnia and Herzegovina (BiH).

The overriding goal of the RS Government is to improve the economic condition of its citizens. To accomplish this, the RS is pursuing economic and judicial reforms, advancing European integration, and protecting the decentralized BiH structure set out in the Dayton Constitution.

The RS Government serves all its people. The RS's cabinet includes members of all of BiH's constituent peoples, and the RS institutions work to ensure that non-Serb ethnic groups are respected. A recent example of this was a February 2013 RS Constitutional Court decision ruling that the coats of arms and flags of two RS municipalities were unconstitutional because their inclusion of Serb symbols put Bosniaks and Croats "in an unequal position."

The RS is justly proud of its well established democratic political system. RS elections, as confirmed by international observers every two years, are fair and competitive. Changes in party control at the Entity and local levels are peaceful, orderly, and routine, as demonstrated most recently in the October 2012 local elections. In the 17 years since the Dayton Accords, the RS Prime Minister's office and Presidency have each switched party hands four times.

As the RS's new Prime Minister, Ms. Željka Cvijanović, told the RS National Assembly on 12 March 2013, the new cabinet will fight for "preserving every job, fiscal and social stability, reforming the business environment and creating space for foreign and domestic investments, and all this in an effort to rehabilitate the principles of social justice."

What the RS asks of the international community is respect for BiH's sovereignty and Constitution and cooperation with local efforts to move the RS—as well as BiH as a whole—forward toward a prosperous, European future.

I. The status of BiH reform

BiH's leaders made important progress in the first half of 2012, including the enactment of laws on the census and state aid and agreements on longstanding controversies like state and military property. But when relations between the two largest Bosniak parties (SDP and SDA) broke down a year ago, progress at the BiH level came to a sudden stop.

Nevertheless, in late November, the parties that make up BiH's partially reconstituted Council of Ministers came together, on their own initiative, and agreed on a wide-ranging agenda for reform. The agreement includes important and urgent measures, such as creation of a coordination mechanism for EU integration talks. Unfortunately, a bitter and protracted dispute over formation of a new Government of the Federation of Bosnia and Herzegovina (FBiH)—again between the Bosniak SDP and SDA parties—has stalled implementation of the agreed reforms. This is the second time in less than a year that intra-Bosniak struggles have derailed

progress. The RS is hopeful that the current impasse in the FBiH will end soon so that legislative progress at the BiH level may resume.

II. BiH must retain the decentralized structure of the Dayton Constitution.

Decentralized forms of government have had great success in improving administrative efficiency, and they are most successful in countries that, like BiH, have deep regional differences. It is BiH's decentralized structure that has made it possible for the RS, unlike the FBiH, to have a functional government and to enact far-reaching economic reforms to encourage job creation. Another reason BiH must retain its decentralized structure is the inefficiency, dysfunction, non-transparency, irrationality, and unaccountability of BiH-level institutions. Moreover, as the EU has made clear, BiH's decentralized constitutional structure is not a barrier to EU integration.

III. Economic Development

In the past several years, the RS has pursued an aggressive program of economic reform that has dramatically improved its business environment. A 2011 World Bank study found Banja Luka, the administrative center of the RS, to be one of the two most improved business environments in the Balkans since 2008. Although economic conditions remain difficult throughout BiH and the Balkans as the global financial crisis grinds on, the RS's reforms have shown results. The RS unemployment rate has actually fallen three percentage points since 2006, before the global financial crisis began. Consistently in recent years, the RS has substantially lower unemployment than the FBiH. The RS is also working to bring about a better economic future by harmonizing its laws with the EU's *acquis*. So far, more than 800 laws and bylaws have undergone this procedure.

IV. Justice Reform

BiH's centralized judicial and prosecutorial system, which was imposed by the High Representative in violation of the BiH Constitution, has proven to be ineffective and unaccountable. It should go without saying that war crimes must be punished without regard to the ethnicity of their victims. But an examination of statistics and other information about war crimes cases indicates a strong predisposition by the BiH Prosecutor's Office against prosecuting war crimes that were committed against Serbs. As part of the EU's Structured Dialogue on Justice, the RS is pursuing essential reforms and suggests solutions to bring BiH's High Judicial and Prosecutorial Council and the Court of BiH into alignment with European standards. The RS is also deeply concerned by the BiH Constitutional Court's increasing expansion of its own jurisdiction to include issues arising not under the BiH Constitution but under ordinary Entity law. The fact that the Constitutional Court has 8,800 appeals pending, together with the fact that it has only six active judges (three foreigners in Sarajevo spend less than a month per year) adds to the woes of BiH's poor, OHR-created judicial system.

V. The OHR's unlawful and counterproductive role

The presence of a High Representative claiming authority to rule and punish by decree violates the Dayton Accords and frustrates BiH's political and economic development. The so-called "Bonn Powers" asserted by the High Representative conflict with his mandate under Annex 10

of the Dayton Accords and violate the civil and political rights of BiH citizens. Moreover, the outside presence of a foreign diplomat—backed by a large bureaucracy—who claims absolute political authority without accountability, severely impedes the normal give-and-take of democratic politics. Key members of the international community are increasingly concluding that the High Representative’s role in BiH should now come to an end. Even so, some in the international community continue to assert that BiH should first fulfill the so-called “5+2” objectives and conditions identified by the *ad hoc* Peace Implementation Council (PIC) in 2008. But the 5+2 formula is unworkable and counterproductive because it ensures that political parties who consider the High Representative an invaluable ally will block the fulfillment of the last remaining conditions for his office’s closure.

VI. BiH is peaceful and secure.

Year by year, an international consensus is growing that BiH does not pose a significant security threat. The situation in BiH in no way warrants the determination required for the UN Security Council to act under Chapter VII of the UN Charter: that there exists a “threat to the peace, breach of the peace, or act of aggression.” After more than 17 years of peace and progress in BiH, there is no justification for the UN Security Council to continue acting under Chapter VII.

I. The status of BiH reform

A. Divisions in the FBiH are impeding BiH's reform agenda.

1. BiH has taken significant steps forward since the beginning of 2012 despite its progress being impeded by political squabbling between the two largest Bosniak parties. In November, the six parties comprising BiH's Council of Ministers agreed on a sound agenda for reform. Unfortunately, the implementation of this agenda in the BiH Parliamentary Assembly has faltered because of political discord in the FBiH. A bitter dispute over the formation of a new FBiH Government, mainly between the two main Bosniak Parties, has thoroughly preoccupied FBiH-based parties and postponed any legislative progress at the BiH level.

2. Early last year, BiH's elected leaders made breakthroughs on some of BiH's most difficult issues, including the long-awaited passage of laws on state aid, the census, and identity cards. BiH's political leadership made other progress as well, including a March agreement on state and military property. However, progress was derailed in the spring by a deep split between the two Bosniak parties then represented on the BiH Council of Ministers.

3. Despite this, in October the leaders of the predominantly Serb SNSD (the largest party in the RS) and the predominantly Bosniak SDP (the largest party in the FBiH) agreed on a wide-ranging package of measures to improve BiH's economy and reform public institutions. One agreement in the October Package resolves a longstanding dispute over the allocation of funds from BiH's electricity distribution company. The October package also advances plans for the construction of a key tunnel between the RS and the FBiH, which will promote economic growth in both Entities. Another important agreement, discussed in section IV-C-1, below, gives BiH's democratic bodies a voice in the final selection of prosecutors, bringing BiH closer to the practice of EU countries. The October package also includes an agreement to reform the BiH Law on Civil Servants to improve accountability, as well as agreements on international trade, public procurement, the BiH Central Bank, and election lists.

4. At a November 2012 meeting in Mostar, the leaders of the six parties comprising the partially reconstituted BiH Council of Ministers endorsed the October package. They also agreed to implement the March 2012 agreements on state and military property and the European Court of Human Rights' decision in *Sejdić-Finci v. Bosnia and Herzegovina*. The parties agreed on an agenda of other priorities as well, including the creation of a coordination mechanism for talks with the EU. In March, these same parties agreed on a formula for a constitutional amendment to implement *Sejdić-Finci*.

5. Legislation has been drafted to implement the October package and other reforms, but action has stalled because of a deadlock over the composition of the FBiH Government. Once again, animosity between the two largest Bosniak parties is holding back necessary reforms. Still, the RS is hopeful that the FBiH's deadlock will be resolved soon so that legislative progress at the BiH level may resume.

B. BiH must comply with the *Sejdić-Finci* decision.

6. Ever since the European Court of Human Rights' 2009 decision in *Sejdić-Finci v. BiH*, the RS has been committed to doing whatever it can to ensure its implementation. Unfortunately,

the RS cannot do this by itself. The *Sejdić-Finci* decision rejected provisions of the BiH Constitution that make individuals who are not members of BiH's Constituent Peoples ineligible to run for BiH's three-member Presidency or its House of Peoples. The RS proposed a simple solution for members of the BiH Presidency and House of Peoples representing the RS: to eliminate all ethnic qualifications. However, the FBiH's Bosniak and Croat parties have long been deadlocked over how to elect the members of the Presidency and the House of Peoples from the FBiH.

7. Last year, the RS's proposal for implementing the *Sejdić-Finci* decision earned the praise of the two plaintiffs in the case, Dervo Sejdić and Jakob Finci. In September, RS President Milorad Dodik met with the two plaintiffs to explain to them the RS's proposal to fix the offending provisions of the BiH Constitution. Messrs. Sejdić and Finci commended the RS proposal and thanked President Dodik for being, they said, the first BiH politician who expressed readiness to discuss with them the implementation of the court's ruling. President Dodik told Messrs. Sejdić and Finci that the RS was ready to immediately enter into a procedure to amend the BiH Constitution to bring BiH into compliance with the decision.

8. On 22 March 2013, the six parties represented on the BiH Council of Ministers agreed on a formula to bring the BiH Constitution into compliance with the *Sejdić-Finci* decision. Among other elements, this agreement would remove from the BiH Constitution ethnic qualifications for all members of the BiH Presidency and House of Peoples. Unfortunately, in the weeks since the agreement, FBiH politicians have made statements that cast grave doubt on whether it will ever be implemented. The RS agrees with the European Union that the *Sejdić-Finci* problem must be resolved before BiH's next elections in 2014. For this to happen, FBiH politicians must at last reach—and adhere to—an agreement on how to implement the *Sejdić-Finci* decision in elections of members of the Presidency and House of Peoples from the FBiH.

9. Unfortunately, some Bosniak politicians and their international supporters are trying to erect an artificial and needless barrier to implementing *Sejdić-Finci*: they demand that any solution be "symmetrical" but fail to explain why this is necessary—or even possible in BiH's asymmetrical constitutional structure. In *Sejdić-Finci*, the court rejected provisions that make individuals who are not members of BiH's Constituent Peoples ineligible to run for certain offices. The Court did not object to the asymmetrical nature of BiH's voting systems.

10. BiH's constitutional structure, with two Entities and three Constituent Peoples, is asymmetrical by its very nature. BiH's three-member presidency and House of Peoples are indispensable to BiH's constitutional structure because they help prevent domination by one Constituent People over the others. As long as there are three members of the presidency and only two Entities, differences in the way the members of the presidency are chosen are unavoidable. The election of a single member of the Presidency by one Entity is necessarily different from the election of two members by the other Entity. Asymmetry is similarly unavoidable in the election of the House of Peoples.

11. In addition, asymmetric election systems are common in democratic systems around the world. In Germany, for example, some members of the Bundestag are directly elected, others are elected as part of a national party list, and still other members, from certain states, are elected through unique methods. In many democratic countries, different members of the same political

body are chosen through different means. These countries include, among others, Italy, New Zealand, the United Kingdom (Scottish Parliament), Hungary, Japan, Lithuania, and South Korea. Members of the EU Parliament are elected through widely varying systems designed by the state they represent.

12. The RS's solution for satisfying the *Sejdić-Finci* decision with respect to RS members of the Presidency and House of Peoples is simple and effective. If the solution with respect to members from the FBiH is not as simple, that does not mean that the solution must be equally complicated with respect to members from the RS. The deadline for BiH to amend its constitution to bring it into line with the *Sejdić-Finci* decision has long passed. The international community should reject certain Bosniak politicians' efforts to erect an artificial roadblock to implementation.

C. State and Military Property

13. The RS remains committed to helping resolve the disputes over the status of state and military property as soon as possible. On 9 March 2012, the six parties in the BiH Council of Ministers agreed on a formula for resolving these disputes.

14. In July, the BiH Constitutional Court adopted a decision that invalidated an RS law pertaining to the state and military property issues. But this decision, as a practical matter, left the issue of state and military property where it had been before.

15. In November, the six parties represented on the partially reconstituted BIH Council of Ministers agreed to implement the March agreement on state and military property. Unfortunately, with FBiH politicians preoccupied with a series of disputes over the reconstitution of the FBiH government, there has been no progress on implementation. Once the political situation in the FBiH stabilizes, the RS hopes that these agreements will soon be fulfilled through legislation in the BiH Parliamentary Assembly.

D. Coordination Mechanism

16. The RS fully supports efforts to reach an agreement on a new coordination mechanism in the area of BiH's European integration. This will help BiH achieve a more efficient realization of upcoming obligations of the EU accession process, as well as the participation of BiH under a "harmonized vote" in communications with the European Union and its institutions. In addition, establishment of a new coordination mechanism presents a formal condition for achievement of further progress of BiH in the process of accession to the European Union.

17. A team composed of representatives from institutions at all levels of government in BiH has been assigned to draft a Decision on the coordination mechanism in the area of BiH's European integration, and it has achieved significant progress on this issue. The new coordination mechanism must be founded on the internal constitutional structure of BiH and include the jurisdiction and responsibilities of all levels of government in the area of the European integration. The role and the position of the Entities, within whose jurisdiction most of the issues covered by accession process lie, must be especially visible. Another goal is to ensure that only harmonized positions—that is, positions agreed to by governmental institutions at all

levels—will be presented as BiH's position in relations with the European Union and its institutions.

E. The BiH Census must take place in 2013 as scheduled.

18. In a breakthrough coming after years of debate, the BiH Parliamentary Assembly approved a Census Law in February 2012, thus allowing BiH to take its first census since 1991. Approval of the census law was an important milestone toward EU integration. In April 2012, the European Commission, Council of Europe, and the BiH Council of Ministers signed a Memorandum of Understanding to provide for an international observers operation to monitor the census. In December, the international observers operation, citing technical readiness problems, proposed to the BiH Council of Ministers that the census, planned for April 2013, be postponed for six months. In February, the BiH Parliamentary Assembly approved a law allowing for postponement of the census until October 2013. Unfortunately, some in BiH are claiming that a census cannot be organized by October.

19. Proposals to cancel the October census are of great concern to the RS. The reason the Census Law was so difficult to enact is that some forces in BiH, for political reasons, want to prevent a census from ever taking place. Postponing the census again could jeopardize it altogether because 2014 is the year of BiH-level and Entity-level elections. The RS insists that the census take place in 2013 as scheduled.

F. Brčko District

20. In August 2012, the Brčko Supervisor issued a decision suspending international supervision in Brčko. Supervision should have been terminated entirely because every conceivable condition for termination had been fulfilled. Still, Brčko has demonstrated, since supervision was suspended, that supervision is unnecessary. After the local election in October 2012, Brčko District's local authority was quickly composed and the special status of Brčko District has been fully respected. The RS looks forward to the final termination of international supervision of Brčko in the near future.

G. Establishment of State Aid Council

21. Last year, BiH accomplished another key reform for EU integration when the BiH Parliamentary Assembly approved the Law on State Aid. In late November 2012, the State Aid Council was established and its rules adopted. The State Aid Council is now engaged in the required process of bringing BiH's current state aid practices into line with EU standards. The RS is pleased that the State Aid Council is in operation and is supporting its work in any way it can.

II. BiH must retain the decentralized structure of the Dayton Constitution.

A. Decentralization improves functionality, especially in countries with deep regional differences.

22. Decentralization is beneficial to administrative efficiency, and it has been used successfully in widely varied countries around the world. Institutions can usually deliver services to citizens most efficiently when they are at the levels closest to the citizens they serve.

23. Academic research shows that decentralization improves efficiency, especially in polities—such as BiH—in which political preferences vary widely by region. 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.”*¹

24. The BAK Basel Economics study emphasizes that benefits of decentralization are greatest in countries where policy preferences differ based on region. According to the study:

The demand for public goods can differ substantially between regions because the preferences of citizens are formed by regional traditions. . . . The bigger the differences in regional preferences within a country, the greater the potential benefits from decentralisation. By supporting decentralisation different preferences of the population can be better incorporated into policy. This helps to ensure that an individual’s needs will be considered more adequately.²

25. 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 FBiH.

26. 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 coupling 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.

27. Switzerland, of course, is widely admired for the effectiveness of its government institutions. It protects the interests of its diverse language and dialect groups in part by vesting

¹ *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.

² From Subsidiarity to Success, p. 15 (citations omitted).

broad autonomy in 26 cantons. The autonomy of Swiss cantons is so broad that they are entitled to conclude international treaties.

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

B. Decentralization has enabled the RS to enact an ambitious program of reform.

29. As detailed in Section III-A, below, the RS has, in recent years, pursued a strong program of reform to improve its economic competitiveness. The RS could not make the reforms that it has made—and continues to make—without BiH’s decentralized structure. The FBiH, in contrast to the RS, has, by and large, failed to enact economic reforms, pursue privatization or impose fiscal restraint. The FBiH’s failure to reform highlights the dangers of proposals to centralize governance in BiH. In a centralized state, the policies and choices of the FBiH, with its larger population, would dominate, and the types of economic reforms the RS has enacted would be in grave jeopardy.

30. The BiH Council of Ministers’ prolonged inability to address contentious issues also demonstrates the wisdom of the Dayton Constitution’s structure. As explained in Section I, above, a protracted dispute between the two largest Bosniak parties over the composition of the FBiH Government has halted progress on reform at the BiH level. The decentralized Dayton system, however, limits the impact of such a deadlock at the BiH-level because the Constitution entrusts most governmental functions to the Entities. The effect of the recent period of deadlock at the BiH level has been mitigated in the RS, which has continued steadily to enact reforms to improve its business environment. In a more centralized system, the periodic episodes of deadlock at the BiH level would halt reform throughout BiH.

C. Centralized BiH institutions are dysfunctional, expensive, non-transparent, irrational, and unaccountable.

1. Transparency and Accountability

31. According to its Preamble, the BiH Constitution is explicitly “Inspired by the Universal Declaration of Human Rights, [and] the International Covenant[] on Civil and Political Rights” (ICCPR) among other human rights instruments. Indeed, the ICCPR is specifically integrated into the laws of BiH via Annex I of the Constitution which lists “Additional Human Rights Agreements to Be Applied in Bosnia and Herzegovina.” The international legal right to freedom of information is therefore also a constitutional right in BiH.

32. BiH was the first country in the Balkans to pass a freedom of information act (FOIA). The BiH FOIA acknowledges “that information in the control of public authorities is a valuable public resource and that public access to such information promotes greater transparency and accountability of those authorities.”³ On that foundation, the act establishes “that every person

³ Freedom of Access to Information Act (BiH), no 28/2000 (17 Nov. 2000), art. 1(a) (hereinafter “BiH FOIA”).

has a right to access this information to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose information.”⁴ Furthermore, the Act specifically establishes, under the heading “Interpretation,” that “This Act shall be interpreted so as to facilitate and promote the maximum and prompt disclosure of information in the control of public authorities at the lowest reasonable cost.”⁵ These foundational principles are consistent with the international laws discussed above.

33. Unfortunately, however, the BiH FOIA has proven ineffective in wresting information that should be public out of the hands of BiH Institutions. Not only do public authorities fail to disclose information when requested; an overreaching and misguided Personal Data Protection Agency currently seeks to withdraw what little information has been made public.

34. The Agency for the Protection of Personal Data (“the Agency”), established to implement the 2006 Law on the Protection of Personal Data has pursued the concept of privacy with such enthusiasm as to reduce—and in some cases eliminate—the visibility of governmental activity, including that of the judiciary. One of the most troubling displays of overreaching by the Agency has been its attempt to cleanse judicial records—indictments, court documents, court decisions, etc.—of any personal data, thus both limiting and anonymizing the information that is made public. Although the RS Government has met with the Director of the Agency about this matter, the trend only continues. It is increasingly difficult to determine from decisions in war crimes and other Court of BiH cases who was involved, where the incident took place or what actually happened. This anonymization fundamentally undermines the notion of transitional justice. The truth necessary to allow the wounds of the war to heal is being obscured by misguided attempts to protect the personal data of the accused and the convicted. The course pursued by the Agency squarely contravenes the European Convention on Human Rights and Fundamental Freedoms, which requires the public pronouncement of court judgments. Furthermore, the Agency’s activity is contrary to the ethos of good and transparent governance that is vital both to democracy at large and to membership in the EU.

2. BiH Armed Forces account for a considerable amount of the BiH budget, but are unnecessary and unaffordable at their current level.

35. The BiH Armed Forces cost the citizens of BiH more money than any other institution at either the BiH or Entity levels. As much as a quarter of the entire BiH budget has been dedicated to the Armed Forces. In 2010, the Ministry of Defense spent 324,758,367 KM—by far the most of any BiH institution, and nearly four times the next most expensive BiH institution, the Indirect Taxation Authority. The RS Government, in its effort to identify areas of the budget that can be freed up to provide services that impact the day to day lives of the citizens asks a question that states all over the world are asking: why?

36. It is healthy, responsible and increasingly common for governments to be reflective enough to ask the question of why they have armed forces. Only once they have clear sense and articulation of the country’s defense and security requirements can Governments then make

⁴ BiH FOIA art. 1(b).

⁵ BiH FOIA art. 2.

informed decisions as to how to devote resources to meet those requirements. In BiH, no study has been done to ask: in 2013, what realistic defense and security requirements does BiH have that would necessitate such a large expenditure on the armed forces? Indeed, as several other European states have recently discovered, there may not be any actual value in maintaining such large armed forces.

37. The UK's 2010 Strategic Defence and Security Review (SDSR) sought to examine the British Ministry of Defence and explore ways for reducing the budget by 10-12%. The end result was a 7.7% reduction over four years and a reduction of 17,000 troops – 7,000 from the Army, 5,000 from the Royal Navy and 5,000 from the Royal Air Force. Various programs were scrapped and projects were cut. Readjustments were then made shortly afterwards in the “Three Month Exercise” which identified further savings that were to be found, including further reductions in the size of the Army, in order to meet the government's targets. The UK continues to examine its implementation of the Strategic Defence and Security plan arising out of this Review, looking for ways to meet the country's defence and security requirements as efficiently and effectively as possible.

38. Scaling back the size of standing armies is becoming an increasingly common approach to addressing budgetary issues, in line with strategic needs. The current prospect of defense spending cuts in the United States could scale back the U.S. Department of Defense payroll by one million people.⁶ Sweden has determined that since the end of the Cold War, when it had more than a million troops, its defense and security requirements have changed such that it now has 330,000 troops and is looking to reduce that to 50,000 over the next decade.

39. According to a study by the Stockholm International Peace Research Institute published in 2013, the majority of European states, particularly those facing economic hardship, have instituted significant defense spending cuts in order to address their overall economic situation. The study reports that “Since 2008, two thirds of countries in Europe have cut military spending, although the rates of cuts have varied considerably. Some of the largest cuts have been in Central Europe, where the generally weaker economies have been unable to sustain such large budget deficits. Eighteen European countries have seen real-terms falls of more than 10% in military spending since 2008, of which 13 are from Central Europe. Eight of these have made cuts of greater than 20%, with all but one from Central Europe. The largest fall has been in Latvia, by 51%. In Western Europe, the largest reductions have generally been in countries facing acute debt crises: Greece (26%), Spain (18%), Italy (16%), and Ireland (11%), as well as Belgium (12%).”⁷

40. Based on these experiences of other European states, and given the urgency of finding ways to cut the BiH budget in order to be able to afford vital governance programs, the RS recommends a requirements-based objective assessment of the BiH defense and security sector. The mentioned requirement-based adjustment includes reduction of the army to two branches: one for participation in peacekeeping operations and the other for protocol obligations. Other

⁶ John Morgan, *Defense Spending Cuts Could Kill 1 Million Jobs*, USA TODAY, 4 Feb. 2013.

⁷ Stockholm International Peace Research Institute, *Recent Trends in Military Expenditure* (2013), available at <http://www.sipri.org/research/armaments/milex/resultoutput/trends>.

activities of the Army should be transferred to civilian structures such as civilian protection, demining, assistance with natural disasters, etc. With the assistance of foreign experts experienced in strategic defense and security assessments, BiH will be able to discern whether and by how much it ought to be demilitarizing in order to better meet its actual needs and to do so within resource constraints.

3. BiH-level institutions consume an exorbitant portion of tax revenues and support from abroad.

41. BiH was established in the Dayton Accords as a highly decentralized state. Other than the 10 competencies specifically designated to BiH institutions under article 3(1) of the Constitution, all governance in BiH fell to the responsibility of the Entities. Even after numerous competencies have been transferred—some voluntarily, most by force or intimidation—to BiH institutions, the principal responsibility for governing in BiH still rests with the Entities.

42. It is worrying, therefore, to see that BiH institutions have extremely high expenditures, despite having dramatically less in terms of responsibilities and functions compared to the Entities. BiH's 2013 budget is 1.74 billion convertible marks (KM), almost as high as the RS's 2013 budget of 1.94 billion KM.

43. In financial terms, therefore, BiH institutions have taken on the economic equivalent of a third Entity without providing concomitant services. Indeed, the RS paid one third of the capital to create the Central Bank, yet the all dividends are used to fund BiH institutions. The most significant political crisis of this past year revolved around callous attempts to continue expanding the already inexplicably large BiH budget in the face of economic downturn—a move that highlights the lack of responsibility by the chief proponents of detrimental BiH institutions.

44. Even as the RS Government made painful cuts to its own spending, BiH institutions saw their budgets increased. For example, between 2012 and 2013, the High Judicial and Prosecutorial Council's operating budget jumped 14%; its capital expenditures budget skyrocketed 71%. The Entities should not be forced to shoulder the burden of austerity measures even as the budgets of opaque and inefficient BiH institutions are preserved or even increased.

45. Further exacerbating these problems and fostering tension within BiH is the allocation of foreign aid and assistance. Most foreign attention is directed toward the BiH institutions at the detriment of the Entities. Whether financial assistance, training or in kind support, most of the aid from abroad has gone to the institutions which have the least impact on the day to day lives of BiH citizens. According to the 24 January 2013 U.S. Congressional Research Service Report, *Bosnia and Herzegovina: Current Issues and U.S. Policy*, the United States has provided BiH with \$2 billion since the country's independence. Significantly, the report clarifies that "U.S. aid has focused on strengthening state-level institutions in Bosnia."⁸ So although the BiH Constitution seats the primary responsibility of governance in the hands of the Entities, foreign aid programs have sought to strengthen the institutions with which the people of BiH have the least interaction.

⁸ Stephen Woehrel, *Bosnia and Herzegovina: Current Issues and U.S. Policy*, Congressional Research Service Report 24 Jan. 2013, p. 9.

4. BiH institutions are failing to meet even basic technical duties.

46. The most recent indicator of the BiH institutions' paralysis is the fact that almost 3,000 children born in BiH in the last two months do not exist in the eyes of the state because the register offices of BiH stopped issuing personal identification numbers (PINs) in early March of this year. PINs represent the most secure system of identification of every single citizen since the time of the Socialist Federal Republic of Yugoslavia. The Constitutional Court revoked the Law on Personal Identification Number of Citizens after the Parliamentary Assembly of BiH was not able to agree for two years on the text of a new law that would respect the Dayton structure of BiH. Representatives of Bosniak parties have blocked such a new law under the rationale that it would "enhance the influence of the Entities" despite the fact that this is a merely technical issue. The impact falls most heavily on the most vulnerable – the newborn children who cannot obtain healthcare rights for lack of a PIN.

47. The problem was temporarily bridged in the RS when the RS Government enacted a special regulation on determining a PIN for citizens. Besides its current work, the RS Government now has to deal with what should have been primarily the job of the BiH institutions, mainly in order to protect its citizens from further violations of human rights, and from putting newborn children, for whom healthcare is more than necessary, in an unenviable position due to a political dispute.

48. It should be emphasized that, through politicization of merely technical work over harmonization of provisions with the Dayton territorial organization, BiH directly violates the following ratified international instruments: International Covenant on Economic, Social, and Cultural Rights (Article 9), International Covenant on Civil and Political Rights (Article 12), Protocol 4 of the European Convention on Protection of Human Rights and Freedoms, Convention on the Rights of the Child (Article 3 and 7), as well as the Constitution of BiH (Article II section 1 and Article II/4).

D. BiH's decentralized structure is fully compatible with EU membership

49. The RS Government strongly supports BiH's integration into the EU, and it will work with determination toward BiH's accession to the EU while, at the same time, preserving the decentralized constitutional system established in the Dayton Accords. BiH's decentralized constitutional structure is fully consistent with membership in the EU. EU officials have frequently made clear that this structure is not a barrier to EU membership.

50. In December 2012, for example, European Commissioner for Enlargement Štefan Füle said, "The decentralized structure of BiH is not an obstacle to the process of EU accession." Another 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.*"⁹

⁹ Comments of Stefano Sannino, Deputy Director-General of EU Directorate General for Enlargement, 24 Jan. 2011, in NEZAVISNE NOVINE, *Stefano Sanino: Bh. lideri nemaju političku kulturu*, 24 Jan. 2011 (emphasis added).

51. In a February 2012 speech, the Head of the EU Delegation to BiH, 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.¹⁰

Similarly, in an interview in January 2012, Ambassador 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.”¹¹

52. No EU member or candidate state has ever been required to change its constitutional structure from a decentralized federal system to a centralized one in order to qualify for EU accession. Nor is BiH required to do so, as EU officials have made clear.

53. BiH’s decentralized system is also consistent with BiH’s future obligations as an EU member. The compatibility of decentralized structures with EU membership is demonstrated each day by current EU members, such as Germany, Spain, Belgium, and Italy.

54. In order for BiH to submit a credible application for EU membership, it must implement the European Court of Human Rights’ 2009 *Sejdić-Finci* decision. As explained in section I-B, above, the RS proposed a simple solution for members of the Presidency and House of Peoples from the RS, and it is up to FBiH politicians to agree on a solution for members from the FBiH. It is imperative that BiH act quickly to implement the *Sejdić-Finci* decision.

55. With regard to more far-reaching constitutional changes, the RS will be careful 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. Any constitutional amendments that may eventually be required for EU membership must be the result of a transparent and lawful process and a domestic consensus to be achieved by BiH institutions without foreign interference. In addition, 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. The time for such changes, moreover, would be much further along in BiH’s accession process, as was the case with other countries that instituted changes a year or two before they became EU members.

III. Economic Development

¹⁰ 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, 26 Feb. 2012.

¹¹ EU Delegation to BiH, Interview with Ambassador Peter Sorensen for Infokom magazine of the BiH Foreign Trade Chamber, 18 Jan. 2012.

A. The RS is pushing forward with reforms to strengthen its economy.

56. The decentralized nature of BiH has enabled the RS Government to pursue comprehensive economic reforms designed to improve the environment for job creation, raise living standards, and harmonize RS laws and practices with EU norms. Past RS reports to the UN Security Council have outlined many of the RS's key reforms to improve the environment for job creation. Since the RS's last Report to the Security Council in November, it has continued to press ahead.

57. While elsewhere in BiH it remains a lengthy and difficult process to start a new business—particularly as a foreign investor—in the RS it takes only 21 days. Soon that time will be reduced to just three days, helping to make the RS one of the most business-friendly environments in the region. The RS has adopted a plan that will, by the end of 2013, allow new businesses to register with one-stop shopping at a single agency and receive decisions on their applications in no more than three days. The plan will also soon enable registration of businesses through the internet. In March, the RS Government approved a Draft Law to reduce business start-up costs by exempting new companies from all fees related to their establishment, whether the founder is a foreign or local person.¹²

58. The RS is working diligently to attract new investments. It continues to work with its Representation Offices in Austria, Belgium, Germany, Israel, Russia, and Serbia to attract new business and direct investment from abroad. In addition, RS officials and businessmen visit other potential investors across the world, and foreign government and business delegations are hosted in the RS and given information and tours of potential investment sites. Delegations from Azerbaijan, Britain, China, Italy, Turkey and elsewhere have been in the RS in recent months. Additionally, the RS has retained investment advisors from the U.S. who are helping to bring American and Canadian investors to the RS to pursue the many opportunities that exist.

59. RS President Milorad Dodik has continued to work with Russian partners, including Foreign Minister Sergey Lavrov and Alexey Miller, Chairman of Gazprom's Management Committee, to lay the groundwork for new jobs by securing the RS's participation in the South Stream natural gas pipeline. In a February meeting in Moscow, the RS's Russian partners affirmed to President Dodik that the South Stream Pipeline would be built through the RS and supply it with natural gas.¹³ They also confirmed their commitment to build two gas-fired thermal power plants in the RS.¹⁴ The South Stream project and other new natural-gas infrastructure will provide the RS with a stable, economical, supply of a clean-burning fuel and do much to boost job growth.

60. In January 2013, RS Ministry of Economic Relations and Regional Cooperation hosted a presentation of the RS's investment potential to representatives of the Azerbaijan Embassy and the Chinese International Trade Promotion Council. Azerbaijan's Ambassador to BiH praised improvements in the RS's legal and business environment and indicated strong interest from

¹² INVESTSRPSKA.NET, *Approved the Draft Law - Company Start-Up Costs Reduced*, 1 March 2012.

¹³ SRNA, *Relations regarding South Stream to be Formalized Soon*, 8 Feb. 2012.

¹⁴ *Id.*

Azerbaijan in investment projects in BiH, and particularly in the RS.¹⁵ In February 2013, the RS Government hosted an Azerbaijani economic delegation that included Azerbaijan's Minister of Economic Development and 24 Azerbaijani companies interested in the economic cooperation with the RS.¹⁶

61. At the end of November 2012, the RS, in cooperation with the International Finance Corporation, held the first in a series of training sessions to strengthen the capacity of Entity and local institutions to attract foreign investments.¹⁷

62. The RS will continue its active outreach programs to educate investors using its websites such as www.investsrpska.net, foreign offices, business and government delegations, and participation in various economic conferences and initiatives throughout 2013 and beyond.

63. In 2012 and 2013, the RS initiated or continued major investments, such as the construction of the thermal plant Ugljevik 3, exceeding EU 500 million euros, and the construction of the thermal plant Stanari with the financial support of the China Development bank, exceeding 550 million euros. Recently, the Italian company Metallege announced an investment exceeding 30 million euros in Mrkonjić Grad. These investments will continue into 2013.

64. The RS Government has also started to implement a regional project of certification of municipalities with positive business environments. This is a process that, on the basis of 12 criteria (which include efficient administration, transparent local administration, adequate infrastructure and partnership towards commerce) and more than 80 sub-criteria, evaluates whether, and to what extent, a municipality has met standards for a favorable business environment, and issues recommendations for improvement. In Republika Srpska, the pilot stage includes the cities of Banja Luka and Prijedor.

65. In the last year, the RS was represented for the first time at the leading international Real Estate and Investment Fair EXPO REAL 2012, held in Munich from 8 October to 10. The RS represented itself with a number investment projects in the areas of tourism, industry, and agriculture. Contacts were established and meetings with representatives of several investment companies were agreed at the fair.

66. New methodologies of drafting regulations are being introduced with the goal of having higher quality drafts, drafted through the process of multisectoral and public consultations, as well as evaluating their influence prior to enactment. To this end, the RS Government adopted guidelines for actions of administrative institutions of the Republic in implementing the evaluation of impact in the process of drafting laws. By the end of October 2012, more than 150 government officials went through training for application of the process of evaluating the

¹⁵ SRNA, *An Opportunity for Investments from Azerbaijan*, 24 Jan. 2012.

¹⁶ INVESTSRPSKA.NET, *Held Republic of Srpska – Azerbaijan Business Forum*, 19 Feb. 2013.

¹⁷ INVESTSRPSKA.NET, *Held Training on Essential Investor Aftercare and Investment Project Preparation*, 30 Nov. 2012.

impact of regulations, in order to obtain basic knowledge and skills in application of this methodology, and to improve public work of administration.

67. At a moment when all of the countries of the region are introducing, or contemplating, new tax rates, the RS's new Law on Changes and Amendments of the Corporate Tax Law introduces new incentives, including a reduced tax base for the value of investment in equipment for the conduct of its own production activities, as well as for employing at least 30 employees through the year.

B. International recognition of the RS's reforms

68. International experts have recognized the RS Government's rapid progress on economic reform, especially in comparison to the FBiH. In a May 2011 report, the U.S. Congressional Research Service, wrote, "Observers have noted that the Republika Srpska has moved more quickly on economic reforms and has enjoyed higher economic growth than the FBiH due to a less cumbersome governing structure in Republika Srpska."¹⁸ The International Crisis Group, similarly, stated, "[T]he RS government is more efficient than the [FBiH's], consumes a much smaller percentage of GDP and is implementing reforms more quickly."¹⁹ According to the EU's 2012 Progress Report for BiH, the RS has privatized about 69% of the initial stock of state-owned capital intended for privatization. The FBiH, by comparison, has privatized only about 42% of the initial stock of state-owned capital intended for privatization.²⁰ In a 2009 report, the International Monetary Fund (IMF) stated, "In recent years, policies have been diverging between the two Entities, with Republika Srpska making steady progress on reforms and the FBiH finding it difficult to mobilize action on needed reforms."²¹ Even the current High Representative, Ambassador Valentin Inzko, in his most recent New Year's Message, acknowledged grudgingly that the RS "basically functioned well."

69. The RS's increasingly business-friendly environment, unfortunately, is often overlooked because of "guilt by association" with the FBiH, where setting up a business takes months and is frequently mired in layers of bureaucracy and corruption. The RS is wrongly associated with the poor scores BiH receives each year in the World Bank's *Doing Business* report. The 2013 report paints an unflattering picture of BiH, ranking it 126th out of 185 economies in ease of doing business.²² But the *Doing Business* report on BiH has almost nothing to do with the ease of doing business in the RS, because its evaluations are based completely on case scenarios of a fictional company in Sarajevo, the capital of the FBiH. BiH's decentralized structure has allowed the RS

¹⁸ Steven Woehrel, *Bosnia: Current Issues and U.S. Policy*, Congressional Research Service, 2 May 2011, p. 6.

¹⁹ International Crisis Group, *Bosnia's Incomplete Transition: Between Dayton And Europe*, Europe Report N°198, 9 March 2009, p. 9.

²⁰ European Commission 2012 Progress Report on BiH, p. 27.

²¹ International Monetary Fund, Request for Stand-By Arrangement, Bosnia and Herzegovina, 17 June 2009, p. 4.

²² In the only category of the study not dominated by the laws, regulations and practices of the Federation and its governmental units—trading across borders—BiH ranks a comparatively respectable 63rd in the world.

to develop a completely different—and much more congenial—business environment than the FBiH's. The conditions affecting the World Bank's hypothetical business operating in Sarajevo are determined overwhelmingly by the laws, regulations, and practices of the FBiH and its governmental units. Such conditions have almost nothing to do with the ease of doing business in the RS.

70. Although the World Bank's annual *Doing Business* reports do not examine conditions for business in the RS, a separate 2011 World Bank report called *Doing Business in Southeast Europe 2011* does evaluate the ease of doing business in the RS's largest city, Banja Luka, along with 18 other cities in the region. The report praises Banja Luka as one of two cities in the region that improved its business environment the most since 2008.²³ In Banja Luka, the World Bank writes, "Business reforms were implemented in all 4 areas measured, resulting in significant benefits in terms of time and cost savings for entrepreneurs."²⁴ In particular, the report praises improvements in efficiency from the 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.²⁵ According to the report, the time it takes to start a business in Banja Luka has been cut by 33 days after 2008; it now takes 21 days.²⁶ By comparison, in Sarajevo, in the FBiH, it takes 50 days.²⁷ The *Doing Business* report says Banja Luka "deserves special mention for recent improvements in contract enforcement."²⁸ According to the report, the costs of enforcing a commercial claim in Banja Luka are now the lowest in the region.²⁹

C. The RS's economic reforms are showing results.

71. The benefits of the RS's market reforms and other efforts can be seen in its economic performance since 2006. The RS's economy, like other economies throughout the Balkans and Europe, has been buffeted by the global economic crisis; unemployment remains a major problem. Despite this, from 2006 to 2011 (the most recent year of GDP statistics available), the RS's per capita GDP soared by 34%.³⁰ The RS's 2012 unemployment rate, as measured by the International Labor Organization (ILO), was almost three points lower than its unemployment rate in 2006, before the economic crisis began.³¹

72. The RS's unemployment rate has consistently been substantially lower than the FBiH's. Since 2006, the RS's unemployment rate, as measured by the ILO, has been an average of 4.6

²³ World Bank, *Doing Business in South East Europe 2011*, pp. 2-3.

²⁴ *Id.*

²⁵ *Id.* at pp. 3, 21, 35

²⁶ *Id.* at p. 16.

²⁷ *Id.*

²⁸ *Id.* at p. 35

²⁹ *Id.* at p. 34

³⁰ IRBRS, Database of Economic Indicators of RS, Main Economic Indicators – Comparative Review ("Comparative Review of Economic Indicators").

³¹ *Id.*

points lower than the FBiH's.³² That difference is more than twice as large when comparing official RS and FBiH statistics. The RS's unemployment rate, according to these statistics, has been an average of 9.9 points lower than the FBiH's since 2006.³³

73. The RS Government's market reforms have also helped to boost wages in the RS. From 2006 to 2012, average wages in the RS jumped by 57.3%,³⁴ an improvement more than 19.7 percentage points better than that of the FBiH.

D. The RS is escalating the fight against corruption.

74. Among the newly formed RS Government's highest priorities is strengthening and improving anti-corruption mechanisms. Corruption exacts an enormous cost even in highly developed European economies, and is all the more destructive in less developed economies. The Government will soon establish an anti-corruption team modeled after a similar expert team established by the European Commission. The team will study European practices in the many fields touching on corruption, such as public procurement and the exploitation of natural resources. The Government will then adopt EU best practices and build into its institutions the anti-corruption mechanisms established by the EU in these fields.

75. The RS Government will propose a multifaceted anti-corruption strategy for 2013-2017, that will include strong anti-corruption legislation. The Strategy will include (1) tougher criminal penalties for corruption; (2) elimination of opportunities for officials and civil servants to engage in corruption; (3) education of citizens; (4) an anti-corruption code for officials and civil servants; (5) institutional integrity plans; (6) broadened Ministry of Interior responsibility for action to prevent corruption; and (7) development and application of general social measures and activities, such as the establishment of anti-corruption bodies.

E. The RS is leading the way on EU harmonization.

76. The RS has embraced the opportunity afforded it by the stabilisation and association process and, in line with its powers, through its permanent action, has contributed to the implementation of reforms necessary for the full membership in the EU. As the International Crisis Group observed in its 2012 report on BiH, RS "ministers are working hard on the European project."³⁵

77. In accordance with the distribution of constitutional jurisdiction in BiH, the vast majority of requirements related to harmonization of laws and statutes with the EU's *acquis* must be implemented at the Entity level. In recent years, the RS constantly and systematically harmonizes its laws with the EU's *acquis*.³⁶ The RS Government has subjected 685 laws, 117

³² *Id.*

³³ *Id.* This includes the 2006-2011 unemployment rates. Figures for 2012 were unavailable.

³⁴ *Id.*

³⁵ International Crisis Group, *Bosnia's Gordian Knot: Constitutional Reform*, Crisis Group Europe Briefing No. 68, 12 July 2012, p. 16.

³⁶ Summary of the 52nd Session of the Government of Republika Srpska.

bylaws, and 16 strategic documents to this procedure. BiH and Federation institutions are much less advanced in their EU harmonization efforts.

78. According to the European Commission's reports, the RS has significantly outpaced the FBiH in achieving the reforms required by the Stabilization and Association Agreement and Interim Agreement. The EC's most recent Progress Report on BiH takes note of many efforts by the RS to help align its laws and regulations with the *acquis*. For example, the EU report notes, "In Republika Srpska, the EU Integration Committee of the National Assembly cooperated with the government in assessing the level of compliance of proposed legislation."³⁷ The RS Government, the EU report observes, "often provided analysis and opinions on the level of approximation of draft legislation with the *acquis*. Its administrative capacity to monitor EU related legislation remained satisfactory."³⁸ The report cites no similar compliance efforts by FBiH or BiH institutions.

79. The EU's 2012 Progress Report also applauds the RS's moves to align its environmental protection laws with the *acquis*. For example, according to the EU report, "Republika Srpska advanced the alignment with the Strategic Environmental Assessment (SEA) Directive by adopting the new Law on Environmental Protection."³⁹ The report also notes, "Republika Srpska adopted a strategy on chemical safety and implementing legislation on chemicals and biocides. The FBiH did not start aligning its legislation with the *acquis*."⁴⁰ The report also praises the RS's adoption of a new Law on Air Protection.⁴¹

80. The report further observes, "While Republika Srpska and the Brcko District amended their criminal codes to introduce a criminal offence to suppress crimes linked to hate and extremism, the FBiH needs to amend and harmonise its criminal code."⁴²

81. The RS has consistently expressed its willingness to provide all necessary assistance to the BiH level and the FBiH in the process of fulfilling EU-related obligations, such as, in the area of harmonization of laws, adopting EU good practices, and the like.

F. Governmental stability and renewal

82. In contrast to BiH's other public institutions, the RS Government has long been stable and functional. The RS recently confirmed this by smoothly and rapidly carrying out the appointment of a new prime minister and a number of other ministers. After 2010's elections, a new RS Government was quickly formed, and has since built on the reform efforts of previous

³⁷ European Commission, Bosnia and Herzegovina 2012 Progress Report, 10 Oct. 2012, p. 10 ("EU 2012 Progress Report").

³⁸ *Id.* at p. 11.

³⁹ *Id.* at p. 44.

⁴⁰ *Id.* at p. 45.

⁴¹ *Id.* at p. 44.

⁴² *Id.* at pp. 56-57.

governments. To accelerate economic growth and increase the efficiency of government performance, a new Prime Minister and other cabinet members were named earlier this year.

83. On 23 February, President Milorad Dodik held a meeting with then-Prime Minister Alexander Džombić to discuss the need for change. Without delay or political upheaval, the Government resigned two days later. Former Minister of Economic Relations and Regional Cooperation Željka Cvijanović was promptly nominated as the new Prime Minister and immediately began working on establishment of a new government. Within two days, then-Prime Minister-designate Cvijanović was able to select the majority of other ministers of the new government, and the RS National Assembly approved the new prime minister and cabinet on 12 March. The RS Government's ability to smoothly establish and renew itself presents a stark contrast to BiH institutions and the governments of the FBiH and Mostar. Prime Minister Cvijanović, the first female prime minister in BiH, was previously responsible for leading the RS Government's intensive EU integration and harmonization efforts. As explained in section III-D, above, these processes are moving at a far greater speed in the RS than in the FBiH or at the BiH level.

G. The FBiH's obstruction of vital IMF loans

84. Not for the first time, the FBiH's lack of fiscal discipline has badly delayed the disbursement of vital IMF loans to both the FBiH and the RS. On 27 February, the IMF said it would not sign off on the next tranche of its loan to BiH until the FBiH adopted a comprehensive law that regulates retirement, including the issue of veterans.⁴³ Reuters reported that IMF mission head Ron van Rooden "made clear the onus was on the Federation parliament." The FBiH's inability or unwillingness to act on this issue held hostage disbursement of a loan that is crucial to both the FBiH and the RS. It was not until 15 April that the FBiH Parliament finally adopted the necessary law.

H. Effects of Croatia's accession to the EU

85. For several years, there have been concerns about the ramifications for BiH of Croatia acceding to the EU. Those concerns will be tested later this year. Every time a state accedes to the EU, there are knock-on effects for its neighbors, and BiH shares nearly two thirds of Croatia's borders. While there are expected consequences on the BiH economy, particularly in agriculture, the BiH-level institutions whose purported responsibility it would be to make arrangements necessary to minimize the impact of Croatia's accession seem to have shown little concern for this imminent situation. Other EU frontier states have taken measures to reduce the impact of being on the border of the EU, but BiH level officials have been woefully inactive. The RS will do what it is able to reduce the burden on border areas in the RS, but if the state institutions want competencies, they need to display at least a minimal degree of competence in exercising their duties to the people of BiH.

⁴³ Daria Sito-Sucic, *IMF says new tranche for Bosnia depends on retirement law*, REUTERS, 27 Feb. 2012.

IV. Justice Reform

A. The centralized judicial and prosecutorial system imposed by OHR in violation of the BiH Constitution has proven to be ineffective and unaccountable.

86. The RS Government is deeply concerned about the functioning of the justice system in BiH. The Government's advocacy for reform led directly to EU's initiation of the Structured Dialogue on Justice, now the leading forum for addressing reform. Unfortunately, after a vigorous beginning, the EU Justice Dialogue effort has lost focus. To some extent it has been co-opted by the pre-existing "judicial assistance industry" that has grown and prospered in Sarajevo over the past 15 years. This industry, composed of international organizations, NGOs, and aid programs of interested states, has built and developed an elaborate and expensive set of institutions in Sarajevo, including the Court of BiH, the Constitutional Court of BiH, the BiH Ministry of Justice, and especially the High Judicial and Prosecutorial Council (HJPC). At present, the primary goal of these institutions seems to be to increase their staffs and budgets, which they have done in part by expanding their scope of jurisdiction beyond that provided for in the Constitution of BiH.

87. Now this Sarajevo-based industry is seeking to use the Justice Dialogue to press for creation of two additional courts at the central level, a new Supreme Court and a new appellate court of BiH. Even the Venice Commission, a strong advocate of a highly centralized Judiciary for BiH, in its opinion No. 648/2011 from 15/16 June 2012, has pointed out the lack of constitutional authority for new courts, suggesting that the centralized judicial institutions in Sarajevo are already pressing against—if not beyond—the limits authorized in the BiH Constitution.

88. Instead of expanding its broken justice system, BiH needs to fix it. The jurisdiction of the Court of BiH must be revised to comply with constitutional limitations. The Constitutional Court of BiH must restrict itself to constitutional issues rather than acting as a court of 3rd or 4th instance for the Entities and Brčko District. The HJPC's functions must be thoroughly revised to comply with European standards, transparency, accountability and the BiH Constitution. The severe problem of failure by the BiH Prosecutor to provide equality of justice with respect to war crimes must be urgently addressed. Finally, BiH and international resources should be focused away from the Justice Ministry, HJPC and BiH courts in Sarajevo to the courts and prosecutors at Entity, canton, and local levels where judicial and prosecutorial services are actually delivered to the citizens. The emphasis should be upon good performance of courts and prosecutors at the levels most affecting people's lives and their economic livelihood.

B. Equality of Justice

89. If a justice system is to be recognized as legitimate, it needs to consistently act with professionalism and impartiality. This is especially true in a country where ethnic divisions are an unfortunate fact of life. Moreover, the equality of each person before the law is a bedrock principle of the European Convention on Human Rights and the BiH Constitution. The need to earn public legitimacy is particularly crucial for institutions like the Prosecutor's Office and Court of BiH that lack a constitutional basis and were imposed on BiH by a foreign High

Representative. Unfortunately, this centralized BiH justice system has treated war crimes in utterly different ways depending on the ethnicity of their victims.

90. Contrary to international declarations and conventions, especially to the opinion of the Venice Commission from June 18, 2012, the Court of Bosnia and Herzegovina applies the Criminal Code of BiH retroactively, as less favorable law, to perpetrators of crimes. According to all international documents, a criminal code that was in force at the time the crime was committed should always be applied; the exception to this rule is application of a new criminal code, or certain provisions, if they are more lenient for the perpetrator. These kinds of decisions of the Court of Bosnia and Herzegovina have special weight because all entity courts (district and cantonal, Supreme Courts of both entities, and the Appellate Court of Brčko District) are applying the Criminal Code of the former SFRY as it is more lenient. Hence, the Court of BiH's retroactive application of the Criminal Code of Bosnia and Herzegovina puts BiH citizens in unequal positions; this has a particular importance when the law is being applied disproportionately to the perpetrators of crimes who are members of one of the constituent peoples.

91. Independent observers have noted the failure to prosecute the perpetrators of war crimes against Serbs, both in the Court of BiH and in the International Criminal Tribunal for the Former Yugoslavia (ICTY). In a 2011 report, the International Crisis Group (ICG) wrote that “many of the most serious” war crimes against Serbs “remain unprosecuted.”⁴⁴ The ICG said that the BiH Prosecutor's Office “owes Serbs an explanation” for the failure to prosecute such cases, and should “make the cases a high priority.”⁴⁵ Yet the prosecution of war crimes committed against Serbs still appears to be the lowest priority of the BiH Prosecutor's Office.

92. In a December New York Times op-ed criticizing the ICTY's record, Prof. David Harland of the Geneva-based Centre for Humanitarian Dialogue wrote:

Too bad if you were a Serb victim of any crime in the former Yugoslavia. More Serbs were displaced—ethnically cleansed—by the wars in the Balkans than any other community. And more Serbs remain ethnically displaced to this day. Almost no one has been held to account, and it appears that no one will be.⁴⁶

93. Because the number of war crimes cases far outstrips resources to prosecute them, it is crucial that the BiH Prosecutors' Office prioritize cases fairly. There are approximately 1,300 war crimes cases still to be processed. The Court of BiH processes about 17 war crimes cases a year. At this rate, because of the limited lifespans of witnesses, victims, and accused war criminals, most war crimes cases will never go to court. Each time the Office selects which cases will be prosecuted next, the odds grow slimmer that each remaining case will ever be prosecuted.

⁴⁴ International Crisis Group, *Bosnia: State Institutions under Attack*, Crisis Group Europe Briefing N°62, 6 May 2011, p. 7.

⁴⁵ *Id.* (emphasis added).

⁴⁶ David Harland, *Selective Justice for the Balkans*, NEW YORK TIMES, 7 Dec. 2012.

The Office's longstanding bias against prosecuting crimes against Serb victims means that most Serb victims will never see justice done.

94. Last year, the RS's [Eighth Report to the Security Council](#) presented an analysis of war crimes prosecutions that demonstrated, through examples and statistics, an extreme disparity in the BiH judicial system's treatment of war crimes against Bosniaks and war crimes against Serbs.

95. The analysis presented a number of cases of the inexplicable failure of the BiH Prosecutor's Office to seek justice for some of the most heinous crimes of the war. BiH, for example, never prosecuted a single member of the famously sadistic El Mujahid, or its superiors, for the unit's widespread murders of Serbs. The El Mujahid, a unit of the 3rd Corps of the Army of the Republic of BiH (ARBiH), was originally made up of foreign mujahidin, but it came to be composed primarily of local Bosniaks.⁴⁷ As confirmed in judgments of the International Criminal Tribunal for the Former Yugoslavia, the El Mujahid committed rampant war crimes, including innumerable murders of Serb prisoners.⁴⁸ Yet the BiH Prosecutor's Office has not charged any member of the El Mujahid—or its superiors in the ARBiH, such as 3rd Corps Commander Sakib Mahmuljin—for the unit's murders of Serbs.⁴⁹ The failure to make any attempt to bring to justice El Mujahid members or their superiors suggests a disregard by BiH's central institutions for the suffering of Serbs during the war.

96. Last year's analysis also details other examples of the BiH institutions' failures. It is well established by independent sources that Bosniak forces committed a multitude of atrocities against Serbs in the Srebrenica region of Eastern Bosnia. At least one Bosniak commander gleefully bragged to Western reporters about his exploits, showing them videos of Serb bodies and severed heads. Yet the BiH Prosecutor's Office has failed to charge this commander or anyone else with these crimes. Nor has BiH prosecuted the wartime commander of the ARBiH's 5th Corps, despite abundant evidence that he committed major war crimes against Serbs and others. BiH institutions have also failed to bring to justice a single perpetrator of the Tuzla Convoy Massacre.

97. Developments since the RS's Eighth Report to the Security Council have only further confirmed that the justice system disfavors Serb war crimes victims. In January, for example, the BiH Prosecutor's Office suddenly announced that it had shut down its investigation of 455 persons for torture and other war crimes against Serbs at six prison camps. The abrupt decision to halt these investigations is particularly questionable because the prosecutor in charge of the cases made it just days after taking over the investigations from her predecessor. It strains credulity to think that a prosecutor could—in just a few days—take over the investigations of 455 persons, analyze the extensive evidentiary records, and make a good-faith decision to shut them all down. The RS's Interior Minister filed a complaint with the BiH Prosecutor's Office,

⁴⁷ Judgment, *Rasim Delić* (Trial Chamber), 15 Sept. 2008, para. 412 (“*Delić*”).

⁴⁸ See *Delić*.

⁴⁹ Sakib Mahmuljin was the Commander of the 3rd Corps from early 1994 until the end of the war. *Delić*, para. 117.

asking that the investigations resume. The BiH Prosecutor should reinstate the investigations and fully explain the circumstances under which they were halted.

98. Last year's analysis also presented statistics showing a scandalous disparity in the way BiH central justice institutions treat war crimes against Bosniaks war crimes victims and war crimes against Serbs. Statistics updated in April 2013 show that the disparity has become even more indefensible. No one would suggest that the justice system should seek to maintain an artificial ethnic balance. However, in a system free of ethnic bias, prosecutions, convictions, and sentencing should roughly reflect the proportion of war crimes that were committed against members of each of BiH's peoples.

99. Although there is no way to know the exact ethnic breakdown of war crimes victims, the ICTY's study of war casualties estimates that Serbs accounted for more than 20% of civilian war deaths in BiH. It is reasonable to expect that war crimes convictions and sentences would bear at least some resemblance to the proportions in which civilians of each ethnicity were killed during the war. Unfortunately, due to BiH institutions' biases, the ratio of convictions for crimes against Bosniaks to crimes against Serbs is wildly inconsistent with the ethnic breakdown of civilian deaths during the war.

100. In the almost 11 years since the High Representative decreed the establishment of the BiH Court and Prosecutor's Office, these institutions have produced final convictions of just *five* Bosniaks for war crimes against Serb civilians. During the same period, the Court has produced final convictions of 67 Serbs for war crimes against Bosniak civilians.⁵⁰ The Court of BiH has convicted *more than 13 times* as many Serbs for war crimes against Bosniak civilians as it has Bosniaks for war crimes against Serb civilians. The disparity is even more shocking when the sentences for these convictions are considered. The average sentence for the 67 Serbs convicted of war crimes against Bosniak civilians is 16.6 years, while the average sentence for the five Bosniaks convicted of war crimes against Serb civilians is 11.2 years.

101. These colossal disparities simply cannot be reconciled with ICTY statistics showing that during the war in BiH 7,480 Serb civilians were killed, accounting for more than 20% of civilian war deaths. Bosniaks convicted of war crimes against Serb civilians have been sentenced to less than 3 days in prison for each Serb civilian death estimated by the ICTY. By comparison, Serbs convicted for war crimes against Bosniak civilians have been sentenced to more than 16 days in prison for each Bosniak civilian death estimated by the ICTY.

102. The Court of BiH's discrimination against Serb war crimes victims is all the worse because it follows many years of undeniable bias against Serb victims by the ICTY. Since the ICTY's foundation almost 20 years ago, it has convicted *just five* Bosniaks for war crimes against Serbs and sentenced them to an average of 8.3 years. Meanwhile, it has convicted 48 RS Serbs for war crimes against Bosniaks and sentenced them to an average of 20.9 years. Perhaps equally shocking is the fact that the ICTY has convicted these 48 RS Serbs *without acquitting a*

⁵⁰ These figures incorporate all information available on the Court of BiH website as of 6 March 2013.

*single RS Serb defendant.*⁵¹ By comparison, the ICTY has convicted just five Bosniaks for war crimes against Serbs while acquitting three.

103. In April 2011, the ICTY Trial Chamber found two Croatians, Ante Gotovina and Mladen Markač, guilty of crimes against humanity in connection with the ethnic cleansing of Serb civilians in Croatia's Krajina region. Yet in a shocking decision last November, the ICTY Appeals Chamber reversed these convictions and acquitted Gotovina and Markač. The decision means that the largest ethnic cleansing event of the 1990s Yugoslav conflicts remains unpunished—and may never be punished. The decision was met with disbelief. Former ICTY Chief Prosecutor Carla Del Ponte said:

I'm shocked. I was very surprised and shocked. It is unbelievable what has happened after the conviction of Gotovina to 24 years and Markac to 18. Unbelievable. I cannot accept it.⁵²

Asked whether politics, money or something else influenced the verdict, Ms. Del Ponte replied, "I do not know, but certainly such suspicion is justified."⁵³

104. Judge Fausto Pocar, one of two dissenting members of the appeals panel, wrote that the decision "contradicts any sense of justice."⁵⁴

105. Just two weeks later, the ICTY delivered another blow to Serb victims of the 1990s wars when it acquitted Kosovo Liberation Army commander Ramush Haradinaj of torturing and killing Serb civilians. According to *Balkan Insight*, "Members of the international community . . . criticized the ICTY ruling, saying that the verdict would turn back the clock on reconciliation, and did not bring justice to the victims."

106. In his recent New York Times op-ed, Prof. Harland of the Centre for Humanitarian Dialogue wrote that the ICTY's results "do not reflect the balance of crimes committed on the ground."⁵⁵ He continued:

The Serbs committed many of the war's worst crimes, but were not at all alone, and it is not right, or useful, for them to carry the sole responsibility. Convicting only Serbs simply doesn't make sense in terms of justice, in terms of reality, or in terms of politics.

* * *

⁵¹ In one case, the ICTY Trial Chamber acquitted three RS Serbs, but the ICTY Appeals Chamber later reversed the acquittals and sentenced the defendants to prison terms.

⁵² *Carla Del Ponte "shocked" by the acquittal of Croatian generals*, HINA, 20 Nov. 2012.

⁵³ Tamara Spaić, *Carla Del Ponte: This is not justice, this is denial of a huge crime*, BLIC, 20 Nov. 2012.

⁵⁴ Judgment, *Ante Gotovina and Mladen Markač*, (Appeals Chamber), 16 Nov. 2012.

⁵⁵ David Harland, *Selective Justice for the Balkans*, NEW YORK TIMES, 7 Dec. 2012.

What has happened at the tribunal is far from justice, and will be interpreted by observers in the Balkans and beyond as the continuation of war by legal means—with the United States, Germany and other Western powers on one side, and the Serbs on the other.⁵⁶

107. The New York Times reported that the acquittals of Gotovina, Markač, and Haradinaj “have provoked criticism beyond Serbia that the verdicts were politically inspired,” because both the Croatian military and the Kosovo Liberation Army “were backed by the West.”⁵⁷ Prof. Florian Bieber of the Centre for Southeast European Studies at the University of Graz wrote that these acquittals “compound the perception of an unjust court that is unable or unwilling to penalize non-Serbs.”⁵⁸ Based on the records of the ICTY and the BiH Court and Prosecutor’s Office, Serbs have good reason to distrust the professionalism and impartiality of internationally created, unaccountable justice institutions.

108. It is essential for all prosecutors and courts to respect the principle of equality before law. Ethnicity should not be a factor in whether a war crime is punished. There is no good explanation for BiH authorities’ failure to prosecute so many well-established war crimes against Serbs. Moreover, statistics on convictions and sentencing for war crimes show that a given Serb victim of a war crime is much less likely to see justice than a given Bosniak victim. The fundamental principle of equality before law demands that Serbs, Croats, and Bosniaks be treated equally in the prosecution of war crimes. The public legitimacy of the BiH Court and Prosecutor’s Office depend on it.

C. EU Structured Dialogue on Justice

109. The judicial system of BiH, which was—for the most part—imposed by decrees of the High Representative, needs significant changes. As part of the EU Structured Dialogue on justice, the RS Government is working with the EU to develop reforms that will ensure that judicial system meets EU standards, respects BiH’s Dayton structure, and is independent of political interference—including interference by the High Representative.

110. A compromise has been reached in the course of the Structured Dialogue on Justice to establish courts of first and second instance at the level of BiH, and to regulate precisely the jurisdiction of these two courts by the Law on Courts of Bosnia and Herzegovina. It is necessary to discard Article 7 of the existing Law on Court of BiH in order for there to be a clear delineation between the subject-matter and personal jurisdiction of the Entity Courts and those of the Court of BiH. No provision that would enable the Court of BiH to take over cases of crimes established in the criminal laws of the entities, for which subject-matter and personal jurisdiction has been established by the Law on Courts of each Entity and Brčko District, can be accepted. A provision like this would be contrary to the European Convention for

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Florian Bieber, *Hague Verdicts Don’t ‘Justify’ Croatia’s Kosovo’s Wars*, BALKANINSIGHT, 29 Nov. 2012.

the Protection of Human Rights and Fundamental Freedoms and would create legal insecurity with regard to the jurisdiction of the Court and regulations applicable in each particular case.

1. HJPC Reform

111. The regime of appointment and discipline of judges and prosecutors in BiH, imposed in early 2002 by the High Representative, requires a comprehensive reform in order for BiH to attain international and European Union standards. Under the current regime, the HJPC appoints and applies disciplinary measures against judges and prosecutors of both BiH and the Entities, except for members of the three constitutional courts. The HJPC also proposes candidates for the three constitutional courts.⁵⁹ Moreover, the HJPC performs a wide array of other functions, some of which may lead to a conflict of interest with the functions of appointing and implementing disciplinary measures. The HJPC is currently working on the preparation of draft amendments to its *own law*. It is time for the HJPC to start performing its multiple tasks in a transparent manner in order to enable an objective evaluation of its operation by government institutions and citizens who are affected by the operation of this body. Its large budget and allocation of funds to special projects must be made public, with sufficient detail to enable such evaluation. Most importantly, the system of appointment of judges and prosecutors in BiH needs comprehensive reforms in order to be harmonized with the European standards and practice of democratic federal states throughout the world.

a) Reforms of prosecutorial appointment procedure agreed by elected officials must become law.

112. On 31 October 2012, the leadership of two of BiH's largest parties, the SNSD and the SDP, reached a breakthrough agreement on reforms to a number of institutions, including the HJPC. The October Agreement, which was subsequently endorsed by nearly every major Bosniak, Serb, and Croat party in BiH, includes a much-needed reform to BiH's system for appointing prosecutors. The reform would improve the legitimacy and accountability of prosecutors' offices in BiH by giving democratic institutions a voice in appointments.

113. Through the agreed reforms of the appointment process ("appointment reform"), the HJPC would lose its current monopoly on the appointment of prosecutors and have to share the responsibility with the elected bodies at all levels of government. Under this reform, after a comprehensive process of identification of candidates for the position of chief prosecutor, the HJPC would forward the list of selected candidates to the BiH Council of Ministers or the relevant executive body of the Entity, canton, or Brčko District, which would then forward its selection to the responsible legislative institution for final appointment. Deputy prosecutors and other prosecutors at all levels would be appointed by the chief prosecutors from the list of candidates established by the HJPC.

114. The appointment reform is designed to address the lack of democratic legitimacy and accountability of prosecutors in the current system. Unlike prosecutors' offices in the overwhelming majority of European states, prosecutors' offices in BiH lack any tie to democratic

⁵⁹ Law on the High Judicial and Prosecutorial Council of BiH, 2004, Art. 17

institutions. BiH's Chief Prosecutor is one of just a few chief prosecutors in Europe whose appointment is entirely in the hands of a non-democratic institution (the HJPC).

115. The appointment reform would bring BiH's system into the mainstream of European practice. Out of the 34 EU members, candidates, and acceding states, 33 give democratic institutions an important role (often the dominant role) in the appointment of chief prosecutors. The appointment reform's provision for subordinate prosecutors is also fully consistent with European practice; it is common in systems throughout Europe for a chief prosecutor to be given considerable authority over the appointment of subordinate prosecutors.

116. Recent Venice Commission reports confirm that the appointment reform is fully consistent with European standards. The Commission has emphasized the need for prosecutors' offices to be accountable to the public and has approved of appointments of chief prosecutors by legislatures, governments, and presidents. In its January 2011 *Report on European Standards as regards the Independence of the Judicial System*, the Venice Commission quoted with approval an earlier ruling, finding:

It is important that the method of selection of the general prosecutor should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession. Therefore professional, non-political expertise should be involved in the selection process. However, it is reasonable for a Government to wish to have some control over the appointment, because of the importance of the prosecution of crime in the orderly and efficient functioning of the state, and to be unwilling to give some other body, however distinguished, carte blanche in the selection process.⁶⁰

The Venice Commission further wrote in its 2011 report, "No single, categorical principle can be formulated as to who - the president or Parliament - should appoint the Prosecutor General in a situation when he is not subordinated to the Government. The matter is variously resolved in different countries."⁶¹ Although the Venice Commission did not endorse any particular method for appointing prosecutors, it suggested that a good solution is "cooperation amongst state organs."⁶² That is just what the appointment reform prescribes.

117. Under the appointment reform, the HJPC would retain its appropriate role as a source of "professional, non-political expertise" by conducting the competition procedure and preparing the lists of successful candidates. The HJPC would even be empowered to appoint an acting chief prosecutor in case the appointment process became blocked. Moreover, the appointment reform, consistent with the Venice Commission's advice, gives no organ a monopoly of power over appointments. Instead, it requires cooperation among the HJPC, the relevant Council of

⁶⁰ European Commission for Democracy through Law (Venice Commission), *Report on European Standards as Regards the Independence of the Judicial System*, CDL-AD(2010)040, 3 Jan. 2011, para 34.

⁶¹ *Id.*, para 35.

⁶² *Id.*

Ministers or government, and the relevant legislative bodies. A system in which the appointment power is divided among institutions is far more resistant to corruption and other abuses than is a system—like BiH’s status quo—in which all authority is concentrated in one unaccountable body.

118. Despite the appointment reform’s total consistency with European standards, it initially received a very hostile reception from the HJPC, which attacked it in letters to the EU and other institutions and arranged for other organizations to raise objections. The HJPC’s reaction betrayed its opposition to any reforms involving its own performance and prerogatives. It suggested an institution interested, first and foremost, with protecting its own powers. The thoroughly self-serving title of the HJPC’s analysis opposing the changes is indicative: “The High Judicial and Prosecutorial Council – The Foundational and Irrevocable Component of the Reform of the Judicial System in BiH.” When a non-democratic, non-constitutional public institution responds with defiant bluster to an agreement among elected officials, the need for reforming the institution becomes clear.

119. The RS Government is committed to important reforms based on a democratic process, including through inter-party agreement and the EU Structured Dialogue. It is imperative that the HJPC also recognize and respect such a process. The October Agreement on the appointment of prosecutors should be included in the Structured Dialogue process and implemented as a law.

b) International standards require Entity judges and prosecutors to be appointed by Entities.

120. It is almost unheard of democratic federal states for judges and prosecutors of federal units to be appointed by an institution of the central government. Throughout Europe and worldwide, in virtually every democratic federal state, federal units are rightly responsible for the appointment of their own judges and prosecutors. In federal states such as Germany, the United States, or Australia, centralized appointment of judges is unimaginable. It is even more important in BiH, which was established by the Dayton Accords as a highly decentralized state, that the Entities keep control over the appointment and discipline of judges and prosecutors at the Entity and lower-government levels.

121. The RS is in a particularly unfavorable position due to the current HJPC system, since members of the HJPC from the RS are at all times outnumbered by members from the levels of BiH and FBiH at the plenary Council. Moreover, as each Entity and lower-government level has its separate laws, the Entities are in a far better position to make the decisions about the best candidates for such appointments.

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

122. 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.”⁶³

123. The nomination process as provided for in the HJPC law is completely inconsistent with the Venice Commission’s admonition. The RS Government was the first institution to raise this issue, which has since been recognized as a subject needing urgent reform by representatives of the European Union and the leadership of the HJPC itself.⁶⁴ In order to assist in the process of institutional reform, the RS Government has drafted proposed amendments to the Law on HJPC that would add additional members to the Council and form separate panels for judges and prosecutors.

d) The Entities must have effective participation in oversight of HJPC reform.

124. The EU representatives involved in the Structured Dialogue process have put the responsibility for drafting a new HJPC Law in the hands of the HJPC itself, with oversight from the BiH Ministry of Justice. For more than a year, the HJPC worked on its draft of the law in secret. Neither the HJPC nor the BiH Justice Ministry has provided opportunities for public input.

125. For the process of reform to be legitimate, this serious lack of Entity oversight and participation must be addressed. The RS Government calls upon the EU to ensure a full opportunity for entity participation through the Structured Dialogue. Too often in the past, entity participation and agreement has been treated as an afterthought once the HJPC, BiH agencies, OHR and members of the PIC, and related international organizations such as the OSCE have reached agreement. The EU Structured Dialogue potentially represents a change from such an approach. Without a more inclusive process, reform of the justice system, which is essential, will not be possible.

e) Transparency and accountability must be ensured.

126. As the reforms proposed in this section and other reforms are considered in the EU Structured Dialogue process or otherwise, complete transparency is essential. If BiH and entity institutions are to be strengthened by the current justice system reforms, all changes must be the result of genuine consensus-building efforts.

127. The selection of judicial officials at all levels of government should be done in accordance with the law of the appropriate level of government, and should also secure the transparency and objectivity of the election of judges, making sure that courts are independent and autonomous, according to the principle of separation of powers into legislative, executive, and judicial. It would be logical that a legislative institution that has the power appoints chief prosecutors, in accordance with the procedure established by a law of a relevant institution. Also, it is important to ensure that prosecutors, as autonomous state institutions, in cooperation with

⁶³ *Id.* at p. 17.

⁶⁴ Milorad Novkovic, “A common platform for changes of the HJPC Law,” Internal HJPC memo, June 2010, p. 5.

other institutions, conduct investigations, and decide autonomously on prosecution of perpetrators of crimes.

128. Furthermore, the HJPC needs to increase the transparency of its internal operations. The Council's budget, resource allocation, and staff directory should be made available to public. The identity of public officials with important responsibilities, such as those persons that currently perform duties in the HJPC, must be identified to the public and available for consultation with legislative and executive officials of the Entities, Cantons and municipalities their work affects. Only then can the affected government institutions and the citizens throughout BiH assess the efficiency and professionalism of the HJPC and the effectiveness of its activities. The standard of effectiveness is not the number of seminars held, the number of foreign advisors hired or the number of foreign tours to other judicial institutions made by HJPC members. Rather it is whether citizens throughout BiH have seen an improvement in the prosecutorial and judicial functions that touch their lives.

f) The HJPC Must Obey BiH Law When Making Appointments

129. The HJPC recently appointed a new BiH Chief Prosecutor who was clearly ineligible for the position under BiH law. The Law on Prosecutor's Office of BiH establishes just one requirement for the HJPC to follow when appointing a Chief Prosecutor: the appointee must be one of the prosecutors in the BiH Prosecutor's Office. The Law on the HJPC supplements this basic requirement with a series of more detailed qualifications. On 12 December 2012, however, the HJPC appointed Goran Salihović, then serving as Chief Judge of the Sarajevo Municipal Court, as BiH Chief Prosecutor. In making this appointment, the HJPC either ignored or disregarded Article 3-2 of the Law on the Prosecutor's Office of BiH (Official Gazette of BiH 49/09) which reads:

The Chief Prosecutor and the Deputy Chief Prosecutors shall be selected and appointed by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina *from the Prosecutors of the [BiH] Prosecutor's Office.*⁶⁵

Not only was Judge Salihović not a Prosecutor of the BiH Prosecutor's Office; his official resume shows that he had had no experience as any kind of prosecutor. Thus, the HJPC appointed Judge Salihović as Chief Prosecutor despite his clear ineligibility under the law.

130. When the HJPC appointment Judge Salihović, it said it believed he met the qualifications prescribed in the Law on the HJPC.⁶⁶ But that law's more detailed qualifications do not replace—and are perfectly consistent with—the single, basic requirement of the Law on Prosecutor's Office—that the appointee be a prosecutor in the BiH prosecutor's office.⁶⁷

⁶⁵ Emphasis Added.

⁶⁶ Prosecutor's Office of BiH, *Goran Salihović Appointed As The Chief Prosecutor Of The Prosecutor's Office Of BiH*, 18 Jan. 2013.

⁶⁷ Article 29, paragraph 1 of the Law on HJPC requires that the appointee as Chief Prosecutor must have “a minimum of eight (8) years of practical experience as a judge, prosecutor, attorney or other relevant

131. It is not clear whether the HJPC's appointment of a new Chief Prosecutor in violation of the Law on Prosecutor's Office was in defiance of the law or in ignorance of it. Whatever the cause, it reflects poorly on the HJPC's professionalism and its respect for the law. The HJPC can scarcely afford to further undermine its legitimacy by ignoring the law.

2. Reforms of the Law on Court of BiH

132. The Court of BiH as now established is in violation of the BiH Constitution. The Constitution assigns no such functions or powers to BiH, but instead allocates this authority to BiH's two Entities. The establishment of such a court at the BiH level requires amendment of the Constitution based on formal agreement of the Entities. The Constitutional Court's ruling to the contrary is fatally flawed because it was the product of the High Representative's domination of the Court through his extensive powers over the appointment, removal and compensation of judges.

133. In considering the present status of the judiciary in BiH, the Venice Commission reviewed but did not approve the rationale upon which the Constitutional Court upheld the Law on Court of BiH.⁶⁸ In the Commission's view, the Constitutional Court's "extensive interpretation of state responsibilities has clear limits," and "it is difficult to imagine that the doctrine [of implied State powers] could be stretched any further than that already done by the enactment of the Law on the Court of BiH."⁶⁹ Further structural changes will require amendment of the BiH Constitution.⁷⁰

134. In addition to its lack of a constitutional basis, the Court of BiH falls 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 ECHR's requirement of an independent and impartial tribunal.
- The power of the Court of BiH to impose on other courts binding legal interpretations and practice directions related to implementation and application of the law, violates the principle of independence within the judiciary and the BiH Constitution.

legal experience after having passed the bar examination . . ." and possess "proven management and leadership skills relevant to the operation of the prosecutors' office."

⁶⁸ European Commission For Democracy Through Law (Venice Commission), *Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina*, adopted by the Venice Commission at its 91st plenary session, paras. 16-20 (June 15-16, 2012) .

⁶⁹ *Id.*, paras. 20, 47.

⁷⁰ *Id.*, para. 101.

- 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 Court's discretionary power to exercise jurisdiction under Entity criminal laws is an unwarranted intrusion into the functions and powers of the Entities.

135. The Court of BiH must be replaced with an institution that meets the requirements of the BiH Constitution and European standards. Any Court of BiH must be established by amendment of the Constitution of BiH passed using constitutional procedures and based on agreement of the Entities, in accordance with the Vienna Convention on the Law of Treaties. The RS has jurisdiction and autonomy confirmed and guaranteed by Annex 4 of the Dayton Accords (the BiH Constitution). The Venice Commission recognized in its Opinion No. 337/05 that the annexes to the Dayton Accords, including Annex 4, "must be considered as international treaties" and that their "character and interpretation are therefore governed by international law, in particular the Vienna Convention on the Law of Treaties."

136. The Court of BiH must have expressly defined jurisdiction limited to matters that are appropriate and necessary for the institutions of BiH rather than the Entities to handle. The present Law on Court of BiH extends the Court's jurisdiction into matters that are clearly the responsibility of the Entities. For example, Article 7(2) of the Law grants the Court discretionary jurisdiction over criminal offenses under Entity laws, and that jurisdiction is subject to criteria that are so vague that they set no effective limits on the Court's exercise of authority constitutionally reserved to the Entities.

137. The Court of BiH cannot continue to be its own appellate court. Appellate jurisdiction must be removed from the Court of BiH. Doing so, either by splitting the Court of BiH or by establishing a new court, will require an amendment of the BiH Constitution.

138. The powers of the President of the Court must be curtailed so that they are not inconsistent with the independence of other judges on the Court.

139. 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 substantive criminal law.

140. 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 or to institute proceedings on the authority of Entity criminal laws. The Court of BiH should not be permitted to continue to apply retroactively the war crimes provisions of the 2003 BiH Criminal Code.

141. The Court of BiH should be required to make public all its decisions, including its past decisions. The disclosure of the decisions already handed down should be prompt and future decisions should be published as soon as they are made.

142. Proposals to establish a Supreme Court of BiH should be rejected. Such an institution would penetrate into the constitutional responsibilities of the entities in terms of interpretation

and implementation of their laws. Establishment of such a court would, naturally, dictate amendments to the Constitution. Moreover, there are also other methods to resolve the discrepancies between the laws of the entities and BiH. As the Venice Commission suggested, since there is no supreme court of BiH, “a common or joint body composed of the representatives from the supreme courts of the two Entities, with appropriate representation of the Appellate Court of the Brčko District and the Court of BiH, could ensure the harmonization of the case law.”⁷¹

143. Moreover, the Rulebook on Internal Court Operations (Official Gazette of BiH no. 66/12), Article 9, section 3, provides that the presidents of the supreme courts of the entities, Court of BiH, and Appellate Court of Brčko District shall hold meetings of court departments at least twice a year, for the purpose of exchange of experiences and improvement of efficiency of court administration. At these regularly held meetings, issues important for judicial functions throughout BiH are discussed. This system is further reason why the establishment of a Supreme Court of BiH is completely unnecessary.

3. The Constitutional Court’s rulings on Entity laws exceed the court’s constitutional power and violate the constitutional division of authority between the Entities and BiH.

144. The Constitution of BiH accords the Constitutional Court jurisdiction over issues *under the Constitution* arising out of a judgment of any other court in BiH. Article VI, Section 3(b). However, in many cases the Court has interpreted this provision in such a way as to give the Court the power to review rulings of other courts on Entity law and other non-constitutional matters. Indeed, the Constitutional Court’s rulings in these cases appear to have the same effect as if the Court were exercising ordinary appellate jurisdiction.

145. In effect, the Constitutional Court has unilaterally and significantly expanded its responsibility, and now performs the functions of an ordinary appeal court. It is making decisions about the appeals in a wide array of cases, which is why the number of cases which fall within its responsibility as set forth by the Constitution of BiH is negligibly small compared to the number of cases in which the Court is deciding as a third or fourth instance court. Rather than serving as an extraordinary legal remedy for the resolution of issues arising from the Constitution of BiH, appeals before the Constitutional Court have become a regular means for the contestation of the final decisions of entity judicial bodies. In early 2013, there were 8,800 appeals before the Constitutional Court, and the number has been steadily growing (4,027 new cases in 2008; 4,209 new cases in 2009; 6,056 new cases in 2010; 4,610 new cases in 2011; and 4,739 new cases in 2012).

146. The Court’s doctrine goes as follows: If a right guaranteed by the Constitution is implicated in an Entity court proceeding, the question whether the Entity court’s ruling is in compliance with the Entity’s substantive law is itself a constitutional issue. Thus, if the lawsuit involves property (including a claim for damages), the Court’s position is that this in itself means

⁷¹ *Id.*, para. 102.c. The Commission recommended that a supreme court at the BiH level be established, but expressly recognized that this action “would require amending the Constitution of BiH. *Id.*, para 102.b.

the case raises a constitutional issue so that an Entity court decision that misapplies the substantive law (e.g., an Entity law) constitutes a denial of the constitutionally protected property right (i.e., guaranteed under Article II, Section 3(k)). The Court customarily formulates its doctrine to require that the Entity court's misapplication of the substantive law must be "arbitrary" in order for its decision to be subject to reversal by the Constitutional Court. However, in practice, once the Constitutional Court determines that, in its view, the Entity court's interpretation of the Entity law is incorrect, it appears to follow without a more precise analysis to reach a decision that the ruling is "arbitrary." Strong dissents in these cases have been issued by judges of the Constitutional Court, but the Court has continued its unconstitutional practice.

a) Overruling a decision on amount of damages under the RS Civil Procedure Code

147. In Decision No. AP 775/08 (30 May 2009), the Constitutional Court quashed an RS Supreme Court decision on the ground that the RS Supreme Court, acting under the RS Civil Procedure Code, had exceeded its authorized scope of review in ruling on the procedure by which a lower court had established the amount of damages. In the Constitutional Court's view, this violation of the RS Code constituted an arbitrary application of procedural law and consequently a violation of plaintiffs' right to a fair trial under Article II, Section (3)(e), of the BiH Constitution and Article 6(1) of the European Convention.⁷² Also, the resulting reduction in plaintiffs' damages violated plaintiffs' right to property under Article II, Section (3)(k), of the BiH Constitution and Article 1 of Protocol No. 1 of the European Convention.⁷³ The Court gave no explanation why the RS Supreme Court determination was "arbitrary" other than that the Constitutional Court found it to be erroneous.

148. The three international judges on the Constitutional Court dissented, stating (*per* Judge David Feldman):

5. The reasoning of the Constitutional Court is based on its interpretation of various provisions of the Civil Procedure Code of the Republika Srpska. The Constitutional Court considers that, in the judgments and ruling which it has quashed by its Decision, the Supreme Court of the Republika Srpska and the County Court of Trebinje misinterpreted and misapplied those provisions.

6. I do not consider that it is normally appropriate for the Constitutional Court of Bosnia and Herzegovina to attempt to rule authoritatively on the interpretation and application of the law of Bosnia and Herzegovina, of an Entity of Bosnia and Herzegovina, or of the Brcko District. The Constitutional Court of Bosnia and Herzegovina has appellate jurisdiction under Article VI.3(b) of the Constitution of Bosnia and Herzegovina over 'issues under this

⁷² BiH Constitutional Court, Decision No. AP 775/08, paras. 73-86.

⁷³ *Id.*, paras. 91-99.

Constitution arising out of a judgment of any other court in Bosnia and Herzegovina'. The Constitutional Court does not have appellate jurisdiction over issues concerning the law of Bosnia and Herzegovina or of an Entity or Brcko District unless they give rise to constitutional issues.

7. An erroneous application of law by a court of Bosnia and Herzegovina or of an Entity or District is not in itself a constitutional issue arising under the Constitution of Bosnia and Herzegovina. Indeed, I do not consider that the Constitutional Court of Bosnia and Herzegovina is normally competent to decide whether other courts have erred in their interpretation or application of the law of their various jurisdictions. The judges of the Constitutional Court of Bosnia and Herzegovina may consider that judges in another court have made mistakes, but we do not have the legal or constitutional authority to determine such questions.

8. It is important to emphasize this for both constitutional and practical reasons. At the constitutional level, Article VI of the Constitution of Bosnia and Herzegovina opens with the words, 'The Constitutional Court shall uphold this Constitution', and Article VI.3/b) carefully limits the appellate jurisdiction of the Court to issues arising under the Constitution of Bosnia and Herzegovina. It would be an unjustified extension of its constitutional authority of the Constitutional Court of Bosnia and Herzegovina to assert a power to decide whether another court has erred in its interpretation or application of the ordinary law. That would turn the Constitution Court into an ordinary court of third or fourth instance, a role for which it has no constitutional or legal authority. Furthermore, in relation to the courts of Entities (and the Brcko District) there is an additional constitutional reason for the Constitutional Court to decline to act as a court of third or fourth instance: to do so would violate the division of responsibility between institutions of Bosnia and Herzegovina and institutions of the Entities and District, as outlined in Article III.1 and 3/a) of the Constitution of Bosnia and Herzegovina.

9. There is also a compelling practical reason for ensuring that the Constitutional Court of Bosnia and Herzegovina does not become an ordinary court of third or fourth instance in relation to matters arising from the ordinary laws of Bosnia and Herzegovina, of the Entities and of Brcko District. Appeals are lodged with the Constitutional Court in ever-increasing numbers If the Constitutional Court is to meet its obligation under the Constitution to respect the right of litigants to a determination of their civil rights and obligations within a reasonable time (Article

II.3/e of the Constitution and Article 6.1 of the European Convention), the Court must be vigilant to ensure that it does not further increase its case-load by unjustifiably extending its jurisdiction.

b) Overruling decision rendered on the Brčko Civil Procedure Code and Brčko Law on Obligations

149. A similar example of the Constitutional Court's intrusion into non-constitutional issues, in Decision No. AP 289/03 (19 November 2004), arose from the Brčko Appellate Court's reversal of a lower Brčko court decision on statute of limitations grounds. The Constitutional Court interpreted Brčko's Civil Procedure Code to preclude the Brčko Appellate Court's review of that issue. In the opinion of the Constitutional Court, the Brčko Appellate Court's misapplication of the Brčko Civil Procedure Code violated the plaintiff's constitutional right to a fair trial. The Constitutional Court stated that the Brčko Appellate Court "arbitrarily" applied the pertinent provision, but it gave no basis for the finding of arbitrariness except its own ruling that Brčko's Civil Procedure Code required a different result.⁷⁴ In the same decision, the Constitutional Court held the Brčko Appellate Court had misapplied the statute of limitations in Brčko's Law on Obligations and that this violated plaintiff's constitutional right of property because it denied plaintiff the right to recover damages.⁷⁵

c) Overruling a decision under RS Labor Law

150. Similarly, in Decision No. AP 3687/08 (18 January 2012), the Constitutional Court ruled that the RS Supreme Court had misapplied the RS Law of Obligations and the RS Labor Law, and that this amounted to denial of plaintiff's constitutional right to a fair trial and constitutional right to property. The Constitutional Court stated that the RS Supreme Court "arbitrarily applied the substantive law," but it did not state why the application was "arbitrary" rather than simply erroneous (in the view of the Constitutional Court).⁷⁶

d) Overruling a decision on evidentiary and factual issues

151. In Decision No. AP 2635/09 (28 Sept. 2012), the Constitutional Court ruled that the RS courts had erroneously evaluated the defendant's confession and other evidence in finding him guilty of murder and had thereby violated defendant's constitutional right to a fair trial. Three judges dissented,⁷⁷ stating that "it is outside of the scope of jurisdiction of the Constitutional Court to assess the quality of conclusions of other courts regarding the evaluation of evidence, unless such evaluation appears to be manifestly arbitrary." In his separate dissent, Judge Knežević pointed out that "the Constitutional Court is imposing upon itself a heavy commitment to act as the court of 'third' or, in some cases, even 'fourth' instance in respect of adjudication in ordinary courts, which is neither its role nor its jurisdiction under the Constitution."

⁷⁴ BiH Constitutional Court, Decision No. AP 289/03, paras. 24-31

⁷⁵ *Id.*, 32-39.

⁷⁶ BiH Constitutional Court, Decision No. AP 3687/08, paras. 41-51.

⁷⁷ Vice President Miodrag Simović, President Valerija Galić and Judge Zlatko M. Knežević.

e) **Constitutional Court has no jurisdiction to interpret Entity laws or second guess factual determinations of Entity courts**

152. These decisions demonstrate the Constitutional Court's assertion of jurisdiction to interpret Entity laws and to review factual determinations of Entity courts. This is a stark example of a BiH institution overstepping its constitutional powers and encroaching upon the authority constitutionally reserved to the Entities. As Judge Feldman pointed out in his dissent,⁷⁸ the Court's practice "violate[s] the division of responsibility between institutions of Bosnia and Herzegovina and institutions of the Entities and District" that the Constitution of BiH establishes. Indeed, if the Constitutional Court's doctrine were correct, it is not apparent why the Court would not have the jurisdiction to review any Entity court's interpretation and application of Entity law in any civil case. A right to fair trial and a right to property, as construed by the Court, would always be involved.

153. The Court's unconstitutional expansion of its own authority must be corrected. The Court has no constitutional jurisdiction to overrule an Entity court's determination on any issue of Entity law: the Constitutional Court should be required to accept Entity law as construed by the Entity court. At the very least, the Constitutional Court should not be permitted to reverse a ruling of an Entity court because of what the Constitutional Court believes to be an error in substantive law unless it is determined to be "arbitrary" under a test such as that suggested in Judge Feldman's dissent: "By 'arbitrarily' I mean not merely 'mistakenly' or 'wrongly', but 'perversely', adopting an approach which no reasonable court could properly adopt, in circumstances which give rise to doubt as to whether the court is acting bona fide or for a proper purpose or with due regard to the principle of equality before the law."⁷⁹

V. The OHR's Unlawful and Counterproductive Role

154. The presence of a High Representative claiming so-called "Bonn Powers" hinders BiH's political and economic development. After 17 years of peace, there is simply no justification for the continuation of a foreign official claiming authority to override the rule of law, the Dayton Accords, the sovereignty of BiH, and the human rights of its people. Annex 10 of the Dayton Accords, which is the legal basis for the High Representative's authority, does not provide for "Bonn Powers" or anything resembling them. The High Representative must adhere at once to the limits of his mandate under the Dayton Accords, and the OHR must be closed at the earliest possible date.

A. The so-called "Bonn Powers" are an affront to the rule of law, democracy, and human rights.

155. The illegality of the dictatorial authority claimed by the High Representative is plain to anyone who has read the High Representative's strictly limited mandate under the Dayton Accords and is familiar with BiH citizens' civil and political rights under the BiH Constitution and international conventions.

⁷⁸ BiH Constitutional Court, Decision No. AP 775/08, dissent, para. 8.

⁷⁹ *Id.*, para. 11.

156. Ambassador Inzko continues to assert powers that drastically exceed the High Representative's mandate under Annex 10 of the Dayton Accords and violate the human 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."⁸⁰ Annex 10 does not include any words or phrases that would suggest the authority to make decisions binding on BiH, the Entities, or their citizens.

157. The term "Bonn Powers" originates from a statement issued two years after the Dayton Accords by the PIC, an *ad-hoc* collection of countries and organizations, at a conference in Bonn, Germany. The PIC did not purport to expand the authority conferred on the High Representative under the Dayton Accords. Nor could it, of course; the PIC could hardly claim authority to rewrite a legally binding treaty witnessed by six PIC members just two years earlier.

158. Instead, the PIC said 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. Thus, the High Representative's self-serving, self-claimed expansion of power came to be known as the "Bonn Powers." As Parish, the former OHR attorney, has recognized, the PIC's Bonn statement "ran quite contrary to the spirit and text of Annex 10 to the [Dayton Accords], and was *legally quite indefensible*."⁸¹

159. For the remainder of the OHR's tenure in BiH, the High Representative must observe the legal limits of his position as laid out in the Dayton Accords.

B. It is unconscionable for an unelected diplomat to threaten to depose democratic leaders for their opinions.

160. Recently, Ambassador Inzko has made thinly veiled threats to depose democratically elected Serb leaders, an action for which he manifestly has no legal authority. These outrageous threats are not even based on these leaders' actions, but instead on their statements of opinions with which the High Representative disagrees. Such threats are offensive to freedom of expression and the right of BiH citizens to select their own leaders through democratic and constitutional means.

C. The High Representative frustrates democratic consensus-building.

161. Another reason the High Representative's position must be terminated is that his looming presence undermines consensus building among BiH's Constituent Peoples and major political parties. As a major, extra-constitutional center of power, the High Representative badly distorts the incentives necessary for striking compromises. Instead of engaging in the difficult give and take of political negotiations, many political actors seek to enlist the High Representative as a political ally.

⁸⁰ Matthew T. Parish, *The Demise of the Dayton Protectorate*, 1 J. INTERVENTION AND STATEBUILDING, Special Supp. 2007, p. 13.

⁸¹ *Id.*, p. 14 (emphasis added).

162. The Bosniak political parties, in particular, habitually make maximalist demands in hopes that the High Representative will intervene on their behalf or otherwise bolster their position in talks. These hopes have often been fulfilled. The International Crisis Group wrote in a November 2009 report that the SDP, one of the two main Bosniak parties, considers the OHR its “main negotiating leverage.”⁸²

163. As the Crisis Group explained:

The OHR has become more a part of Bosnia’s political disputes than a facilitator of solutions, and the High Representative’s executive (Bonn) powers are no longer effective. The OHR is now a non-democratic dispute resolution mechanism, and that dispute resolution role should now pass to Bosnia’s domestic institutions with the temporary and non-executive assistance of the EUSR.⁸³

* * *

The conflict over the future of the OHR should end now; the office should close . . . BiH cannot work in its present form, keeping the OHR open will not push its citizens toward reform and may sow enough discord to push reform out of reach.⁸⁴

164. There is a growing realization inside and outside BiH that the High Representative’s presence hinders the negotiations and give-and-take necessary for democratic government to function. Even the High Representative’s principal deputy, Roderick Moore, admitted in a September 2012 interview, “[T]here have been some tendencies to get the international community [i.e., the OHR] involved in the local political processes, which I think is harmful.”

165. But BiH politicians’ efforts to enlist the OHR in local political disputes will undoubtedly continue as long as the OHR continues to claim powers of rule by decree.

166. In 2011, the High Representative tried to mediate a dispute over the formation of a new FBiH Government. Following the failure of the mediation, the largest FBiH party, acting in flagrant violation of the FBiH Constitution, formed a new FBiH Government that marginalized the Croats. In a March 2011 decision, the BiH Central Election Commission rightly declared the formation of the FBiH government unlawful and annulled it.

167. The High Representative, however, quickly responded by handing down a decree overruling the Central Election Commission’s decision, effectively imposing a new, illegally-formed government on the FBiH. The High Representative’s imposition of the FBiH Government is widely considered—both inside and outside BiH—to have been unlawful and politically disastrous. The 2011 decree, as the President of the International Crisis Group wrote,

⁸² International Crisis Group, *Bosnia’s Dual Crisis*, 12 Nov. 2009, pp. 5-6.

⁸³ *Id.* at p. 1.

⁸⁴ *Id.* at p. 16.

“undermined state bodies and the rule of law.”⁸⁵ The two largest Croat parties, in a joint statement, said the decree “represents the introduction of an emergency in the state and the destruction of constitutional order.” In an interview last year with Principal Deputy High Representative Roderick Moore, Croatia-based newspaper *Večernji List* said the High Representative’s imposition of the FBiH government “led to the biggest crisis since the signing of the Dayton Agreement.”

168. The High Representative’s 2011 decree and the long history of political interventions by OHR continue to undermine political consensus building. The government coalition effectively imposed on the FBiH by Ambassador Inzko in 2011 collapsed little more than a year later after a breakdown in relations between the two largest Bosniak parties. As explained in section I, above, the stalemate over replacing that coalition government continues to drag on, stalling progress at the BiH level as well as in the FBiH. Efforts by the OHR and other members of the international community to facilitate talks to break the FBiH stalemate have been unsuccessful.

169. The PIC Steering Board has shown increasing concern about the tendency for some political authorities in BiH to expect the OHR intervene to solve their disputes. Unfortunately, the Steering Board does not yet seem to appreciate that such dependence is inevitable for as long as the OHR claims “Bonn Powers.” In March 2013, the SDP, the Bosniak party that leads the FBiH Government, demanded that the OHR impose a “solution” in the FBiH’s current political crisis. On 26 March, the PIC Steering Board wisely rejected this demand, saying, “Authorities must stop expecting the International Community to do their job for them and instead explain how they intend to move forward”⁸⁶ The Steering Board should not be at all surprised at this expectation, however. The OHR’s long history of imposing “solutions,” combined with OHR’s continued claim that it possesses “Bonn Powers,” ensures that this expectation of foreign intervention will continue to undermine the culture of compromise that is so essential to BiH’s future.

170. Last autumn, the High Representative launched a new initiative to mediate between Bosniak and Croat parties, this time with respect to the long-running crisis over the electoral system of the ethnically divided city of Mostar. The previous Mostar electoral statute, which had been imposed by the High Representative, was declared unconstitutional by the BiH Constitutional Court in 2010. The OHR-led talks have been unsuccessful.

171. This year, the United States has been pursuing an initiative for the drafting of a new Constitution for the FBiH. Under the initiative, a group of “thoughtful lawyers and experts”⁸⁷ handpicked by the U.S. Embassy will consider various proposals for constitutional change. The RS Government believes this effort is counterproductive and only risks further complicating

⁸⁵ Letter from Louise Arbour, President and CEO of International Crisis Group, to PIC Steering Board Ambassadors, 2 May 2011.

⁸⁶ Statement by the Ambassadors of the Steering Board of the Peace Implementation Council, 26 March 2013.

⁸⁷ Amb. Patrick Moon, *Federation Reform: Meeting the Needs and Protecting the Rights of All Citizens*, Ambassador’s Notes: Embassy Sarajevo, 23 Jan. 2013.

FBiH politicians' efforts to resolve more urgent issues, such as forming a Government, implementing the *Sejdić Finci* decision, and approving a new Mostar electoral statute.

D. International Support for the OHR continues to decline.

172. The High Representative is continuing to lose international support for his claimed “Bonn Powers” and for his office’s continued operation.

173. In a report on BiH published in January 2013, the U.S. Congressional Research Service noted:

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 and conditions are met, perhaps for fear of suffering a blow to their own credibility.⁸⁸

A January 2013 paper by Sofia Sebastián of the Madrid-based think tank FRIDE, argued, “Given the OHR’s loss of credibility and effective capability to fully engage in the reform process, a timeline for progressively dismantling the office should be defined.”⁸⁹

174. Key participants in the most recent Security Council meeting on BiH spoke in diplomatic terms, but their support for ending the OHR’s current role in BiH was clear. Ambassador Peter Wittig of Germany called for an end to OHR’s executive role in BiH and a shift in responsibilities from the OHR to the EU:

Germany wholeheartedly welcomes the contribution to peace and stability made by the High Representative and his Office over the past 17 years. After the war ended in 1995, the close monitoring and executive control of the international community were undoubtedly necessary.

Today, however, such policies serve instead as an impediment to the accountability of political leaders to their electorate and to their ownership of the reform process. Instead of sticking to the institutional set-up of the past, we need to focus on concepts and instruments that can initiate forward-looking developments. With the European Union perspective of Bosnia and Herzegovina finally occupying centre stage, we can afford to relieve the Office of the High Representative of tasks that are better fulfilled by the European Union and its representatives on the ground. We therefore welcome the decision to suspend international

⁸⁸ Stephen Woehrel, *Bosnia and Herzegovina: Current Issues and U.S. Policy*, Congressional Research Service Report, 24 Jan. 2013, p. 7.

⁸⁹ Sofia Sebastián, *Bosnia’s Logjam*, FRIDE Policy Brief No. 153, Jan. 2013.

supervision in the Brcko District, where the EU has instead opened a new regional office. Further progress in that regard is needed.⁹⁰

175. Martin Briens, France's representative at the November Security Council meeting, similarly called for a continued "reconfiguration" of the OHR that would diminish its role in BiH.

The reconfiguration of the international presence in Bosnia and Herzegovina is under way, as evidenced by the end of the international supervision over the district of Brcko and the completion of the European Union Police Mission, of which some key residual tasks have been assumed by the EU Special Representative. An analysis of the reconfiguration of the Office of the High Representative, requested by the European Union Foreign Ministers, has also been launched. That has led to initial steps taken in parallel with increased engagement of the European Union. Those efforts must continue because the reconfiguration is aimed at achieving greater effectiveness based on the key role of the European Union. We must continue to refocus the action of the Office of the High Representative, ensuring its complementarity with the action of the European Union and continuing to identify and eliminate any duplication with the European Union Office.⁹¹

Mr. Briens concluded France's statement by declaring that "the functions of High Representative must evolve substantially."⁹² Similarly, the European Union's representative, in a statement to which eight states aligned themselves, called for continuing discussions "on the reconfiguration of the international presence" in BiH.⁹³

176. Russian Ambassador Vitaly Churkin urged the abolition of the OHR so as "to transfer responsibility for the fate of the country to the Bosnians themselves."⁹⁴

177. Even the United States, which has long been the OHR's most consistent supporter, has indicated a growing understanding that the OHR cannot continue its current role in BiH. In a recent interview, U.S. Ambassador to BiH Patrick Moon said that "significant progress" had been achieved toward closing OHR, which he characterized as being in a "transitional phase."⁹⁵ In a September 2012 speech, Ambassador Moon said that the time for "intrusive international intervention" was over. Ambassador Moon explained:

⁹⁰ UN Security Council, 6860th Meeting, S/PV/6860, p. 5.

⁹¹ *Id.* at pp. 7-8.

⁹² *Id.*

⁹³ *Id.* at p. 20.

⁹⁴ *Id.* at p. 8.

⁹⁵ *Moon: Conditions clear for OHR closure; demilitarization not the answer for BiH*, OSLOBODENJE, 19 Nov. 2012.

Our approach for promoting these objectives in BiH has evolved from the immediate post-war period of intrusive international intervention, which was necessary at the time to overcome Dayton obstructionism and to ensure BiH had the basic tools required to enter the process of NATO and EU integration, toward a more subtle approach of using the NATO and the EU accession processes themselves as the drivers for reform.”⁹⁶

178. The international community’s declining support for OHR intervention in BiH affairs was also evident in a September 2012 interview by Roderick Moore, an American diplomat serving as Ambassador Inzko’s top deputy, who said, “It is a strategic determination of the international community, in which the OHR plays a key role, to step back.” Ambassador Moore also said, “The OHR should not stay even a day longer than necessary. It is unusual - I am the first one to admit it - that the institution like the OHR still exists.”

179. Washington-based Freedom House, in its recent report *Freedom in the World 2013*, raised BiH’s score for “political rights” in part because of a “gradual reduction of international supervision.”⁹⁷ While this improvement in BiH’s rating is welcome, it underlines the need to completely eliminate the High Representative’s interference in BiH’s constitutional governance. The threat and reality of this interference, in addition to denying BiH citizens the political rights to which they are entitled, undermines international perceptions of BiH.

E. The counterproductive “5+2” formula for OHR closure must be scrapped.

180. Some members of the international community continue to assert that before OHR can be closed, BiH needs to fulfill a list of “five objectives and two conditions” identified by the PIC Steering Board in 2008. The 5+2 formula, unfortunately, is inherently counterproductive and unworkable. Three of the five objectives—and one of the two conditions—were accomplished years ago, but the remaining two objectives and one condition make fulfillment of the list a virtual impossibility.

1. Pro-OHR parties will never allow completion of the five objectives.

181. The International Crisis Group, in a report criticizing the 5+2, notes, “Experts in the [PIC] Secretariat warned that new [5+2] conditionality could backfire and be manipulated by local politicians, especially those who wanted the OHR to remain in Bosnia, so would have an interest to block fulfilment of the conditions.”⁹⁸ The experts were right. Bosniak parties—particularly the SDA—ardently want the OHR to remain open because they consider the OHR a valuable ally. As a result, the SDA and other parties, for as long as the 5+2 is held over BiH’s head, will do whatever is possible to prevent accomplishment of the two remaining objectives—resolution of the state and military property issues. As the International Crisis Group explained,

⁹⁶ Amb Patrick S Moon, Speech to Paul H. Nitze School of Advanced International Studies, 10 Sept. 2012.

⁹⁷ Freedom House, *Freedom in the World 2013*, p. 8.

⁹⁸ International Crisis Group, *Bosnia: Europe’s Time to Act*, 11 Jan. 2011, FN 81.

“[R]esolution of the state property issue is elusive not because the problem is inherently hard but because the PIC has linked it to Bosnia’s most controversial issue, the fate of the OHR.”⁹⁹

2. The second of the two “conditions” is infinitely subjective.

182. BiH accomplished the first of the 5+2’s two “conditions” when it signed its SAA with the EU in 2008. However, fulfilling the second condition—“a positive assessment of the situation in BiH by the PIC Steering Board, based on full compliance with the Dayton Peace Agreement”—may be an impossibility. The extreme subjectivity of this judgment essentially gives each PIC Steering Board member power to block OHR closure by claiming that BiH is not in “full compliance” with the Dayton Accords. The PIC Steering Board includes close allies of BiH’s Bosniak parties, such as Turkey, who would likely obstruct OHR closure for as long as OHR remains a useful Bosniak ally.

183. The international community must not allow the long-overdue closure of OHR to be held hostage by a set of conditions that are impossible to fulfill.

VI. BiH is peaceful and secure.

A. There is no justification for the Security Council to act in BiH under Chapter VII of the UN Charter.

184. The situation in BiH, which has been peaceful and secure for many years, does not warrant the Security Council to continue acting in BiH under Chapter VII of the UN Charter. Article 39 of the UN Charter empowers the Security Council take certain measures “to maintain or restore international peace and security” if it has determined “the existence of any threat to the peace, breach of the peace, or act of aggression.” There is a growing international consensus that BiH constitutes no such threat.

185. Gerald Knaus, the founding Chairman of the European Stability Initiative, recently observed that since 2001, BiH “has been as peaceful as Croatia or Slovenia.”¹⁰⁰ He noted “how strong the international consensus has become that . . . Bosnia no longer poses any serious security threat.”¹⁰¹

186. In a speech last year, the Head of the EU Delegation to BiH, Ambassador Peter Sørensen, said:

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

⁹⁹ *Id.* at p. 11.

¹⁰⁰ Gerald Knaus, *Stagnation in Bosnia and Herzegovina – why the ball is in Bosnia's court*, European Stability Initiative, 16 Feb. 2013.

¹⁰¹ *Id.*

country in the Western Balkans with similar problems and advantages.¹⁰²

187. In order to justify the so-called “Bonn Powers” and OHR’s continued existence, High Representatives and their supporters have often portrayed BiH as being in a time of singular peril. In his November 2012 report to the UN Secretary General, Ambassador Inzko continued in this tradition, issuing dire warnings about supposed threats to BiH. But these warnings have no basis in reality.

188. At the November 2012 Security Council meeting on BiH, French representative Martin Briens rejected Ambassador Inzko’s claims, saying, “[W]e do not share the fears expressed in the report of the High Representative, which to us seem excessive, especially as political tensions have at no point jeopardized the security climate.”¹⁰³

189. As Mr. Briens pointed out, “The security situation on the ground has remained calm and stable, as it has consistently for several years. Furthermore, as stated by the Foreign Ministers of the European Union (EU) and the Force Commander, the country’s authorities have thus far proven capable of confronting any threat to the security climate.”¹⁰⁴

190. German Ambassador Peter Wittig, similarly, noted:

Since its beginning in 2004, the EU-led force (EUFOR) Operation Althea has not had to intervene a single time to restore peace. Most recently, the fifth local elections since the end of the war were carried out in a calm environment.

Authorities in Bosnia and Herzegovina have thus proved capable of dealing with threats to the safe and secure environment. Based on that assessment, the reconfiguration of Operation Althea was completed by 1 September. With a reduced number of forces based in Bosnia and Herzegovina, Althea is successfully focusing on capacity-building and training.¹⁰⁵

191. The Security Council should recognize the international consensus that the situation in BiH does not threaten international peace and security and cease acting under Chapter VII of the UN Charter.

192. Apart from the deeply-rooted peace, BiH has made tremendous progress during the years since the war. As journalist Tim Judah wrote last year, BiH’s “transformation since [the war] has

¹⁰² Address of the EU Special Representative to BiH, Meeting with the Joint Committee on European Affairs, The House of the Oireachtas (Irish Parliament), 28 March 28 2012.

¹⁰³ UN Security Council, 6860th Meeting, S/PV/6860, p. 7.

¹⁰⁴ *Id.* at 8.

¹⁰⁵ *Id.* at 5.

been almost miraculous.”¹⁰⁶ 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. According to the most recent annual GDP statistics, BiH’s economy has grown in 15 out of the 16 years since the war. Moreover, political progress last year showed that BiH’s constitutional leadership is capable of finding common ground and resolving thorny issues through negotiation and compromise.

193. The EU’s 2012 Progress Report for BiH observes that both civil and political rights and economic and social rights “are broadly respected.”¹⁰⁷ In its summary of BiH’s progress on regional issues and international obligations, the report says:

Bosnia and Herzegovina’s cooperation with the ICTY has continued to be largely satisfactory and a number of important steps have been taken to process war crimes. . . . Efforts to find the missing persons from the 1992-1995 conflict continued. The country has continued to participate actively in regional cooperation and to maintain good neighbourly relations.

A peacekeeping contingent from the BiH Armed Forces continues to participate in the NATO-led International Security Assistance Force in Afghanistan.

194. After these many years of peace and progress, there is simply no justification for a determination that the situation in BiH constitutes a threat to international peace and security. Misuse of Chapter VII powers damages the Security Council’s 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.

B. The RS Government will again commemorate the forgotten crimes of the Second World War.

195. On 12 May 2013, the RS Government will again host a Commemoration at Donja Gradina, remembering the victims of the fascist Ustaše regime during the Second World War. Importantly, those victims include not just Serbs, but also Jews and Roma, as well as the Croat and Muslim dissenters who stood up to their leadership and paid the ultimate price as a result. Because the five sites of the Jasenovac Concentration Camp Complex were razed following the inmate revolt on 22 April 1945, which left only 80 survivors, the world seldom recognizes the atrocities committed in the Western Balkans during that regrettable period of history. To fully understand the current situation in BiH, it is important to also understand the past. The RS Government, therefore, encourages this opportunity to honestly, openly, and inclusively reflect on the horrors of what happened and to work to ensure that such crimes are never repeated. The

¹⁰⁶ Tim Judah, *Bosnia’s Come a Long Way, Don’t Be Fooled by War Memories*, BLOOMBERG, 8 April 2012.

¹⁰⁷ European Commission 2011 Report on BiH, pp. 17, 19.

RS Government welcomes all those who wish to pay their respects to the fallen victims on 12 May.

VII. Conclusion

196. As the RS Government works to build a better economic future for its citizens, it asks members of the international community to respect the Dayton Accords and support local reform initiatives in BiH. Although legislative progress at the BiH level has stalled for the moment, the BiH Council of Ministers' agreed reform agenda can move forward as soon as the current political impasse in the FBiH is resolved. The decentralized structure of BiH, enshrined in its Constitution, is essential for functional governance and reform in the RS; it must be preserved. That decentralized structure has enabled the RS to dramatically improve its business environment and harmonize much of its law with EU standards, even as the FBiH has struggled to reform. The BiH justice system, which was imposed by the High Representative in violation of the BiH Constitution, has proven ineffective and unaccountable. The RS is working with the EU and its partners in BiH to make essential reforms to align the system with European standards. As members of the international community are increasingly concluding, the continued presence of a High Representative claiming legally spurious "Bonn Powers" is detrimental to BiH's political development. Although BiH, like most countries, continues to have deep political divisions, it has been peaceful and secure for many years; there is no security threat that could possibly justify the Security Council acting under Chapter VII of the UN Charter. The RS hopes this report will help members of the Security Council and the international community better understand the situation in BiH.