

46th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations

Summary

This report covers the period from 21 April 2014 to 21 October 2014. During this period, the downward trajectory the country has been on during the last eight years continued, with governing institutions and political leaders failing to advance on a broad range of reforms, including the conditions set for Bosnia and Herzegovina (BiH) to move towards Euro-Atlantic integration. The two most significant developments in the reporting period were the severe flooding, which struck communities throughout the country in May, and the holding of the country's seventh General Elections since the war on 12 October.

Estimates put the total economic impact of the floods and consequent landslides that hit BiH in May 2014 at EUR 2.04 billion or nearly 15 percent of BiH's GDP.[1] The prompt and admirable readiness of individuals and local communities to assist neighbors in need across ethnic and administrative boundaries was an overwhelming signal that many people are more interested in finding solutions to the country's problems together than the divisive rhetoric of some politicians would suggest. The international community has responded to the disaster with financial assistance, but much remains for the domestic authorities to do to complete the recovery effort and mitigate the risks of similar disasters in the future.

Although the official election campaign began in September, personal conflicts between party representatives from ruling and opposition coalitions at various levels and divisive rhetoric from certain politicians began well before then. The poll itself was considered to be generally conducted in an orderly fashion, but with reports of irregularities in several polling stations. The high number of spoiled or invalid ballots cast, in particular, has been a source of controversy, and the Central Election Commission was engaged in a recount exercise for some 120 polling stations before the announcement of preliminary results. Legal challenges from some parties are to be expected before the final results are announced on 11 November.

Once the results are final, it will be important that the new legislatures and governments are formed promptly and fully in accordance with the applicable legal framework. Both the citizens of BiH and the international community are right to have high expectations from the incoming governments regardless of the parties that form the ruling coalitions. For these expectations to be met there will need to be a decisive break with the past and a new way of doing politics that puts the interests of citizens and the country as a whole first.

From the point of view of my mandate to uphold the civilian aspects of the General Framework Agreement for Peace (GFAP), the ever increasing calls by officials from the Republika Srpska (RS) for that entity's secession from Bosnia and Herzegovina and other statements challenging the sovereignty and territorial integrity of the country are a significant concern. Under the authority vested in me, I have made clear repeatedly that the entities have no right to secede from BiH under the Dayton Peace Agreement and that the sovereignty and territorial integrity of BiH is guaranteed by the country's Constitution and by

international law.

In the complex environment that currently prevails in the country, the presence of the European Union military mission in Bosnia and Herzegovina (EUFOR) with an executive mandate remains of vital importance, enabling my Office and others in the international community to fulfill our respective mandates as well as reassuring citizens from all ethnic groups throughout the country.

I. Introduction

1. This is my twelfth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina. It provides a narrative description of progress made towards attaining the goals outlined in previous reports, registers factual developments, logs relevant citations relating to the reporting period, and provides my assessment of the implementation of key areas falling under my mandate. I have focused my efforts on addressing these areas, in line with my primary responsibility to uphold the civilian aspects of the GFAP, while also encouraging progress on the five objectives and two conditions for the closure of the Office of the High Representative (OHR) and working to preserve steps that have previously been undertaken to implement the GFAP.

2. My energies continue to be directed towards meeting my mandate as defined under Annex 10 of the GFAP and relevant Resolutions of the United Nations Security Council. My Office fully supports the efforts of the European Union (EU) and the North Atlantic Treaty Organization (NATO) to help BiH move along the path toward closer integration with those organizations.

II. Political Update

A. General Political Environment

3. The reporting period was dominated by two events, the floods in May and the General Elections in October, while continuing to be characterized by the ongoing failure by institutions and political leaders to advance a broad range of issues, including those steps that are necessary for the country to advance towards Euro-Atlantic integration.[2] The rise in statements and actions challenging the fundamentals of the GFAP continued to be a matter of concern. While the February protests petered out during the summer months, civil society made a significant effort to stimulate an issues-based election campaign and to encourage citizens to get out and vote. On 25 September, the longstanding President of the Party for Democratic Action (SDA) and former Member of the BiH Presidency Sulejman Tihić passed away after a long and difficult illness. His commitment to reaching healthy compromises through dialogue will be missed and it will now fall on others to show these qualities.

General Elections

4. BiH held its seventh general elections since the signing of the GFAP on 12 October. In its preliminary assessment, the Office for Democratic Institutions and Human Rights (ODIHR) noted that the elections “were held in a competitive environment. The interethnic divide was a key factor. The lack of a shared vision in the country’s future and co-operation among the three constituent peoples continues to hinder the reform necessary to fully ensure democratic elections”. At the time of writing, overall voter turnout stood at around 55 percent. Once again, there are concerns about the high number of spoiled ballots and other alleged irregularities.

5. Under the Election Law of BiH, the final Election Results are to be confirmed by the Central Election Commission by 11 November and therefore, at the time of writing, all election results remain provisional. In the Federation, the Party for Democratic Action (SDA) received the highest level of support, followed by the

Party for a Better Future (SBB) and the Democratic Front (DF). The Croat Democratic Union (HDZ BiH) re-affirmed its position as the largest Croat party in BiH. The Alliance of Independent Social Democrats (SNSD) lost votes compared to 2010 but remained the largest party in the RS. Due to the complex system of allocating compensatory mandates in the BiH House of Representatives, it is too early to predict the final composition of the state parliament or the possible makeup of the state executive. Given the wide distribution of seats and the markedly differing agendas of the parties, the government formation process could take several months.

6. The three-member BiH Presidency saw the re-election of the current Bosniak member (Bakir Izetbegovic, SDA) with two new candidates being elected as the Croat member (Dragan Covic, HDZ BiH led coalition) and the Serb member (Mladen Ivanic, Party for Democratic Progress (PDP)). At the time of writing, one of the candidates for the Croat member of the Presidency has announced that he will file a complaint alleging voter fraud.

Floods in Bosnia and Herzegovina

7. Severe flooding and subsequent landslides hit many communities in both entities and the Brcko District in May 2014, damaging homes, public infrastructure, businesses and agricultural land. Heavy rains in August caused additional damage and complicated recovery efforts. The Recovery Needs Assessment that was conducted by the authorities at all levels in BiH with the support of the European Union, United Nations (UN) and World Bank estimates the total economic impact of the disaster at EUR 2.04 billion or 15 percent of the country's GDP. Thousands of people were displaced from their homes, over 2,000 of which were completely destroyed. The flooding also moved land mines and other unexploded ordnance from the 1992-95 war, leaving 70 percent of flooded areas at risk from this threat.

8. International organizations and bilateral donors, including the UN, the EU, EUFOR, NATO, and the Red Cross, played a crucial role in the immediate response to the floods, providing an initial USD 30 million during the emergency phase, with another USD 30 million coming from private contributions and other sources. I must acknowledge the role of the UN in coordination and information-sharing throughout. On 16 July, an international donor's conference was organized in Brussels, to shore up financial assistance to the countries affected by the floods, which also included Serbia and Croatia. A total of EUR 1.846 billion was pledged, out of which EUR 809.2 million was allocated for BiH, primarily through loans.

9. Several months after the disaster, the country has not recovered. Although substantive financial support is available to the authorities of Bosnia and Herzegovina from the international community, the absence of a comprehensive recovery strategy and associated recovery projects by the domestic authorities have hindered the disbursement of donors' pledges and the implementation of recovery efforts, leaving the affected population vulnerable as winter approaches. Consequently many donors (including the European Union, via its EUR 43 million Floods Recovery Programme) have opted to implement recovery activities directly in the affected municipalities through implementing agencies such as the UNDP. Moreover, a coherent strategy for coping with potential similar disasters in the future is sorely lacking and must be urgently addressed by the domestic authorities.

B. Decisions of the High Representative during the Reporting Period

10. On 19 August, I used my executive authority to lift bans on holding public office for 31 individuals. These sanctions had been enacted by High Representatives against officials for obstructing the implementation of the GFAP. This represents the final step in a review process initiated nine years ago by

then High Representative Paddy Ashdown. Following this step, there is currently no person under High Representative ban. This action in no way calls into question the High Representative's authority to remove individuals in the future should they violate or challenge the GFAP and the peace it has brought to the citizens of BiH.

11. High Representatives have always made clear that removals of officials from public office are extraordinary measures, subject to constant review, with the aim of lifting them when appropriate. As such, I issued these Decisions in light of the principles of equity, proper governance, and the judicious exercise of the High Representative's international mandate, all of which take into account the balance between the protection of stability and the rights of the individual.

C. Five Objectives and Two Conditions for Closure of the OHR

Progress on Objectives

12. During the reporting period, the authorities in BiH failed to make any concrete progress on the outstanding objectives set by the Steering Board of the Peace Implementation Council as prerequisites for the closure of the OHR.

State and Defence Property

13. My Office continued efforts to facilitate a resolution of state and defence property issues related to the ownership status of public property of the former Yugoslavia, primarily through direct contacts with relevant domestic and international stakeholders. Regrettably, the lack of political will to achieve a compromise within the framework of the clear principles laid out in the BiH Constitutional Court decision on this issue from July 2012 continued to be the primary obstacle to progress.

14. On the specific issue of properties to be used by the BiH Ministry of Defence and Armed Forces of BiH (prospective defence property) there has been a serious setback. Land registry authorities in Republika Srpska in at least two cases have used the "public inspection process" provided in a 2011 law to seek to register such properties to the RS entity, despite the fact that the BiH Law on Defence already requires they be registered to the state of BiH. In both these cases (one in the Han Pijesak municipality and the other in the Bileća municipality), the BiH State Attorney has on behalf of the BiH Ministry of Defence filed a law suit with the Court of BiH asking for the court to protect the state's right of ownership. The Han Pijesak case is currently more advanced procedurally. The Court's decision in this case is likely to set a precedent for all other property disputes over prospective defence locations in Republika Srpska.

15. The case touches upon a number of decisions enacted by the High Representative in the field of state property, and also relates to my mandate in that the GFAP requires the Entities to respect the competencies and laws of the state and in that the issues of state and defence property remain central to the mandate of the High Representative. Having these facts and the significance of the case in mind, my Office has submitted written observations to the court.

16. The reporting period has also seen worrisome developments in the RS related to the broader state property issue. In the last 18 months, the RS Government has adopted at least two decisions on the apportionment of so-called non-prospective defence locations in Republika Srpska. The term "non-prospective defence property" refers to properties owned by the former Yugoslav National Army, which are not needed by the BiH Ministry of Defence and are therefore not covered by the BiH Law on Defence. However, these properties are subject to the general ban on the disposal of state property enacted by the High Representative on 18 March 2005, and adopted by the BiH Parliamentary Assembly in 2007 (Law on

the Temporary Prohibition of Disposal of State Property of BiH). The purpose of the ban is to prevent publicly owned properties from being sold off or otherwise disposed of in a way that would damage the interests of the state prior to an “acceptable and sustainable resolution” being found for the distribution of these properties.

17. In at least these two cases in the Kalinovik and Foca municipalities, the RS Government adopted decisions to “transfer the right of ownership” over sites to the local municipality in direct violation of the High Representative’s ban. It is vital that this practice ends without further delay and that state and defence property are registered in a manner that respects the existing decisions of the High Representative and is fully consistent with all relevant legal requirements, including the July 2012 ruling of the BiH Constitutional Court.

Fiscal Sustainability

18. During the reporting period, my Office continued to follow and keep its international partners informed of developments within the Indirect Taxation Authority (ITA) Governing Board. The ITA Governing Board met regularly and worked efficiently under the chairmanship of the BiH Minister of Finance and Treasury. However, the RS Finance Minister, who sits on the Board, opposed indirect tax revenue allocation coefficients for the second quarter of 2014 (although the coefficients for the third quarter were adopted unanimously on 4 July), as well as the indirect tax revenue settlement for the second half of 2012 and first half of 2014, for which the RS owes the Federation approximately EUR 21 million. This calls into question compliance with the ITA Governing Board regulations. The BiH authorities also made a commitment to the IMF to address these issues.

19. During the reporting period, my Office also followed developments with the BiH Fiscal Council, which met infrequently over the last six months – twice in relation to the IMF Stand-By Arrangement and once to adopt the Global Framework of Fiscal Balance and Policies of BiH for the Period 2015-2017. While the adoption of the Global Fiscal Framework is a welcome step towards facilitating the preparation of budgets for 2015, this is the fourth year in a row that the state institutions’ share of indirect tax revenue is locked at the same level. This runs contrary to commitments made by the members of the BiH Fiscal Council under the Global Fiscal Framework for 2013-2015 (to increase the state’s share by EUR 15 million in 2015), as well as under the Global Fiscal Framework for 2014-2016 (to adjust the state’s share in 2015 to indirect tax revenue performance, which would amount to a 2.1 percent increase).

Brcko District

20. In June, the Brcko District Mayor’s extremely ill-judged presence at the welcoming ceremony of released ICTY convict Dario Kordic triggered a fierce reaction from Bosniak representatives in the District, who requested his resignation. Ultimately the ruling coalition was able to survive the crisis following a reshuffling of the majority in the Brcko District Assembly.

21. Pursuant to the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in the Brcko Area and the BiH Election Law, District residents may declare citizenship in one of the two entities. This is one of the conditions for Brcko residents to vote in General Elections. During the reporting period, my Office assisted the Brcko District Election Commission and the Brcko District Public Records Department as they worked together with the BiH Central Election Commission and the Agency for Identification Documents Registers and Data Exchange to ensure sufficient administrative access to District residents for declaring their entity citizenship. By 28 August 2014, 45,247 (53 percent) registered voters in Brcko District

had declared their entity citizenship, with a possibility for all other voters in Brcko to do this by Election Day and to then vote by tendered ballot.

D. Challenges to the General Framework Agreement for Peace

Challenges to the Sovereignty and Territorial Integrity of Bosnia and Herzegovina

22. During the reporting period, officials coming from the ruling SNSD party in Republika Srpska continued their longstanding practice of directly questioning and challenging the sovereignty and territorial integrity of BiH, referring to Republika Srpska as already possessing elements of statehood and openly advocating for secession and the dissolution of the state of BiH.[3] While officials from the RS have sometimes presented an ultimatum to others that BiH will dissolve if the entities are not granted additional autonomy,[4] RS President Milorad Dodik has repeatedly stated that dissolution of BiH is inevitable[5] and that the main goal of his policy is to wait for the right circumstances and proclaim RS independence.[6] Although the Republika Srpska President continues to be the most frequent and vocal exponent of state dissolution, during the reporting period he was joined by other officials from his party, both at the level of Republika Srpska and the BiH Institutions.[7] The RS President has also advocated openly for the revival of the wartime Herzeg-Bosnia as a Croat state and the dissolution of the Federation entity into two separate states.[8]

23. The sovereignty and territorial integrity of BiH is guaranteed by the constitution of the country and by international law, including the GFAP. Under the Constitution of BiH and the Dayton Peace Agreement, the entities exist as parts of the country and there is no possibility for them to secede. I have reiterated this point on several occasions during the reporting period. Nevertheless, in accordance with my mandate under the GFAP and relevant Resolutions of the United Nations Security Council, I remain concerned about the destabilizing effect which statements promoting secession have on the situation inside Bosnia and Herzegovina. I am also concerned about the tendency for officials elected or appointed from RS to the state-level institutions to use constitutional and decision-making mechanisms at the state level to prevent BiH from moving forward and meeting its international obligations, while then citing this lack of progress at the state-level as a reason why the country should be dissolved.[9]

Challenges to the Competencies of BiH Institutions

24. On 4 July, the BiH Constitutional Court annulled the controversial RS Government decision of 17 April regulating applications for residence in the RS, referring to the matter of residence as an exclusive state competency. Subsequently, the RS leadership threatened to adopt a new decision to the same effect, but has not taken such a step during the reporting period. I have made clear that this issue must be resolved at the state-level, while repeating that under Annex 4 to the GFAP all authorities are obliged to respect final and binding decisions of the Constitutional Court of BiH.

25. During the reporting period the Republika Srpska President and other senior officials from the RS continued public attacks denying the authority of key state institutions established to exercise the responsibilities of the state under the Constitution of BiH and to safeguard the rule of law.[10] Annex IV of the GFAP, which is the BiH Constitution, enumerates the responsibilities of the BiH Institutions and enables BiH to establish institutions to carry out these competencies. The BiH Constitutional Court has on a number of occasions decided that the BiH Court and Prosecutors Office were established to exercise those competencies in line with the Constitution.

Threats against Personal Freedoms

26. In the pre-election period the RS President threatened consequences for citizens who expressed themselves against the perceived interests of his party. On 21 August, he announced on television that his party would analyze election results to determine which Bosniak communities in the RS had supported his party's candidate for the BiH Presidency and which had not to determine how these communities would be treated by the RS authorities.[11] On 13 September, he warned workers of a public company in bankruptcy that they would not receive their court-mandated settlements if they spoke of their plight to a media outlet he deems unfriendly to his political party.[12]

III. State-level Institutions of Bosnia and Herzegovina

BiH Presidency

27. The BiH Presidency met regularly during the reporting period, holding seventeen sessions in total. Its main focus has been providing guidance, coordination, and – by rebalancing the budget and activating the BiH Armed Forces – assisting in relief efforts for flood-affected areas. In June, the Presidency decided to withdraw the infantry unit of the BiH Armed Forces from the international security mission in Afghanistan. BiH will however maintain a presence within the German contingent in northern Afghanistan in addition to contributing to missions in Congo, Mali, Liberia, South Sudan, and Cyprus. These contingents are generally working very well and enjoy wide international community respect.

BiH Council of Ministers

28. The BiH Council of Ministers continued to meet regularly during the reporting period, holding 27 sessions, mostly focused on technical issues, and adopting various regulatory acts. The Council's overall legislative output remained poor, with only four new laws and five sets of amendments to existing legislation adopted. Adopted legislation included the Law on Obligations in Civilian Air Transportation, the Law on the Procedure for Voting of Foreign Citizens on the Territory of BiH, the Law on Customs Policy, and the Law on the Prevention of Money Laundering and Financing of Terrorist Activities (a requirement of the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)), as well as amendments to the 2014 State Budget, reallocating more than BAM 7 million for flood-affected areas in BiH.

29. On a positive note, after many years of work by the BiH Ministry of Communications and Transport, the country has moved towards taking over BiH's air control responsibilities from the neighboring countries. At a 16 July meeting, the civil aviation authorities and air navigation service providers of BiH, Croatia, Montenegro and Serbia, together with the European Organization for the Safety of Air Navigation (EUROCONTROL), agreed to open the BiH Area Control Centre (BH ACC), which will initially provide air traffic services over parts of the Sarajevo flight information region.

BiH Parliamentary Assembly

30. The House of Representatives held eight sessions and the House of Peoples five during the reporting period, adopting four new laws (Law on Public Procurement, Law on Witness Protection Program, Law on Prevention of Money-Laundering and Financing of Terrorist Activities, Law on Electronic Documents) and nine sets of amendments to existing legislation.

31. With the final confirmation of election results expected shortly, the current BiH Parliamentary Assembly is not expected to meet again. Over the course of its 2010-2014 mandate, the Assembly adopted 14 new pieces of legislation (including four annual budgets) and amendments to 71 existing laws. By comparison, the 2006-2010 Assembly adopted 58 new laws and amendments to 110 existing laws, as well as the only

amendment so far to the BiH Constitution. The contrast with the performance of the 2002-2006 mandate is even more stark.

32. While the performance of a legislature cannot be measured by quantity alone, the poor output of the last four years is indicative of the outgoing Parliamentary Assembly's inability to address important challenges, including those related to Euro-Atlantic integration. In this regard, it is worth noting that the Assembly did not vote on any of the proposals submitted to correct the systematic discrimination addressed by the European Court of Human Rights *Sejdic-Finci* case.

33. In analyzing the reasons for the Assembly's poor output, political parties bear significant responsibility for focusing too much on political power struggles and coalition reshuffles. It is also significant that the so-called entity majority veto was used on numerous occasions to block legislation which had received support in the Council of Ministers. With the 2014 General Elections complete, it is vitally important that the new Parliamentary Assembly addresses the many crucial reforms needed to bring prosperity to the country.

IV. Federation of Bosnia and Herzegovina

Progress in De-blocking the Vital Interest Panel of the Federation Constitutional Court

34. As previously reported, the Vital Interest Panel of the Federation Constitutional Court has been incapacitated for several years, due to the failure of relevant authorities to appoint missing judges to the court and to this panel within the court. Because the panel has a role in the legislative process in the Federation, its 10 cantons and the City of Mostar, parties have exploited the lack of a functioning panel to block legislative and other acts indefinitely by referring them to the non-functioning panel.

35. I am pleased to report that the final steps have now been completed to make the panel functional, following the longstanding engagement of my Office with all of the institutions involved to resolve this issue. It was of the utmost importance to have this panel operational before the implementation of the October 2014 election results, to avoid disputes in government formation process being referred to a non-operational panel, and thereby blocked indefinitely.

Genocide Denial Becomes Criminal Offence in the Federation

36. On 18 July, the Federation Parliament adopted amendments to entity Criminal Code, which make the public denial or justifying of genocide and other war crimes a criminal offence punishable by three months to three years in prison. The law defines the war crimes in question as, "genocide, crimes against humanity or perpetrated war crimes, determined by a final and binding decision of the International Court of Justice, the International Tribunal for Former Yugoslavia or a domestic court."

Federation Constitutional Reform

37. On 23 April, the Federation House of Representatives discussed amendments and initiatives to change the entity constitution. Although most of the House members agreed that constitutional changes are necessary, the debate demonstrated that political parties hold very different views as to the content of such changes. The Constitutional Commission of the Federation House of Representatives presented a number of options including abolishing the posts of the Federation President and Vice Presidents, thereby making the Federation Parliament the center of political decision-making. The question of the role of the cantons was hotly debated, with the President of the Constitutional Commission promoting the idea that the Federation and its municipalities be strengthened, and cantonal legislative, executive and judicial competences abolished.

BiH Constitutional Court Annuls Federation Law on Returnee Benefits

38. On 11 April, the Federation Parliament adopted the Law on the Rights of Returnees to their Pre-war Place of Permanent Residence in Republika Srpska and the Brcko District. Republika Srpska authorities claimed that the law would encourage persons not currently living in Republika Srpska to register their residence there only for the purpose of voting, and 34 deputies of the RS National Assembly filed a request to the BiH Constitution Court for review of the constitutionality of the law. During the reporting period, the Court determined that the law violates the BiH Constitution and annulled it.

Mostar

39. Although the PIC Steering Board Communiqué from December 2013 underscored that local elections in Mostar should be held no later than October 2014, domestic authorities and political parties failed to take any action during the reporting period to implement the 2010 ruling by the BiH Constitutional Court, which established that the current electoral system in Mostar is unconstitutional. The Mostar Mayor therefore continues in an acting capacity. In consultation with the Head of the Mostar Finance Department, he proclaimed the 2014 Mostar City Budget on 29 May. In order to facilitate a breakthrough, on 2 July, my deputy and I sent a letter to the Joint Collegium of the BiH Parliamentary Assembly, with a draft proposal that would have provided a basis for one-time local elections to be held in Mostar in October alongside the general elections. Regrettably the proposal has so far not been considered by the BiH Parliamentary Assembly as a result of which local elections have still not been held.

V. Republika Srpska

40. During the reporting period, the institutions of Republika Srpska convened on a regular basis, functioning against a backdrop of rising tensions between the ruling coalition and the opposition parties as the 12 October general elections approached. On 30 April, the three major opposition parties (SDS, PDP and the Peoples' Democratic Movement (NDP)) formed the coalition bloc "Alliance for Changes" to run against the current RS ruling coalition in the general elections. The opposition campaign focused on economic issues, crime, corruption and nepotism in the entity institutions, while the focus of the campaign of the ruling coalition was on Serb identity and nationalism, including the preservation of the RS and increased calls for RS independence. In this climate, a number of initiatives were undertaken ahead of the elections designed to raise ethnic tensions. The erecting of a makeshift cross at one of the locations above Sarajevo from which the city was shelled during the war three weeks ahead of the general vote, provoked outrage among citizens and political actors in the Federation. Outrage was also provoked by the RS President's public praise for indicted war criminals Radovan Karadzic and Ratko Mladic, and his suggestion that streets and public buildings should be named after the two men currently on trial for the Srebrenica genocide.

41. A positive development of note in the reporting period was a 47 percent increase in the number of registered companies in the RS over the last six months. The RS Government attributes this primarily to the new one-stop shop business registration system that has been operational in the RS since 1 December 2013.

Non-cooperation with the High Representative

42. The Republika Srpska authorities have continued their policy of denying the High Representative access to official information and documents required to fulfill his mandate. Under Annex X of the GFAP, all authorities in BiH are obliged to fully cooperate with the High Representative as well as with the international organizations and agencies as provided for in Article IX of the GFAP. The practice of the

Republika Srpska Government not to provide information and documents requested by the OHR goes back to 2007. Repeated calls to the Republika Srpska authorities by the Peace Implementation Council reminding them of their obligation to ensure the High Representative has full access to documents in a timely fashion, and my most recent letter to the Republika Srpska Prime Minister of 21 March 2014, have had no impact. This policy by the RS authorities contradicts the frequently made claim that the RS respects the letter of the Dayton Peace Agreement.

Srebrenica/Potocari Commemoration

43. The annual 11 July commemoration to the victims of the 1995 Srebrenica genocide passed without major incident. A further 175 identified victims were buried this year and the number of victims buried at the Memorial Cemetery in Potocari now stands at 6,241. Tensions related to the construction of an orthodox church on a disputed location near the Potocari Memorial Centre and a mass grave remain an issue, with construction and consecration of the church completed in September.

44. On 13 July, associations of victims' families organised visits to several locations in the wider area of Srebrenica and neighbouring municipalities, where men and boys fleeing the Srebrenica enclave were massacred in July 1995. In the Kravica village where victims' families have been denied access to an execution site at a cooperative warehouse for 19 years, families were permitted access this year following a concerted effort led by my Office with local authorities in the Bratunac municipality.

Tomasica Commemoration

45. On 20 July, a mass burial ceremony was conducted for 284 Bosniak and Croat victims whose remains were found in one of the largest mass graves found to date in BiH in Tomasica, near Prijedor.

VI. Entrenching the Rule of Law

46. The Structured Dialogue on Justice, launched by the EU with the authorities in BiH, which I have welcomed, continued to be the forum in which further development of the judiciary and wider justice sector in BiH was discussed. My Office follows elements of this process which relate to the civilian implementation of the GFAP, especially those related to the division of competencies between the state of BiH and its entities under the BiH Constitution. One such issue is the ongoing preparation of a draft Law on Courts of BiH, which my Office will continue to follow closely.

Anti-Corruption Efforts

47. A number of cases during the reporting period highlighted the ongoing challenges BiH faces in tackling corruption head on. In June, the former Indirect Taxation Authority Director along with some 30 customs officials were arrested on charges of organised crime, abuse of office and money-laundering. In September, just ahead of the elections, the Federation Deputy Prime Minister and several others were arrested on charges of tax evasion.

Justice Sector Reform Strategy

48. The Justice Sector Reform Strategy in BiH expired at the end of 2013. A new Strategy for 2014-2018 has been prepared and, following negotiations between different levels of government, was adopted by the Brcko District and Federation. It now remains for the RS Government and the BiH Council of Ministers to adopt the strategy.

War Crimes Prosecution

49. The Supervisory Board for the Implementation of the War Crimes Prosecution Strategy continued to meet on a regular basis. In June, the Board concluded that it was satisfied with the pace of war crimes

processing in BiH. Indicators suggest that the goal of reducing the number of unsolved cases by 5 percent by September has been surpassed. However, the Board continues to note that the goal of prosecuting the most complex war crimes cases by the end of 2015 and

other war crimes cases by 2023 is unlikely to be met. A special report on causes for the delay is being prepared. Additional judges and prosecutors to work on war crimes were appointed with support from the EU and I hope that this will accelerate the prosecution of war crimes, including the most complex cases.

VII. Public Security and Law Enforcement

50. Political interference in operational policing continues to be a major challenge. One form of interference is the ongoing practice of delaying appointments of police directors and the formation of the independent boards which select them. In the Posavina Canton, the appointment of the local board has been delayed since March 2011, with the Tuzla, Zenica, and Gorazde Cantons also experiencing delays.

51. My Office continues to monitor changes to police legislation and encourage its harmonization in jurisdictions throughout the country. Despite the BiH Council of Ministers adopting improvements to the BiH Law on Police Officials in April, intended to serve as a model to other levels of governance, there have been no further developments in adopting this legislation.

52. There have been attempts in several jurisdictions to change police legislation without taking into account the overall goal of maintaining harmonized solutions. An uncoordinated attempt to change legislation on internal affairs was prevented in Gorazde Canton in September 2014, and in Una-Sana Canton in October 2014. In the Brcko District problematic legislation regulating police officials was adopted in September 2014.

53. In a positive development, in July 2014, after years of discussions, the Federation BiH Parliament finally adopted a new Federation BiH Law on Internal Affairs. The Law makes a number of improvements including securing budgetary and operational autonomy for the Federation BiH Director of Police. In addition, it represents a workable model for cantonal laws to be similarly improved in a harmonised manner.

VIII. Economy

Economic Indicators

54. Concluding its mission visit on 19 September, the IMF cautiously assessed that BiH's economic recovery has been more resilient to the impact of the May floods than expected, with projected growth in 2014 close to 1 percent. BiH's own economic data show a mixed picture. In the first eight months, exports increased 0.5 percent compared to the same period last year, while imports increased 5.6 percent, with imports exceeding exports of 53.9 percent. Industrial production in August 2014 decreased by 4.5 percent over last year. BiH registered deflation of 0.6 percent in August. The average net salary in August amounted to EUR 422, while the average pension in August amounted to EUR 180. Unemployment and foreign direct investment levels remain a serious concern. Official registered unemployment in August 2014 stood close to 44 percent (552,319 persons), while foreign direct investment dropped 54.3 percent in the first half of 2014 over the same period last year.

Fiscal issues

55. Late Spring posed a number of risks to fiscal stability, in particular the floods and uncertainty of IMF and World Bank disbursements caused by delays in the realization of the IMF Stand-By Arrangement commitments. These risks were mitigated by stable indirect tax revenues. In addition, international

disbursements resumed in the summer, with the IMF releasing EUR 95.7 million under the existing Stand-By Arrangement and another EUR 95.7 million as an augmentation of the Arrangement to help the country alleviate the impact of the floods. However, despite the benefits of compliance with the Stand-By Arrangement, particularly for the entities as the direct financial beneficiaries, IMF mission discussions with BiH authorities in September did not allow for consideration of the 8th review by the IMF Executive Board. As assessed by the IMF at the conclusion of its mission visit on 19 September, the outstanding policies include "...policies aimed at reining in government spending not directly related to addressing the impact of the floods; improving tax compliance and fighting tax fraud; and strengthening financial sector stability and enhancing banking supervision."

56. Flood recovery operations undertaken by the state institutions again highlighted the need for these institutions to be reliably and adequately financed. The fact that the budget of the state institutions has been locked at the same level for three years, with no increase foreseen in 2015, could impact the functioning of the state institutions and their ability to meet their obligations, including those relevant for the EU and NATO.

Non-compliance with International Obligations

57. During the reporting period, BiH's non-compliance with its international obligations related to money-laundering and the financing of terrorism, as well as in the energy sector, posed threats of sanctions. On 1 June, MONEYVAL issued a public statement under Step 3 of its Compliance Enhancing Procedures, calling on states and territories to advise their financial institutions to apply enhanced due diligence measures to transactions with persons and financial institutions from or in BiH to address money laundering and financing of terrorism risks. The statement resulted from BiH's long-standing failure to address deficiencies that have been of concern to MONEYVAL since December 2010, in particular by adopting necessary amendments to the BiH Anti-Money-Laundering and Counter-Financing of Terrorism Law, as well as to the BiH Criminal Code. Both pieces of legislation were opposed by RS representatives, who saw them as an expansion of state competences. Although the amendments to the BiH Anti-Money-Laundering and Counter-Financing of Terrorism Law were eventually adopted in June, the amendments to the BiH Criminal Code have still not been adopted. As a consequence, on 19 September MONEYVAL reiterated its 1 June statement advising due diligence in transactions with persons and financial institutions from or in BiH. In case of a continued failure to adopt the amendments to the BiH Criminal Code, BiH may face additional measures. The next on-site MONEYVAL evaluation is scheduled for mid-November.

58. At its 23 September meeting in Kiev, the Energy Community Ministerial Council declared "the existence of a serious and persistent breach by Bosnia and Herzegovina of its obligations in the gas sector." The declaration results from the country's long-standing failure to adopt legislation requested by the Ministerial Council, in this sector. Representatives in state institutions from the RS have persistently opposed the regulation of certain aspects of the gas sector at state level, such as the establishment of a state regulator, seeing this as an expansion of state competences. The Ministerial Council invited the Energy Community Secretariat to assist BiH in drafting the requested legislation, which BiH committed to present to the Ministerial Council in 2015. The Council also recalled the possibility of imposing sanctions at its next meeting.

IX. Return of Refugees and Displaced Persons

59. Upholding the right of refugees and displaced persons to return to their pre-war homes remains central

to the full implementation of the GFAP, Annex VII of which requires state and entity level authorities “to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.” As previously reported, there are a number of examples throughout the country highlighting the failure of authorities to create these conditions.

60. Given the outstanding obstacles to the full implementation of Annex VII and the current political situation, I continue to view a possible recommendation by the UN High Commissioner for Refugees (UNHCR) on the cessation of refugee status for refugees from Bosnia and Herzegovina as problematic, also in light of expected political fallout from the future announcement of census results. Therefore, I recommend a new process of consultations with BiH authorities at all levels and international organizations present in BiH dealing with these issues following the post-election establishment of new governments in BiH.

61. Divisions and discrimination within the education sector remain obstacles for the sustainable return of refugees and displaced persons to communities where their group is not a numerical majority. Education must be urgently addressed by the incoming authorities to raise standards throughout the country based on the principles of non-discrimination, non-segregation, and inclusiveness.

X. Media Developments

62. Given the role played by media controlled by competing groups in encouraging conflict during the 1992-1995 war in BiH, efforts were initiated several years ago to ensure the independence of public broadcasters, as well as their cooperation within a single system. These reforms are stalled due to political disagreements about the relationship between the public broadcasters and the various levels of government in BiH. At the same time, the public broadcasters, in particular the two entity television channels, are not free of political influence.

63. More specifically, seven years have passed since the adoption of state-level legislation requiring the public broadcasters within BiH to establish the umbrella Public Broadcasting Corporation and implement key reforms to make more efficient use of resources and coordinate within a single system, with no action taken towards registration. The financial sustainability of the system is also under question as transitional provisions regulating the method for collecting taxes to finance the public broadcasters are due to expire in less than six months. In addition, the continuing failure of the Council of Ministers to appoint a new director to the state-level Communications Regulatory Agency has crippled the institution that regulates and oversees public and private electronic media (television and radio) throughout the country.

XI. Defence Matters

64. During the reporting period, slow but consistent progress on surplus munitions demilitarization and destruction continued. The BiH Ministry of Defence and BiH Armed Forces have continued to improve the control and management of the country’s ammunition, weapons and explosive stockpiles. The international community continues to support the development of an improved process for inspecting ammunition stockpiles in addition to facilitating the disposal of surplus ammunition and weapons under the 2008 Agreement on Final Disposal of All Rights and Obligations over Moveable Property that Will Continue to Serve Defence Purposes. Nevertheless, the risk of accidental explosion still exists, due to ageing ammunition and poor storage conditions. No further progress has been made by BiH authorities to agree on a mechanism through which surplus stockpiles could be sold.

65. BiH continues to meet its obligations under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. BiH also continues to conduct comprehensive public safety activities on mines and unexploded ordnance.

XII. European Union Military Force

66. The European Union military mission in Bosnia and Herzegovina (EUFOR) continues to play a vital role in supporting Bosnia and Herzegovina's efforts to maintain a safe and secure environment. This, in turn, assists my Office and other international organizations to fulfil their respective mandates. EUFOR played a crucial role during the reporting period in assisting the BiH Armed Forces flood-relief effort. Its presence on the ground, including through its liaison and observation teams, continues to have a positive and stabilizing effect and to reassure citizens from all ethnic groups, in particular those who have returned to their prewar homes. This is particularly important at a time when senior politicians continue to use destabilizing and provocative rhetoric.

XIII. Future of the Office of the High Representative

67. The Peace Implementation Council Steering Board (PIC SB) political directors met in Sarajevo on 21-22 May 2014 to underline their unequivocal commitment to Bosnia and Herzegovina's (BiH) territorial integrity and sovereignty. The PIC SB also reinforced the need to complete the 5+2 agenda, which remains necessary for OHR's closure. The next meeting of the PIC Steering Board is scheduled for 9-10- December 2014.

68. My Office continues its responsible efforts to realize budgetary savings where possible, which was once again reflected in a reduction of 8 percent in the 2014-2015 budget over the previous year. Since the beginning of my mandate the OHR's budget has been reduced by over 41 percent and my staff by over 51 percent. More than ever, it remains essential that I am equipped with the budget and staff required to carry out my mandate effectively.

XIV. Reporting Schedule

69. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Security Council Resolution 1031 (1995), I herewith present my twelfth regular report. Should the Secretary-General or any Security Council member require information at any other time, I would be pleased to provide an additional written update. The next regular report to the Secretary-General is scheduled for April 2015.

Notes:

[1] "Bosnia and Herzegovina Floods 2014 - Recovery Needs Assessment", conducted by the authorities in BiH with the support of the European Union, the United Nations and the World Bank.

[2] In this regard, the EU noted in this year's Enlargement Strategy and Main Challenges 2014-2015 that, "There has been no tangible progress in establishing functional and sustainable institutions" and that "Bosnia and Herzegovina has made little progress towards becoming a functioning market economy". The EU summarised that "Bosnia and Herzegovina remains at a standstill in its European Integration path. Following the elections it will be essential for the country to speak with one voice, to tackle urgent socio-economic reforms and to progress on its European agenda."

[3] "One day we will have to relieve ourselves of that un-freedom which is called BiH...There is no consensus for the life of BiH...It is necessary to strengthen the RS so it can declare independence one day..." RS President Milorad Dodik, Nezavisne Novine, 4 July 2014; "Today Serbs with their two states - Serbia and Republika Srpska can be an advantage and stabilizer of regional peace and development." RS President Milorad Dodik, SRNA, 4 September 2014.

- [4] "What I think is a minimum for us to stay in Bosnia and Herzegovina is a confederate organization or even a union of two or three republics or states." RS President Milorad Dodik, Tanjug, 5 October 2014.
- [5] "In the former Yugoslavia, BiH was treated as a 'small Yugoslavia'.... Is it logical, is there any historical or any other sense, to break apart the big Yugoslavia and say it cannot function because its peoples hate each other and then you have that small Yugoslavia and request it to function on the principle of the big one? Of course it cannot." RS President Milorad Dodik, Happy TV (Cirilica interview), 8 September 2014.
- [6] "When we took power in 2006, the main question was whether the RS would survive and the question now is whether BiH will survive." RS President Milorad Dodik, PRESS, 9 October 2014; "The idea of the RS as a state has never been lost, it was pushed to the background a little, and now we have completely rehabilitated it and put it on the agenda. I am convinced the Serb entity will gain its independence and would like to be the man to head that process." RS President Milorad Dodik, NES Radio, 10 September 2014; "My political program is to strengthen the autonomy of the RS until it accomplishes its independence..." RS President Milorad Dodik, Politika, 20 July 2014; "And should we stay, you can count on the RS taking strong steps towards the independence as of 2014." RS President Milorad Dodik, Novi Pecat, 1 July 2014; "There are 'pro-Serb forces' which exclusively fight for Republika Srpska, its Dayton position, strengthening its autonomy up to the moment when it would declare independence." RS President Milorad Dodik, FENA, 27 June 2014; "I am ready to invest all remaining ideas in my life in RS independence, because that is my political story", RS President Milorad Dodik, Tanjug, 17 June 2014.
- [7] "Around the world a process is permitted by which a people can declare in what kind of state they wish to live... You cannot prevent the will of a people by force. There will come a time when no one will be able to stop it." BiH Presidency Member Nebojsa Radmanovic, Novi Pecat, 6 August 2014.
- [8] "Yes, I wouldn't hesitate to support Herzeg-Bosna... But for it to be a true Republic and to have truly all the prerogatives of a state – equal to Republika Srpska ... On the territory of BiH only the RS is sustainable – it could already at this moment begin with an independent life. And the other sustainable republic or state would be Herceg-Bosna – if it were formed. And Bosniaks would, then, have their Bosnia, as an independent Republic or state. Everything else is a pure experiment which has proved unsuccessful." RS President Milorad Dodik, Jutarnji List, 5 October 2014; "And what the Americans are saying that there can't be a so-called third or Croat entity in BiH, that doesn't have to mean anything - they said that about Yugoslavia and it still fell apart. Herzeg-Bosna could well be a reality. Because if Croats truly want it, and if RS supports it - then Bosniaks, actually Muslims, are a dramatic minority in all of that." RS President Milorad Dodik, Jutarnji List, 5 October 2014.
- [9] "We have done all we could under the given circumstances and under conditions when nothing within BiH functions. It does not offer anybody the possibility to move ahead and that is why, at a certain historical moment, we will declare independence." RS President Milorad Dodik, Novi Pecat, 11 September 2014; "I am glad that BiH is in deadlock because the BiH that they have been building before me is unsustainable and it was damaging for Serbs from the RS. I am glad that he confirmed that the project that I have led is finally an absolute success. We have done all that in accordance with the Constitution of BiH and Dayton Treaty." RS President Milorad Dodik, RTRS, 10 May 2014.
- [10] "The Court of BiH and the Prosecutor's Office are promoted by the violence of the international community and have demonstrated that they are not places of justice but of injustice and they should not exist. We do not believe in the work of the BiH Prosecutor's Office, and they can do what they want." RS President Milorad Dodik, SRNA, 29 August 2014.
- [11] "I call on Bosniak voters in the RS to think about how they will vote. This is not any kind of threat but only a wish to enter into a partnership. We will check to see which communities voted for Zeljka Cvijanovic. Wherever there were votes in favor of Zeljka Cvijanovic to become a BiH Presidency member, we will be fair to them and try to work with these communities in the best possible way. In other cases, we will not be able to give them anything." RS President Milorad Dodik, Federation TV, 21 August 2014.

[12] "We told them that they would be paid under the court rulings. Today I say it will be so. But I will repeat this: Anyone I see on BN television will not be paid. They can complain to whomever they please." RS President Milorad Dodik, Oslobođenje, 13 September 2014.