



# Security Council

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## Letter dated 29 October 2021 from the Secretary-General addressed to the President of the Security Council

Pursuant to Security Council resolution [1031 \(1995\)](#), I have the honour to transmit herewith the sixtieth report on the implementation of the Peace Agreement on Bosnia and Herzegovina, covering the period from 16 April to 15 October 2021 (see annex). It should be noted that not all members of the Security Council acknowledge the High Representative for Bosnia and Herzegovina.

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

*(Signed)* António **Guterres**



## Annex

### **Letter dated 22 October 2021 from the High Representative for Bosnia and Herzegovina addressed to the Secretary-General**

Pursuant to Security Council resolution [1031 \(1995\)](#), in which the Council requested the Secretary-General to submit to it reports from the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina, in accordance with annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina and the conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I transmit herewith the sixtieth report of the High Representative. I would kindly request that the report be distributed to the members of the Council for their consideration.

This is my first regular report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina on 1 August 2021. The present report covers the period from 16 April to 15 October 2021.

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

*(Signed)* Christian **Schmidt**  
High Representative for Bosnia and Herzegovina

## Sixtieth report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations

### *Summary*

The present report covers the period from 16 April to 15 October 2021.

At the time of writing, Bosnia and Herzegovina is facing the greatest existential threat of the post-war period. Persistent, grave challenges to the fundamentals of the General Framework Agreement for Peace by the Republika Srpska authorities, led by the entity's biggest party, the Union of Independent Social Democrats (SNSD), headed by Milorad Dodik, a member of the Presidency of Bosnia and Herzegovina, endanger not only the peace and stability of the country and the region, but – if unanswered by the international community – could lead to the undoing of the Agreement itself.

In the climax to an escalating series of crises throughout 2021, Mr. Dodik – the de facto leader of the Republika Srpska, although the entity has an elected president – has called for the entity's unilateral withdrawal from agreements reached long ago on the transfer of entity competences to the State in the areas of defence, indirect taxes and the High Judicial and Prosecutorial Council, and for the entity to “reclaim” what he asserts were usurped constitutional competences in the fields of the State judiciary, law enforcement and intelligence.<sup>a</sup> He also announced the drafting of a new constitution for the Republika Srpska and the rejection of all “illegally imposed decisions and laws by High Representatives”.

According to announced plans, this would mean the withdrawal of the members of the Armed Forces of Bosnia and Herzegovina who reside in the Republika Srpska, the takeover of Armed Forces facilities in the territory of the Republika Srpska and the re-establishment of the Republika Srpska Army ostensibly from personnel withdrawing from the Armed Forces of Bosnia and Herzegovina, a move that would turn back the clock 15 years in the field of defence reform alone and even further in terms of confidence- and security-building. This would also mean the withdrawal of the entity from the State-level Indirect Taxation Authority, the High Judicial and Prosecutorial Council, the State Investigation and Protection Agency and the Intelligence-Security Agency, as well as measures to prevent those institutions from operating in the territory of the Republika Srpska.

Mr. Dodik refers to this undertaking as a return to “original Dayton”,<sup>b</sup> which is a political misnomer based on erroneous interpretations of the Constitution of Bosnia and Herzegovina. In practice, the policy is aimed at undoing many of the hard-won reforms of the past 26 years, not in order to strictly adhere to the letter of the General Framework Agreement for Peace but rather to revert to the situation that existed on the ground prior to the implementation of the Dayton Peace Agreement. In short, Mr. Dodik seeks to withdraw the Republika Srpska from the constitutional order established under annex 4 to the Agreement and to opt out of civilian implementation of the Agreement set forth in annex 10.

This is tantamount to secession without proclaiming it. The unilateral withdrawal of either entity from the established State institutions, which is not legally possible under the current constitutional framework, would lead to the collapse of those institutions and ultimately undermine the State's ability to function and carry out its constitutional responsibilities. Shortly before the completion of the present report, Mr. Dodik revealed his goal as being an independent Republika Srpska “within the Dayton Bosnia and Herzegovina”.<sup>c</sup> As Republika Srpska opposition parties have noted, this is a dangerous path not only for Bosnia and Herzegovina but also for the

Republika Srpska, having in mind that entities exist legally only by virtue of the Constitution of Bosnia and Herzegovina and have no right to secede.

State institutions had already been paralysed since July, when Mr. Dodik, in agreement with the Republika Srpska opposition parties, announced the withdrawal of Republika Srpska representatives from the decision-making process in the institutions, ostensibly in response to the decision made by my predecessor as High Representative for Bosnia and Herzegovina, Valentin Inzko, on 22 July to enact amendments to the Criminal Code of Bosnia and Herzegovina to criminalize the denial of genocide and war crimes and the glorification of war criminals,<sup>d</sup> demanding annulment of the decision.

As part of the orchestrated response, the Republika Srpska authorities adopted the Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina, which entered into force in early October. The Law rejects the High Representative's decision of 22 July, prescribes that State-level legislation shall not be applicable in the Republika Srpska and obliges the Republika Srpska authorities not to cooperate with institutions of Bosnia and Herzegovina attempting to implement State-level law. This constitutes concrete violations of annexes 4 and 10 to the General Framework Agreement for Peace.

Although Mr. Dodik has recently stated that his actions are not aimed at inciting conflict, he has also warned that any attempt by State-level judicial institutions or law enforcement agencies to intercede would be met with force, adding, unprovoked, that if the North Atlantic Treaty Organization were to intervene, the Republika Srpska would seek assistance from unnamed "friends", who he claims have given assurances of their readiness in this regard.<sup>e</sup>

In my capacity as final interpreter of the General Framework Agreement for Peace, it is my considered assessment that the Republika Srpska authorities are already in grave violation of the Agreement and are poised to violate it further, potentially causing irreparable damage. If they succeed unchallenged in this undertaking, they would establish a new constitutional and legal framework removing the Republika Srpska from the Dayton architecture, particularly from the constitutional order of Bosnia and Herzegovina, which is synonymous with secession. Ignoring or downplaying this state of affairs could have perilous implications for the region and beyond.

This is not to suggest that only the Republika Srpska is problematic. Three full years since the 2018 general election, a new Federation Government has not been appointed, and the Government established under the 2014–2018 mandate remains in place, while the institutions of Bosnia and Herzegovina have been utterly stagnant, with a poorer legislative output from the Council of Ministers and the Parliamentary Assembly of Bosnia and Herzegovina than under any previous mandate. Agreement on much-needed electoral reforms also remains elusive.

<sup>a</sup> On 7 October, Mr. Dodik said at a press conference: "By the end of this month, in the first week of next month at the latest, we will come with an extensive agenda that will lead to the withdrawal of consent from the army, indirect taxes that according to the Constitution of Bosnia and Herzegovina belong to Republika Srpska, even borders – that is, border management on the territory of Republika Srpska belongs to the Republika Srpska, not Bosnia and Herzegovina. ... Then we will repeal and ban the work of the State Investigation and Protection Agency in the Republika Srpska, the work of the Intelligence-Security Agency in the Republika Srpska".

<sup>b</sup> On 25 September, Mr. Dodik said at a press conference: "I will demand that all decisions imposed by the High Representative be rejected, that we return to the original Dayton and, if that is not the case, return to the [Republika Srpska National] Assembly in the next six months and declare independence".

- <sup>c</sup> On 12 October, Mr. Dodik said at a press conference: “We promoted a programme called ‘Independent Srpska within the Dayton Bosnia and Herzegovina’”.
- <sup>d</sup> See [www.ohr.int/hrs-decision-on-enacting-the-law-on-amendment-to-the-criminal-code-of-bosnia-and-herzegovina/](http://www.ohr.int/hrs-decision-on-enacting-the-law-on-amendment-to-the-criminal-code-of-bosnia-and-herzegovina/).
- <sup>e</sup> On 14 October, Mr. Dodik said at a press conference: “If necessary, we will defend ourselves with our forces. If they come to say that the North Atlantic Treaty Organization will intervene, we will ask for the help of our friends who told us clearly and loudly that they never let their friends down”.

## **I. Introduction**

1. This is my first report to the Security Council since my appointment by the Steering Board of the Peace Implementation Council (except the Russian Federation) in May 2021 as High Representative for Bosnia and Herzegovina and since assuming my mandate in August. While many reported developments occurred prior to the start of my mandate, owing to the institutional memory of my staff, I can provide facts on these developments, with citations where relevant, and an impartial assessment of the degree of implementation of the General Framework Agreement for Peace in those areas within my responsibility for upholding the civilian aspects thereof.

2. It is my duty to fulfil my mandate in accordance with annex 10 to the General Framework Agreement for Peace and relevant Security Council resolutions. While I continue to urge the authorities of Bosnia and Herzegovina to achieve progress on the five objectives and two conditions set in 2008 as the agenda to bring the mandate of the High Representative and Dayton oversight to a close after having successfully fulfilled this framework of objectives and conditions, the facts as reported in the present report clearly illustrate that progress to date in this regard has been hampered by persistent political crises and even open rejection of several of the objectives, while progress in the near term is questionable at best. The “5 plus 2” agenda entails full compliance with the General Framework Agreement for Peace, which is regrettably not the status quo. I have meanwhile launched an initiative to involve all stakeholders in the objectives to resume work on progress in this regard. If I see the need to readjust certain objectives, I will make proposals in due time.

3. While it is my hope that the authorities will fully comply with the General Framework Agreement for Peace and achieve progress on the path of Bosnia and Herzegovina towards European Union integration, which remains a foreign policy goal as defined in numerous decisions adopted by the institutions of Bosnia and Herzegovina, should peace and stability be further endangered, the use of my executive mandate in concert with additional efforts of the international community to safeguard the Agreement must not be out of the question. Additional details on the progress of the “5 plus 2” agenda and other matters are provided in the enclosure.

## **II. Political update**

### **A. General political environment**

4. The ongoing political crisis began during the previous reporting period, as early as February 2021, when the National Assembly of the Republika Srpska reacted to reports of my predecessor’s imminent departure and my appointment as High Representative by adopting a conclusion calling on international community representatives to prevent the appointment of a new High Representative. This was followed in March by the adoption by the National Assembly of conclusions calling for Federation political actors to engage with the Republika Srpska to discuss the future of Bosnia and Herzegovina, warning that, should such discussions not materialize, “talks on peaceful dissolution should be launched”. On 19 April, the Union of Independent Social Democrats (SNSD) launched an online video campaign promoting and attempting to normalize the concept of the “peaceful dissolution” of Bosnia and Herzegovina.<sup>1</sup>

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<sup>1</sup> Union of Independent Social Democrats, “Dodik on the Peaceful Dissolution of Bosnia and Herzegovina”, video, 15 April 2021. Available at: <https://www.youtube.com/watch?v=Shyao7TZ-DQ>.

5. Soon thereafter, SNSD submitted to the National Assembly of the Republika Srpska its initiative for talks and dialogue between the Republika Srpska and the Federation of Bosnia and Herzegovina, as well as the three constituent peoples of Serbs, Croats and Bosniaks, on a possible solution for Bosnia and Herzegovina and announced the formation of a negotiating team in this regard. The initiative imposed the party's erroneous interpretations of the General Framework Agreement for Peace, including the assertions that Bosnia and Herzegovina "was created with the consent of the Republika Srpska and the Federation and the three constituent peoples and it is only with the consent of both entities and constituent peoples that it can and does exist" and that the State of Bosnia and Herzegovina "has limited and derived sovereignty" reflected in its foreign relations. The initiative "demanded" that the Federation institutions and the other two constituent peoples engage in political discussions on a "return to the fundamental principles of the Dayton Peace Agreement", making it clear that if the demand were ignored or the outcome were not to the Republika Srpska authorities' satisfaction, the entity "reserves the right to finally decide on its future status".

6. On 26 April, the Steering Board of the Peace Implementation Council (except the Russian Federation) issued a statement condemning "political discourse centred around the so-called 'peaceful dissolution' of Bosnia and Herzegovina, not least the concrete steps by Republika Srpska representatives and State-level office holders towards dissolution negotiations, including establishing negotiating teams and advocating for the break-up of the country via an online advertising campaign". The Steering Board also reiterated its commitment to the territorial integrity and fundamental structure of Bosnia and Herzegovina, correctly underlining that under the General Framework Agreement for Peace "the entities have no right to secede from Bosnia and Herzegovina and exist legally only by virtue of the Bosnia and Herzegovina Constitution".<sup>2</sup>

7. Nonetheless, in May, the National Assembly of the Republika Srpska adopted the SNSD initiative and rejected the earlier call by my predecessor for the National Assembly to revoke decorations that it awarded in 2016 to convicted war criminals, including the wartime Republika Srpska leader, Radovan Karadžić. The National Assembly further concluded that it rejected the Bonn powers, claiming that the High Representative had no mandate to use them or to dictate what the Republika Srpska should do.

8. The situation escalated just prior to my arrival, with the Republika Srpska responding to the decision made by my predecessor on 22 July amending the Criminal Code of Bosnia and Herzegovina to sanction the denial of genocide and war crimes and the glorification of war criminals. This decision was deemed necessary, in part owing to the Republika Srpska authorities' increasingly vocal denial of the Srebrenica genocide and the glorification of convicted war criminals. This includes openly praising the former Republika Srpska military commander, Ratko Mladić, as a hero following confirmation on 8 June of the verdict against him for genocide, crimes against humanity and violations of the laws or customs of war, and the release of a report by a commission sponsored by the Republika Srpska Government denying the Srebrenica genocide, having repealed in 2018 the 2004 report of the Republika Srpska Government that at least acknowledged the scope of that tragic event.

9. Republika Srpska officials rejected the decision and announced that they would not participate in decision-making in key State-level institutions until it was annulled. Subsequently, Republika Srpska political party leaders, including the opposition, met and signed conclusions rejecting all decisions imposed by the High Representative, also claiming that my appointment as High Representative did not follow the

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<sup>2</sup> See [www.ohr.int/statement-by-the-peace-implementation-council-steering-board-2/](http://www.ohr.int/statement-by-the-peace-implementation-council-steering-board-2/).

necessary procedure and rejecting any cooperation with me. Finally, they concluded that there were no conditions for further work of Republika Srpska representatives in the Presidency, the Parliamentary Assembly or the Council of Ministers of Bosnia and Herzegovina.

10. Soon thereafter, on 30 July, the National Assembly of the Republika Srpska endorsed the conclusions signed by the party leaders and amended the Criminal Code of the Republika Srpska to sanction acts that disparage the name or reputation of the Republika Srpska or the Serb people. The National Assembly also adopted the Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina, rejecting my predecessor's decision, determining that State-level legislation shall not be applicable in the territory of the Republika Srpska and obliging the entity's authorities not to cooperate with the competent authorities of Bosnia and Herzegovina attempting to implement the amended Criminal Code of Bosnia and Herzegovina.

11. The adoption of the law represents not only a challenge by the Republika Srpska authorities to the authority and powers of the High Representative under the General Framework Agreement for Peace, but also a rejection of the application of State-level legislation in the territory of the Republika Srpska, overstepping entity competence to directly challenge the authority and sovereignty of the State and its institutions. In this light, I recall the special report of the High Representative to the Secretary-General on the implementation of the Agreement in Bosnia and Herzegovina, of September 2015,<sup>3</sup> submitted by my predecessor following the adoption by the National Assembly of the Republika Srpska of a decision to conduct a referendum in the entity on the validity of the legislation on the Court and the Prosecutor's Office of Bosnia and Herzegovina, the applicability of decisions of those institutions in the territory of the Republika Srpska and the authorities and decisions of the High Representative. Although such a referendum was averted, many issues raised in that report concerning the gravity of violations of obligations and commitments of the Republika Srpska under annexes 4 and 10 to the Agreement apply to the current situation.

12. On 31 July, the Steering Board of the Peace Implementation Council (except the Russian Federation) condemned the escalation of tension, including "steps taken by the National Assembly of the Republika Srpska that would undermine stability and impede effective government". The Steering Board also underlined that "revisionism, glorification of convicted war criminals, and denial of well-documented and established facts about war-time events, including genocide, is unacceptable" and "contradicts the most basic European values and undermines the stability of the country and the welfare and prosperity of Bosnia and Herzegovina citizens".<sup>4</sup>

13. Nonetheless, following the endorsement by the National Assembly of the Republika Srpska of the conclusions of the Republika Srpska party leaders on non-participation in State-level decision-making, the strategy evolved from non-participation to actively blocking decisions, particularly by Mr. Dodik, in the Presidency of Bosnia and Herzegovina. Among other things, key appointments to vital institutions such as the Central Bank of Bosnia and Herzegovina – crucial to maintaining monetary and fiscal stability in the country – were blocked. That particular crisis could have been addressed through an extension of the mandate of the outgoing Governing Board of the Central Bank, the members of which fortunately determined among themselves to continue to work until replaced, in accordance with the principle of continuity of office. My office fully and publicly supported this

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<sup>3</sup> See [www.ohr.int/special-report-of-the-high-representative-to-the-secretary-general-of-the-un-on-the-implementation-of-the-gfap-in-bih/](http://www.ohr.int/special-report-of-the-high-representative-to-the-secretary-general-of-the-un-on-the-implementation-of-the-gfap-in-bih/).

<sup>4</sup> See [www.ohr.int/statement-by-the-peace-implementation-council-steering-board-3/](http://www.ohr.int/statement-by-the-peace-implementation-council-steering-board-3/).



pragmatic approach. In August, Mr. Dodik even prevented the Presidency of Bosnia and Herzegovina from engaging the Armed Forces of Bosnia and Herzegovina to assist in firefighting efforts in the southern part of the country. In the Parliamentary Assembly of Bosnia and Herzegovina, adoption of the 2021 budget for the institutions and international obligations of Bosnia and Herzegovina remains stalled.

14. Only in late September was there a brief respite from the blockade, when ministers in the Council of Ministers of Bosnia and Herzegovina from the Republika Srpska participated in an urgent session to adopt, in lieu of an adopted budget, a decision on temporary financing of the institutions and international obligations of Bosnia and Herzegovina for the fourth quarter of 2021. Prior to this, I had sent a letter to the Chair and Deputy Chairs of the Council of Ministers of Bosnia and Herzegovina, urging them to act on that matter. Mr. Dodik had previously stated that the Republika Srpska would assume salary payments for Serbs from the entity in the institutions of Bosnia and Herzegovina, indicating an intention to block temporary financing. Such a step would have been incompatible with the existing constitutional and legal framework.

15. In the same period, following a decision of the Constitutional Court of Bosnia and Herzegovina assessing certain provisions of the Law on Forests of the Republika Srpska as incompatible with the Constitution of Bosnia and Herzegovina, Mr. Dodik announced that the Republika Srpska would withdraw from existing transfer agreements on the Armed Forces of Bosnia and Herzegovina, the Indirect Taxation Authority and the High Judicial and Prosecutorial Council, re-establish its own army and value added tax collection, bar the judicial institutions of Bosnia and Herzegovina from acting in the territory of the Republika Srpska and reject all decisions of the High Representative. Mr. Dodik stated that the aim was a return to the so-called “original Dayton” or to otherwise declare independence “within six months”.<sup>5</sup> Following a meeting of ruling coalition partners of the Republika Srpska in early October, Mr. Dodik announced that the National Assembly of the Republika Srpska would hold a session to discuss these issues by early November at the latest.

16. On 8 October, Mr. Dodik announced that teams of experts would draft a new constitution for the Republika Srpska and define new entity structures for defence, justice and financial matters. This would be a rejection of all “illegally imposed decisions and laws of the High Representative”, with Mr. Dodik claiming approximately 140 decisions imposed by the High Representative, including the establishment of the Republika Srpska Council of Peoples – an institution established specifically to protect the vital national interests of the constituent peoples in the entity – the State Investigation and Protection Agency and the Intelligence-Security Agency. Mr. Dodik reiterated that the National Assembly of the Republika Srpska would withdraw the entity’s previous consent for the formation of the Armed Forces of Bosnia and Herzegovina, the Indirect Taxation Authority and the High Judicial and Prosecutorial Council and adopt regulations and conclusions related to addressing the legal vacuum created by such withdrawals. He asserted that the entity’s 2022 budget would cover the salaries of all Serbs who withdrew from the institutions of Bosnia and Herzegovina.

17. If followed through, such actions would establish a new constitutional and legal framework for the Republika Srpska that is legally binding for the entity’s authorities and citizens, with the entity essentially opting out of the constitutional order of Bosnia and Herzegovina and the Dayton framework. This would have the practical effect of

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<sup>5</sup> On 25 October, Mr. Dodik said at a press conference: “I will demand that all decisions imposed by the High Representatives are revoked, that we return to the original Dayton, and if that does not happen, to go to the (Republika Srpska) National Assembly in six months and declare independence”.

the secession of the Republika Srpska without the entity formally proclaiming independence. This is a severe attack on the General Framework Agreement for Peace and undermines the prospects for lasting peace and reconciliation.

18. This situation could be particularly dangerous in the State law enforcement sector, as it may be called upon to assert State jurisdiction, which could result in clashes with Republika Srpska law enforcement. The Criminal Code of Bosnia and Herzegovina envisages the criminalization of the offences of “illegal creation of military forces” (article 162 (a)) and “attack on the constitutional order” (article 156). Article 162 (a) prescribes criminal responsibility for anyone who violates the country’s Law on Defence or its Law on Service in the Armed Forces by organizing or mobilizing a military force on the territory of Bosnia and Herzegovina. It is also a crime to join such forces.

19. The return of competences allegedly usurped by the State has been a long-standing claim by the authorities of the Republika Srpska, who assert that all competences transferred to or assumed by the State institutions were so achieved through decisions of the High Representative, the Constitutional Court of Bosnia and Herzegovina and other State-level institutions. This claim follows the Republika Srpska authorities’ unilateral interpretation of the constitutional framework of Bosnia and Herzegovina on the basis of the so-called “original Dayton” in which the State institutions should return most competences that they assumed, even though it was within their constitutional prerogative to do so.

20. Contrary to this claim, the Constitution of Bosnia and Herzegovina foresaw a dynamic process, offering constitutional modalities for “additional responsibilities to be assumed by the State and additional institutions” to be established by the State. For example, article III.5 of annex 4 to the “original Dayton” provides several modalities for “additional State responsibilities” and provides that “additional institutions may be established to carry out such responsibilities”.<sup>6</sup> The fact that the institutions created are at the centre of the discussions on integration with the European Union (High Judicial and Prosecutorial Council, Bosnia and Herzegovina Electricity Transmission Company (TRANSCO) and Indirect Taxation Authority) and the North Atlantic Treaty Organization (defence) highlights the importance of the establishment of these institutions and their functionality.

21. The State has also assumed other responsibilities, such as those necessary to preserve the sovereignty, territorial integrity, political independence and international character of Bosnia and Herzegovina, including the State Border Service, the Intelligence-Security Agency, the State Court and the Prosecutor’s Office. Again, these assumptions are fully in line with article III.5 (a) of the Constitution.

22. Many of the contested competences – including statistics, procurement, the High Judicial and Prosecutorial Council, the Border Service, electricity transmission and judicial institutions (the State Court and Prosecutor’s Office) – have been subject to challenges by the Republika Srpska before the Constitutional Court of Bosnia and

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<sup>6</sup> Article III.5 of the Constitution of Bosnia and Herzegovina states:

“Additional responsibilities

“a. Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.

“b. Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.”

Herzegovina, which determined that they were constitutional. Each decision highlights the fact that the Court does not adhere to the assertion that the competences listed in article III.1 are the only State competences.

23. The Republika Srpska authorities, and particularly Mr. Dodik, also use the phrase “original Dayton” as the basis for rejecting the decisions and authority of the High Representative and final and binding decisions of the Constitutional Court of Bosnia and Herzegovina. However, having in mind that the General Framework Agreement for Peace, as initialed in Dayton and signed in Paris in 1995 envisages the Constitutional Court of Bosnia and Herzegovina with its current composition and stipulates that its decisions are final and binding, includes an agreement on the need for a High Representative as the final authority in the theatre regarding interpretation of civilian implementation of the Agreement and calls for full cooperation with the High Representative, Mr. Dodik gives the impression that he intends to substitute the real Dayton Peace Agreement – with its constitutional structure of Bosnia and Herzegovina as a single sovereign State comprising two entities – with an empty shell incapable of acting and lacking any competences, and to call into question the legitimacy of the country as a subject of international law. Intensive work is necessary to come to a discussion and common understanding of the Dayton framework.

24. While the Republika Srpska authorities frame their stances as reactions to what they claim are injustices against the entity, these developments are in fact part of a long-standing policy aimed at undermining the functionality of the State-level institutions to establish the self-fulfilling prophecy that Bosnia and Herzegovina is dysfunctional. This gives them licence, they believe, to assert the need to reclaim competences from the State – in line with adopted Republika Srpska policies dating to 2016 and specifically to 2019, when the National Assembly of the Republika Srpska adopted an action plan for the return of transferred constitutional responsibilities to the entity – and, failing that, to declare independence. It is a never-ending story, well documented in numerous previous reports. Unfortunately, Mr. Dodik has so far not responded to any invitation to discuss the subject. I extend this invitation to all other elected actors.

25. Since late September, a developing corruption scandal in which coronavirus disease (COVID-19) patients were allegedly treated with industrial oxygen rather than medical oxygen has shocked the public in the Republika Srpska. The filing of criminal charges against government and public health officials and a large public protest in the de facto capital of the Republika Srpska, Banja Luka,<sup>7,8</sup> accompanied the most recent developments, including the escalation of rhetoric and an acceleration of efforts to block State and constitutional, legislative and administrative actions in the entity aimed at weakening the State of Bosnia and Herzegovina.

26. Although the Republika Srpska opposition parties have frequently gone along with the ruling coalition on matters framed as being in the national interest of Serbs and the Republika Srpska, they have on occasion warned that certain undertakings – such as the proposed talks on “peaceful dissolution” and the current course of action aimed at withdrawing from transfer agreements – endanger the General Framework Agreement for Peace and thus all achievements of the entity to date. Having in mind that the entity’s authorities base their positions on wilful misinterpretations of the Agreement, such an assessment is prudent. As the entities exist only by virtue of the Constitution of Bosnia and Herzegovina, such political adventurism aimed at

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<sup>7</sup> Radio Free Europe/Radio Liberty, “Thousands protest corruption in Bosnia’s Serbian entity”, 2 October 2021.

<sup>8</sup> Euractiv, “Protesters go against Dodik after COVID-19 patients treated with industrial oxygen”, 4 October 2021.

destabilizing or undoing the country – even if it is only rhetoric – is therefore as dangerous to the Republika Srpska as it is to everyone else.

27. The withdrawal of the Republika Srpska from the constitutional order of Bosnia and Herzegovina would have several immediate implications, not least for the Brcko District – presently the sole area of progress under the “5 plus 2” agenda – having in mind that the District is held in condominium between the Republika Srpska and the Federation and operates within the constitutional order under the institutions of Bosnia and Herzegovina, including those from which the Republika Srpska has announced its withdrawal, not least the Indirect Taxation Authority on which the District relies for revenue. Under these circumstances, the Arbitral Tribunal for Dispute over the Inter-Entity Boundary in the Brcko Area would have to assess whether such actions by the Republika Srpska constitute serious non-compliance with the terms of the Final Award.

28. As a reminder, in the only comparable crisis since the signing of the Dayton Peace Agreement, the Croat People’s Assembly, an umbrella organization of Croat political parties, attempted in 2001 to declare self-rule in Croat-majority areas of the Federation and were only prevented from doing so by a decisive response from the international community. A lack of response to the current situation would endanger the Agreement, while instability in Bosnia and Herzegovina would have wider regional implications. I am prepared to fulfil my responsibilities as part of such a response.

29. While frequent statements are heard from Mr. Dodik that he is not interested in conflict and that nothing is worth the blood of Serbs, Bosniaks and Croats, I would be remiss if I did not express my concern over reports of attempts to establish and upgrade the military capabilities of the Republika Srpska. While it remains to be seen, I would like to be able to take the aforementioned statements as more than just oratory.

30. On 14 October, the Steering Board of the Peace Implementation Council (except the Russian Federation) issued a statement reaffirming the importance of functional institutions, including the Armed Forces of Bosnia and Herzegovina, rejecting destabilizing and divisive rhetoric and calling for a cessation of threats of secession. The Steering Board underlined its support for the sovereignty, territorial integrity and constitutional order of Bosnia and Herzegovina.

31. The prospects for further division and conflict are very real. I strongly encourage the Secretary-General and the members of the Security Council to take note.

32. The policies of the Republika Srpska have borne fruit, as the key institutions of Bosnia and Herzegovina were effectively paralysed well before the blockade announced in the summer. This is evident from the lack of an adopted 2021 State-level budget by the fourth quarter of 2021 and a lower level of legislative output by the Council of Ministers and the Parliamentary Assembly of Bosnia and Herzegovina than under any previous mandate of those institutions.

33. In the Federation, the Government established under the 2014–2018 mandate remains in place, with no new Government appointed following the 2018 general election. The Government has also been reduced from 16 to 13 ministers, owing to the death of two ministers and the resignation of another. There is no agreement on appointing the new Government or the missing ministers owing to the stated position of the main Croat party, the Croat Democratic Union (HDZ Bosnia and Herzegovina), not to approve any appointments until an agreement on electoral reform primarily between itself and the main Bosniak party, the Party of Democratic Action (SDA), is reached. In any democracy, implementing the will of the electorate by forming authorities should be a priority.

34. The divergent positions of the two parties have not changed since the previous report. In June, in an open letter to the President of HDZ Bosnia and Herzegovina, Dragan Čović, the President of SDA, Bakir Izetbegović, stated that the negotiation process between their respective parties had been exhausted and called on other Federation parties and the international community to contribute to the process. In July, Mr. Čović, who on numerous occasions had stated that an agreement on electoral reform was imminent, warned that, without changes to the Election Law, the 2022 general election could not be held, implying a possible boycott.

35. In the context of electoral reform, following a lengthy dispute in the Parliamentary Assembly of Bosnia and Herzegovina over the composition of the inter-agency working group for electoral reform – mainly due to SNSD and HDZ Bosnia and Herzegovina opposition to the participation of the Central Election Commission of Bosnia and Herzegovina – the working group was finally constituted in May. It consists of 14 members: 8 appointed from the House of Representatives of Bosnia and Herzegovina, 3 from the House of Peoples of Bosnia and Herzegovina and 3 from the Council of Ministers of Bosnia and Herzegovina. The working group held eight sessions, the latest on 23 July, thus far without concrete results.

36. Even on the crucial issue of technical improvements to restore integrity and public trust in the electoral process – including those recommended by the Office for Democratic Institutions and Human Rights following the 2018 general election and earlier recommendations of the European Commission for Democracy through Law and the Group of States against Corruption – there are disagreements over the composition of electoral boards, the introduction of new technologies, closed versus open lists, preferential quotas, voter registration, early voting, postal voting and a host of other issues.

37. In parallel, the Central Election Commission of Bosnia and Herzegovina launched its own process of public consultations over its draft initiative of amendments to the Election Law, after which in mid-September it submitted a consolidated proposal to the Parliamentary Assembly of Bosnia and Herzegovina and other relevant stakeholders, including the international community.

38. Limited constitutional and electoral reforms are necessary to implement the Sejdić and Finci and other election-related judgments of the European Court of Human Rights, which remain unimplemented, some for more than a decade. In the process of electoral reform, it would be necessary to take into account decisions of the Constitutional Court of Bosnia and Herzegovina and recommendations of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, the Group of States against Corruption and the European Commission for Democracy through Law on election integrity. Authorities should refrain from taking legislative or political steps that would make the implementation of European Court of Human Rights judgments more challenging or lead to further divisions. To achieve this will require continued dialogue and a greater deal of flexibility on the part of all parties engaged on the issue, rather than the usual “all or nothing” approach.

39. There have been a few positive developments. On 5 June, Republika Srpska authorities removed the Orthodox church constructed on the property of Bosniak returnee Fata Orlović’s family home in the village of Konjević Polje, near Bratunac. The demolition of the church marks the end of a decades-long legal battle undertaken by the Orlović family and others, which culminated in October 2019 with a decision of the European Court of Human Rights, ordering the removal of the church from the private property within six months.

40. Mutual visits among several recently elected mayors in Bosnia and Herzegovina have also been encouraging. In May, the Mayor of Sarajevo, Benjamina Karić-Londrc

(Others, Social Democratic Party (SDP)) visited her counterpart in Mostar, Mario Kordić (Croat, HDZ Bosnia and Herzegovina). In June, she paid an official visit to the Mayor of Banja Luka, Draško Stanivuković (Serb, Party of Democratic Progress), the first visit of a mayor of Sarajevo to Banja Luka in the post-war period. Subsequently, Mr. Stanivuković visited Tuzla and met the Mayor, Jasmin Imamović (Bosniak, SDP). Despite significant political disparities, the message from all visits emphasized “turning a new page”, underlining that cooperation and support among local communities are possible while setting aside political or ethnic differences for the benefit of all citizens and for a better future for Bosnia and Herzegovina.

41. In August, the Assembly of Herzegovina-Neretva Canton adopted long-outstanding amendments to the constitution of the canton, affirming the constituent status of Serb people, Serbian and Bosnian as official languages, and Cyrillic as an official script in the canton. This represents a first step to implement the 2018 judgment of the Federation Constitutional Court, which found that several provisions of the constitutions of Herzegovina-Neretva, Posavina and West Herzegovina cantons did not conform to the Federation Constitution in that regard and ordered the assemblies to amend them accordingly. While no doubt a positive development, the amendments adopted in Herzegovina-Neretva Canton do not incorporate all aspects of the Constitutional Court judgment, and the authorities should work towards full implementation. Necessary changes remain pending in the other two cantons.

## **B. Decisions of the High Representative during the reporting period**

42. On 22 July, my predecessor issued the decision enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina. The decision was published in the Official Gazette of Bosnia and Herzegovina on 27 July and entered into force on 28 July.

43. Notwithstanding the circumstances of the decision or reactions to it, the decision is aimed at protecting all peoples and communities in Bosnia and Herzegovina and all victims and survivors of genocide and war crimes and is not limited to genocide and war crimes committed during the war in the country. The amendments to the Criminal Code apply to any genocide or war crime finally adjudicated pursuant to the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945 or by the International Tribunal for the Former Yugoslavia, the International Criminal Court or a court in Bosnia and Herzegovina.

44. Moreover, the amendments to the Criminal Code are in line with the European Union Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law of 28 November 2008 obliging States members of the European Union to criminalize such behaviour. All Western Balkan countries adopted legislation in line with the Framework Decision, except Bosnia and Herzegovina, which most urgently needed it.

45. There have been many misinterpretations and misleading comments concerning the amendments, suggesting that they apply only to single specific crimes or that they accuse or otherwise target one specific people, which is absolutely not the case. I encourage the Parliament of Bosnia and Herzegovina to organize public discussion and debate on these amendments in cooperation with civil society and consider further amendments if necessary. A broad and open dialogue on the past and perspectives in civil society is also essential for reconciliation.

### C. Challenges to the General Framework Agreement for Peace

46. As noted, there have been constant challenges to the General Framework Agreement for Peace during the reporting period, with numerous threats to the territorial integrity of Bosnia and Herzegovina, through either secession or dissolution, most frequently from the Serb member of the Presidency of Bosnia and Herzegovina and President of SNSD, Milorad Dodik,<sup>9,10,11,12,13</sup> who also continued to deny the Srebrenica genocide<sup>14,15</sup> and glorify convicted war criminals.<sup>16</sup> Mr. Dodik's party, SNSD, launched an online advertising campaign promoting "peaceful dissolution". Such rhetoric is destabilizing as it seeps into society and poisons relations between communities.

#### *Republika Srpska Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina*

47. The Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina specifically targets the entire decision in question, without formally linking it to past or future decisions of the High Representative. However, the explanation appended to the Law makes it clear that the rationale behind it goes beyond this specific decision to generally question the mandate and authority of the High Representative to enact

<sup>9</sup> On 23 July, Mr. Dodik said at a press conference: "And I think that the Republika Srpska should be determined, after all this that has been announced, that they tried to impose, to resolutely stick to its path to independence".

<sup>10</sup> On 4 August, Mr. Dodik said during an interview on Prva TV: "We must finally say that it is not possible to live together, that we must separate and simply find a way to exist as separate subjectivities that would live in peace. I think that the only solution is for us to separate, create three independent states there in Bosnia and Herzegovina and exist within the international law. And that means higher degree of peace guarantee if we are separate states than this way. This is an unclear situation which accumulates certain dissatisfaction and thereby eventually generates some activities".

<sup>11</sup> On 9 September, Mr. Dodik said on RTRS "Pečat": "I think that peaceful dissolution is the best thing that can happen here. To create separate independent states and prevent those states by international law and international obligations from going to war against each other. I will not abandon this idea, because I have been in it from the start. So, I have believed the Republika Srpska should be an independent state since 9 January".

<sup>12</sup> On 25 September, Mr. Dodik said at a press conference in Kozarska Dubica: "I will demand that all decisions imposed by the High Representative be rejected, that we return to the original Dayton and, if that is not the case, return to the [Republika Srpska National] Assembly in the next six months and let us declare independence".

<sup>13</sup> On 23 July, Mr. Dodik said during a press conference: "I think we should reject this [High Representative decision], ban the activities of the Bosnia and Herzegovina Court and Prosecutor's Office in the territory of Republika Srpska, reject its jurisdiction, defend Republika Srpska through our security system, from attempts by anyone to act here. Reject the State Investigation and Protection Agency's activities in the territory of Republika Srpska, reject any possibility of anyone being prosecuted by the authorities of Bosnia and Herzegovina, and separate the Republika Srpska judiciary from the system that has existed so far. And I think that the Republika Srpska should be determined, after all this that has been announced, that they tried to impose, to resolutely stick to its path to independence".

<sup>14</sup> On 22 July, Mr. Dodik said on RTRS: "The report that I have already received, and read – consisting of 1,200 pages, says one thing without a doubt, and it is that the word genocide may not be put before Srebrenica, because it never happened".

<sup>15</sup> On 12 August, Mr. Dodik was quoted in *Vijesti* as saying: "I would absolutely choose to go to prison rather than admit something that did not happen, and that is the alleged genocide in Srebrenica".

<sup>16</sup> On 8 June, Mr. Dodik said at a press conference: "I think General Mladić only entered directly into legend, because the Serbian people know that without his command and his spirit that he kept in the army, there would be much more suffering of our people".

legislation, again reflecting long-standing policies of the Republika Srpska, in this case challenging the mandate and the authority of the High Representative stemming from annex 10 to the General Framework Agreement for Peace and relevant resolutions of the Security Council. The status and powers of the High Representative are matters arising under the Agreement and international law, and therefore do not fall within the purview of the entities. The entities cannot adopt legal acts on these matters. Concretely, the adoption by the National Assembly of the Republika Srpska of the Law constitutes a violation of the entity's commitments and obligations arising from annex 10 to the Agreement and Security Council resolutions under Chapter VII.

48. Moreover, in stipulating that the competent bodies of the Republika Srpska shall not cooperate with the competent bodies of Bosnia and Herzegovina, the Law seeks to prevent the application of the amendments to the Criminal Code of Bosnia and Herzegovina within the territory of the Republika Srpska. The Criminal Code as amended by the decision of the High Representative is applicable in the entire territory of Bosnia and Herzegovina, and an entity may not adopt legal acts aimed at preventing the application of State-level legislation in its territory. Such measures do not fall under the purview of the entities but rather within the responsibilities of the Parliamentary Assembly of Bosnia and Herzegovina, and any dispute concerning the compatibility of the amendments with the Constitution of Bosnia and Herzegovina is exclusively the jurisdiction of the Constitutional Court of Bosnia and Herzegovina. The adopted Law demonstrates the intention to attack the constitutional order and sovereignty of the State of Bosnia and Herzegovina. Under the Constitution, the entities are required to fully comply with the Constitution of Bosnia and Herzegovina and decisions of the State institutions, including State laws and decisions of the State judicial institutions, which are applicable throughout the entire territory of Bosnia and Herzegovina.

49. Although the Bosniak caucus in the Republika Srpska Council of Peoples initiated the request for the protection of the vital national interest of Bosniak people over the adoption of the Law, in late September the Constitutional Court of the Republika Srpska rejected the appeal and the Law has entered into force.

### **III. European Union military mission in Bosnia and Herzegovina**

50. The present turbulent environment in Bosnia and Herzegovina highlights the vital role of the European Union military mission in Bosnia and Herzegovina in safeguarding peace and security, which enables my office and other international organizations to fulfil our respective mandates. The mission's high visibility is also a reassurance to many citizens who, now more than ever, feel safer with an international military presence.

51. While the non-executive mandate of the European Union military mission in Bosnia and Herzegovina (supporting the collective and combined training of the Armed Forces of Bosnia and Herzegovina) is vital, it is equally important that the mission retain its executive mandate and the capacity to deploy troops at short notice if the situation were to dictate it. It must be noted that the international military presence has been reduced over the years from tens of thousands of soldiers to under 1,000 in the mission today, in no small part owing to the defence reforms and the establishment of a single Armed Forces of Bosnia and Herzegovina that enabled the country to assume the lead role in preserving peace and security. Should the Armed Forces of Bosnia and Herzegovina splinter into two or more armies, the level of international military presence would require reassessment.



#### **IV. Future of the Office of the High Representative**

52. The total budget amount of the Office of the High Representative has been “frozen” at the same level since 2017. The term “frozen budget” is misleading, as it does not account for annually increasing costs, which in turn reduce available revenue each year. There are also the issues of non-payers and donors that have reduced their contributions. As a result, operating revenues decline year by year by approximately 7 per cent.

53. While the organization has faced substantial reductions to budgets and staff over time, the remaining tasks have not decreased proportionally. As the budgets decrease, it becomes exponentially more difficult to further reduce costs without cutting essential expertise. Staff reductions pose a greater risk for an organization such as the Office of the High Representative, which relies on its human capital, institutional memory, expertise and long-standing contact networks.

54. Moreover, given the current dynamic and the challenges ahead, the Office of the High Representative must retain effective capacity to move the country forward and eventually graduate from international supervision. To achieve this, resources must follow the mandate and the organization must be supported politically and financially, with policy considerations regarding Bosnia and Herzegovina being the basis for assessing the future resource requirements of the Office. To achieve the goals of the organization, consideration should be given to a temporary increase in the budget. Under ideal circumstances beyond the present crisis, the Office must execute its ad hoc mission and be able to act to meet the demands of a more proactive approach in fulfilling the “5 plus 2” agenda in due course.

#### **V. Reporting schedule**

55. The present report is submitted in keeping with the practice of submitting regular reports for onward transmission to the Security Council, as required by Council resolution [1031 \(1995\)](#). I would be pleased to provide additional information or clarification at any time, should the Secretary-General or any member of the Council require it. The next regular report to the Secretary-General is scheduled for April 2022.

## Enclosure

### **I. Five objectives and two conditions for the closure of the Office of the High Representative**

#### **A. Progress on objectives**

1. When in 2008 the Peace Implementation Council Steering Board established the five objectives and two conditions necessary for the closure of my office, it was expected that the leaders of Bosnia and Herzegovina would assume responsibility for fulfilling the “5 plus 2” agenda as a demonstration of their political maturity and commitment to moving Bosnia and Herzegovina forward towards its self-declared objective of Euro-Atlantic integration. As was well documented in previous reports, this has not been the case, and it is time to consider the greater involvement of the international community, including my Office, in moving the agenda forward. For now, apart from continued progress in the Brčko District, the authorities have made no effort to implement the 5 plus 2 agenda and, in many cases, have actively worked against it. In line with the developments described in the main part of the present report, the prospects for further progress soon are grim.

#### **B. State and defence property**

2. My Office continues to monitor significant developments related to the issue of State and defence property, as well as to call for the adoption of comprehensive State-level legislation on State property. Such legislation should be fully in compliance with the legal principles established in the Constitution of Bosnia and Herzegovina and the relevant decisions of the Constitutional Court of Bosnia and Herzegovina. Unfortunately, no substantial progress towards the acceptable and sustainable resolution of that issue, as defined in the 5 plus 2 agenda, was achieved during the reporting period.

3. Instead, there have been numerous developments and media reports related to the issue of the planned and ongoing joint infrastructure projects between the Republika Srpska and Serbia, including the construction of hydropower plants on the Drina River and of an airport near the town of Trebinje. As elaborated in the previous report, the projects are linked to the issue of State property, as the relevant public property and natural resources may be subject to a ban on the disposal of State property.

4. The Constitutional Court of Bosnia and Herzegovina has issued several decisions explicitly clarifying that the State of Bosnia and Herzegovina, specifically the Parliamentary Assembly of Bosnia and Herzegovina, has the exclusive competence to regulate the issue of State property, which includes assets of the former Socialist Federal Republic of Yugoslavia and of the former Socialist Republic of Bosnia and Herzegovina, as well as agricultural land and public goods such as rivers and lakes.

5. In May, on the occasion of the announced ceremony to lay the cornerstone for the construction of the first of three planned hydropower plants, the then High Representative for Bosnia and Herzegovina, Valentin Inzko, wrote to the Prime Ministers of the Republika Srpska and Serbia reiterating that – notwithstanding the undeniable benefits of foreign direct investment – the pending constitutional dispute must be taken into account prior to proceeding, and all undertaken or planned activities must be fully consistent with the Constitution of Bosnia and Herzegovina and decisions of the Constitutional Court of Bosnia and Herzegovina. In principle, clarifying and resolving relevant legal issues must be a precondition for proper planning and implementation of capital investments and infrastructure projects. The rule of law obliges all parties and stakeholders to respect and implement all laws in

force in Bosnia and Herzegovina, as well as rulings of the Constitutional Court of Bosnia and Herzegovina. Despite the above-mentioned correspondence, as well as concerns expressed by experts, politicians and civil society, the cornerstone ceremony proceeded as announced.

6. In July, the Constitutional Court of Bosnia and Herzegovina issued a partial decision on admissibility and merits in a case related to the construction of the three hydropower plants (case No. U-16/20). The application was submitted by 24 members of the Bosnia and Herzegovina House of Representatives and asserted – on the basis of the existing jurisprudence of the Constitutional Court of Bosnia and Herzegovina – that the Republika Srpska violated the constitutional competences of the State of Bosnia and Herzegovina, given that the concession decisions and related contracts issued and concluded by the Republika Srpska Government constituted acts of disposal of State property. In its decision, the Court recognized the existence of a constitutional dispute and ordered the Concession Commission of Bosnia and Herzegovina, in its capacity as the Joint Concessions Commission, to resolve the disputes between Bosnia and Herzegovina and the Republika Srpska arising in connection with the award of concessions no later than three months from the date of delivery of the decision.

7. In addition to the decisions concerning State property, on 23 September, the Constitutional Court of Bosnia and Herzegovina rendered another ruling in a case reviewing the constitutionality of specific provisions of the Republika Srpska Law on Forests. The Court established that the contested provisions that read “owned by the Republic” were not in conformity with the Constitution of Bosnia and Herzegovina, as forests and forest lands represent public goods as defined under State property belonging to the State of Bosnia and Herzegovina and exclusively within the jurisdiction of the Parliamentary Assembly of Bosnia and Herzegovina. To avoid calling into question the application of the entire law, potentially jeopardizing the management and care of forests as public goods and important natural resources, the decision did not repeal the unconstitutional provisions. Instead, the Court ordered the National Assembly of the Republika Srpska to harmonize the relevant provisions with the Constitution of Bosnia and Herzegovina within six months of the delivery of the decision.

### **C. Brčko District**

8. The Brčko District Supervisor and the Office of the High Representative continued to promote good governance, anti-corruption measures, infrastructure development and private sector growth in the District to advance the uniquely integrated, multi-ethnic community of Bosnia and Herzegovina towards achieving the objectives of the Final Award.

9. Acknowledgement of the need for positive changes was demonstrated by the District through implementation of reform-related laws: the Law on Associations and Foundations, intended to ensure transparent, equitable and merit-based support to the non-governmental organization sector; and the Law on the Protection of Rights of National Minorities, which harmonizes the Brčko District’s legislative framework with European Union standards and follows the recent establishment of the Brčko District Council of National Minorities.

10. The Brčko District Assembly established the Office for Prevention of Corruption and Coordination of Activities in Combating Corruption, foreseen in legislation adopted in 2018. As the precursor of its efficient and international standards-based operations, in September, the Brčko District Government signed a memorandum of understanding on anti-corruption cooperation with the Bureau of International Narcotics and Law Enforcement Affairs of the Department of State of

the United States of America. Correspondingly, the Brčko District Assembly passed internal organization guidelines for the commission overseeing the implementation of the Law on Prevention of Conflict of Interest, with the commission becoming operational in mid-October.

11. Encouraged by the continuous support of the Brčko District Supervisor, in April, the Brčko District Assembly revoked amendments to the Law on Police that had been adopted in 2020, which were viewed as political interference in professional policing. Moreover, the prior practice of Assembly delegates adopting legislation in an urgent procedure, thus forgoing any transparency, which led to the latter problem, was discontinued by the Assembly that took office in December 2020. The transparency of the legislative practice was further strengthened by the appointment in the spring of 2021 of opposition delegates to the Assembly's commission.

12. In September, the Brčko District Finance Directorate took on the task to improve financial oversight of State-owned enterprises through an International Monetary Fund (IMF) technical assistance programme, launched with political backing from the Office of the High Representative. The initiative complements the principles of fiscal discipline and transparency embedded in the new Law on Budget, which was applied to the draft budget for 2022 that was put in process by the Assembly on 6 October. The new Law on Budget will allow the budget to be adopted before the end of the year, a deadline not met for a decade.

13. District authorities completed the legal documentation to transfer the District's ownership rights over the electricity transmission facilities to TRANSCO in compliance with the State-level law. The transfer will ensure continued maintenance and upgrade of key electricity transmission infrastructure by the State and will thus contribute to the security of the electricity supply in Brčko. In October, the Assembly initiated a process to adopt a new electricity law for Brčko, which will align the District's law fully with the State's law as well as create a framework for laws on renewable energy and energy efficiency to be brought online in the District in 2022.

14. Transportation infrastructure projects have been prioritized by the District authorities as a stimulus to business development. In June, the Brčko District leadership hosted a meeting between the Minister of Communications and Transport of Bosnia and Herzegovina and the Minister of Maritime Affairs, Transport and Infrastructure of Croatia, in which short- and long-term solutions for the vital Brčko-Gunja Bridge, which connects Brčko District to Gunja, in Croatia, were agreed. In the short term, the existing bridge will be refurbished, with work to begin in the spring of 2022, while long-term plans foresee the construction of a new bridge by the end of the decade, which would alleviate heavy traffic in the Brčko town centre.

15. Also in June, Brčko established a working group to finalize by mid-December routes of highways that will run east-to-west and north-to-south and intersect in the District. In addition, in August, the implementation of the Brčko Port modernization project was launched. The collective result of those connectivity initiatives is that, in the next few years, Brčko District will become a regional transportation hub through which Bosnia and Herzegovina can gain access to the Western Balkan and European Union markets.

16. The pull of infrastructure development augmented by Brčko's public-private initiatives to improve the business environment is already generating results. In May, the Assembly approved the disposal of District property through a special agreement with Studen Global, a branch of Austria-based Studen Group, for the construction of an economic business zone expected to result in 220 jobs over a period of five years, as well as an investment of €10 million. The business zone will facilitate turnkey investment, thus compressing the start-up time of new private sector initiatives in the District.

17. While the blockade of State-level institutions by Republika Srpska representatives did not have a heavy impact on the performance of the executive and legislative authority in the Brčko District, the requirement of the Bosnia and Herzegovina Council of Ministers to approve the international financial components of two infrastructure projects means that launch dates set for the fourth quarter of 2021 and the second quarter of 2022 may be delayed.

18. Brčko District was excluded from receiving an allocation of financial assistance through IMF distribution in August of special drawing rights to Bosnia and Herzegovina aimed at mitigating the economic consequences of the coronavirus disease (COVID-19) pandemic, as that would have required a decision by State-level institutions. In September, the Brčko District Assembly adopted a resolution calling for, among other things, the establishment of a systematic mechanism through which the District would always be included with the entities in budget support assistance provided by international financial institutions, in keeping with the entities' requirement to comply with the Final Award.

19. While progress is being made towards reforms, the continued engagement of the Brčko District Supervisor, as well as the support of expert assistance from the Office of the High Representative in cooperation with the international community, remains crucial to seeing the reforms through to achieve the sustainable status mandated in the Final Award.

#### **D. Fiscal sustainability**

20. My office continued to follow, analyse and report on developments and legislative actions relevant to fiscal sustainability, including monitoring and reporting to the Peace Implementation Council Steering Board on the activities of the Governing Board of the Indirect Taxation Authority of Bosnia and Herzegovina, of which a member of my staff is the only international community representative, and the Fiscal Council of Bosnia and Herzegovina. Trends at both institutions continue to raise concerns over the ability of governments at all levels, in particular the State level, to ensure the unimpeded functioning of institutions and the discharge of their constitutional and legal obligations.

21. The Fiscal Council of Bosnia and Herzegovina held only one session. The fact that the Global Framework of Fiscal Balance and Policies for 2022–2024 is still pending puts timely preparation and adoption of a State budget for 2022 at risk. The Fiscal Council is not only affected by the Republika Srpska blockade but also has become an instrument of the Republika Srpska policy of undermining the functionality of the State by depriving State institutions of funds needed to fully discharge their constitutional and legal responsibilities. Tactics include delaying the budget process at the State level, capping the financing of State institutions at a disproportionately low number compared with their obligations and depriving the State of a share in international financial assistance to Bosnia and Herzegovina.

22. My office continued to follow developments related to the single indirect tax system and its institutional structure, including activities of the Governing Board of the Indirect Taxation Authority of Bosnia and Herzegovina. The Board held three regular and two telephone sessions, resulting in the adoption of the quarterly indirect tax revenue allocation coefficients until the end of 2021 and the inter-entity debt settlement for the first half of 2021. Despite the higher degree of compliance with Board regulations, other long-standing issues remain unresolved. One example is the outstanding KM 30 million debt of the Indirect Taxation Authority to the Republika Srpska based on a 2015 Court of Bosnia and Herzegovina decision.

23. The attempted debt enforcement by the Republika Srpska from Indirect Taxation Authority public revenue accounts caused financial damage to all indirect tax revenue beneficiaries, including both entities and Brčko District, as well as recipients of value-added tax refunds and customs insurance depositors, prompting the Court of Bosnia and Herzegovina to suspend it until June 2022 to allow time to identify an alternative enforcement source. No solution has been identified thus far. Another long-standing dispute concerns the manner of distribution of the accumulated road toll revenue reserves (over KM 150 million) intended for highway and road construction.

24. The failure to address those and similar issues affects the unimpeded functioning of and confidence in the single indirect tax system and its State-level institutional structure. By extension, it provides a pretext for the Republika Srpska to challenge the State's competence in indirect taxation and to advocate the return of that competence to the entities. If pursued, such actions would roll back one of the most important reforms of the past 25 years, which safeguards the macroeconomic stability, and thus the overall political stability, of Bosnia and Herzegovina.

25. My office continued to follow other developments relevant to the fiscal stability of Bosnia and Herzegovina, including those related to the Central Bank of Bosnia and Herzegovina, the guardian of monetary and financial sector stability in Bosnia and Herzegovina.

26. For the first time since the establishment of the Central Bank of Bosnia and Herzegovina, in 1997, the Presidency of Bosnia and Herzegovina failed to appoint new members to the Governing Council of the Central Bank before the expiration of the current members' mandates, on 11 August. On 10 August, the outgoing Council unanimously opined on the need to ensure the unimpeded ability of the Central Bank to discharge its legal role, duties and functions pending the appointment of a new composition of the Council. The position of the Council is based on the legal principle of continuity of office embedded in the legislation of Bosnia and Herzegovina. On 31 August, the Chair of the Presidency of Bosnia and Herzegovina, Zeljko Komšić (Democratic Front (DF)), called a session of the Presidency to address the pending appointment. However, because a member of the Presidency, Milorad Dodik – acting pursuant to the conclusions of the National Assembly of the Republika Srpska of 30 July – voted against the proposed appointment decision, there was no requisite consensus for its adoption.

27. I continue to inform international partners of all developments on this matter. I have publicly commended the Central Bank of Bosnia and Herzegovina for carrying out its constitutional and legal obligations in the best interests of the entire country and have underlined that preserving its continuity and independence from politics is vital to the overall stability and development of Bosnia and Herzegovina.

## **E. Issues related to the rule of law**

28. The rule of law, and the perception thereof, cannot be improved without fundamental changes in the way in which the integrity of judicial functionaries is maintained. In that regard, in June, the Bosnia and Herzegovina Council of Ministers adopted amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which are aimed at addressing issues of conflict of interest, disciplinary responsibility and the legality and transparency of decisions on appointments. The amendments are pending consideration by the Parliamentary Assembly of Bosnia and Herzegovina.

29. In July, the disciplinary panels of the High Judicial and Prosecutorial Council pronounced a sanction of demotion against the Chief Prosecutor of Bosnia and Herzegovina for failing to implement the decision of the Council introducing a

random allocation system for cases and for failing to ensure staff vetting as envisaged by law. In September, the Second Instance Disciplinary Panel confirmed the sanction, which can still be appealed before the full Council. Meanwhile, the Chief Prosecutor of Bosnia and Herzegovina remains in her position.

30. In August, the disciplinary panels of the High Judicial and Prosecutorial Council pronounced a public admonition as a sanction against the President of the State Court of Bosnia and Herzegovina for social contact with the Director General of the Intelligence-Security Agency of Bosnia and Herzegovina while the Director General was on trial before the same court, as well as for providing false information when applying for his position. In October, he was found not guilty on the appeal.

31. The Federation legislation establishing a special prosecutor and a court department for fighting corruption and organized crime, adopted in 2014, remains unimplemented.

## **F. War crimes cases**

32. On 8 June, the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals confirmed the earlier trial judgment of the International Tribunal for the Former Yugoslavia against the former Republika Srpska military commander, Ratko Mladić, for genocide, crimes against humanity and violations of the laws or customs of war, including terrorizing the civilian population of Sarajevo for nearly four years and killing more than 8,000 Muslim men and boys in Srebrenica in 1995. The Chamber also reaffirmed the previously imposed sentence of imprisonment for life. Shortly thereafter, a commission established by the Republika Srpska Government issued a report in which it was claimed that crimes committed by Republika Srpska forces in Srebrenica did not amount to genocide.

33. On 30 June, following the order of the Appeals Chamber of the International Tribunal for the Former Yugoslavia for retrial, the International Residual Mechanism for Criminal Tribunals convicted the former head of the State Security Service of the Republic of Serbia, Jovica Stanišić, and his subordinate, Franko Simatović, for aiding and abetting murder as a violation of the laws or customs of war and a crime against humanity, as well as for crimes of deportation, forcible transfer and persecution as crimes against humanity, committed by Serb forces following the takeover of the town of Bosanski Šamac in April 1992, and it sentenced each to 12 years of imprisonment. The ruling marks the first conviction of State officials of neighbouring Serbia for crimes committed on Bosnia and Herzegovina territory. In September, both the prosecution and the defence filed appeals.

34. Highlighting the need to closely monitor prosecutions of war crimes, earlier in 2021, the Banja Luka District Prosecutor's Office suspended several cases related to the destruction of six mosques in the city in 1993. The cases had been transferred from the Bosnia and Herzegovina Prosecutor's Office to the Republika Srpska in accordance with the Bosnia and Herzegovina National War Crimes Strategy. However, instead of proceeding more efficiently, which is the aim of such transfers, the cases were suspended, citing expiration of the 15-year statute of limitations under the Criminal Code of the Socialist Federal Republic of Yugoslavia, the law in force since 1993. In July, the State-level judiciary took the cases back for processing by the Bosnia and Herzegovina Prosecutor's Office and the Bosnia and Herzegovina State Court.

35. In August, the former Republika Srpska military regiment commander and head of the Veterans' Association of Republika Srpska, Milomir Savčić, who had been indicted by the Bosnia and Herzegovina Prosecutor's Office for genocide in Srebrenica and ordered into custody until the end of his trial, escaped Bosnia and Herzegovina jurisdiction, which illustrated the need for international cooperation in

prosecuting war crimes. Such cases usually concern suspects absconding to a neighbouring State – in this case, likely Serbia, although Serbian officials have denied it – where the suspect also has citizenship and which will not extradite its citizens for war crimes cases. While agreements exist that should ensure prosecution by such States, there have been no legal consequences in several known cases in recent years.

36. Soon thereafter, in September, a former senior Federation police official accused of war crimes against prisoners of war allegedly committed in Goražde, Bosnia and Herzegovina, in 1993 and 1994 was arrested in Serbia. It was the most recent of a string of arrests of Bosnia and Herzegovina nationals by Serbia for crimes allegedly committed in Bosnia and Herzegovina, and the Bosnia and Herzegovina Ministry for Foreign Affairs issued a recommendation that people who had been in the Bosnia and Herzegovina defence from 1992 to 1995 not travel to Serbia.

## **G. Denial of war crimes**

37. On 28 July, the amendments to the Criminal Code of Bosnia and Herzegovina criminalizing denial of genocide and all other violations of international humanitarian law that had been adjudicated by international tribunals or courts in Bosnia and Herzegovina entered into force. The amendments also criminalize the glorification of adjudicated war criminals. Both genocide denial and the glorification of convicted war criminals have become all too frequent in Bosnia and Herzegovina in recent years, with devastating effects on society. The amendments were enacted by the former High Representative for Bosnia and Herzegovina as a countermeasure to the unfortunate trend after unsuccessful attempts by the Parliamentary Assembly of Bosnia and Herzegovina to adopt similar legislation. The amendments are in line with the European Union Council Framework Decision of 2008 (2008/913/JHA) on combating certain forms and expressions of racism and xenophobia by means of criminal law.

## **II. State-level institutions of Bosnia and Herzegovina**

### **A. Presidency of Bosnia and Herzegovina**

38. The current political crisis in Bosnia and Herzegovina is most visible in the Presidency of Bosnia and Herzegovina, which resembles anything but a collective head of State. The divergent positions of Mr. Dodik on one side and two other members, Mr. Komšić and Šefik Džaferović (Party of Democratic Action (SDA)), on the other persist on all State-level matters and have intensified following the decision by the former High Representative for Bosnia and Herzegovina enacting amendments to the Criminal Code of Bosnia and Herzegovina. Since then, Mr. Dodik has blocked the work and/or the decision-making of the Presidency either by not attending sessions or by attending and voting against all agenda items.

39. Tensions increased following the address of Mr. Komšić in his capacity as Chair of the Presidency of Bosnia and Herzegovina (which he had assumed from Mr. Dodik in July as part of the regular rotation) before the General Assembly in September. In his address, Mr. Komšić focused on the political crises in Bosnia and Herzegovina as he saw them, as well as what he claimed were poor neighbourly relations with Serbia and Croatia, instability caused by threats to territorial integrity and electoral reforms aimed at promoting ethnic rather than civic principles, and he called upon the United Nations to protect human rights in Bosnia and Herzegovina. Mr. Dodik had attempted to prevent Mr. Komšić from attending and addressing the General Assembly, claiming that his appearance could only be in a private capacity because it was not approved by the Presidency of Bosnia and Herzegovina. Mr. Dodik not only accused



Mr. Komšić of abusing his position to present a false narrative of the situation in Bosnia and Herzegovina, he also blamed the Secretary-General of the United Nations and accused him of laying the foundation for the dissolution of Bosnia and Herzegovina by allowing Mr. Komšić to appear.<sup>1</sup>

40. Mr. Dodik similarly criticized the participation of the Permanent Representative of Bosnia and Herzegovina to the United Nations, Sven Alkalaj, and his remarks during a session of the Security Council in May, as well as the participation of the Minister of Foreign Affairs of Bosnia and Herzegovina, Bisera Turković (SDA), during a Council session in June. Following Mr. Alkalaj's remarks, in which he congratulated the work of the International Residual Mechanism for International Tribunals and criticized Serbia for harbouring convicted war criminals, Mr. Dodik instructed all ambassadors of Bosnia and Herzegovina of Serb ethnicity to coordinate their activities solely with the Serb member of the Presidency of Bosnia and Herzegovina and to ignore instructions from the Ministry of Foreign Affairs of Bosnia and Herzegovina.

41. Unsurprisingly, the Presidency of Bosnia and Herzegovina held only two regular sessions, one in July and the other in late August, while it held several unreported urgent and extraordinary sessions. Even throughout the political crisis, the Presidency maintained regular protocol activities, receiving official diplomatic delegations and making some official visits abroad.

42. In June, the Presidency adopted the budget of Bosnia and Herzegovina institutions and international obligations for 2021, with a conclusion requesting the Parliamentary Assembly of Bosnia and Herzegovina to allocate funds for salary increases for members of State-level police agencies and the armed forces of Bosnia and Herzegovina. However, the budget remains stalled in the Parliamentary Assembly of Bosnia and Herzegovina. There is also no indication regarding the preparation and submission of the budget for 2022, which should be adopted by the end of 2021.

## **B. Bosnia and Herzegovina Council of Ministers**

43. Until the end of July, the Bosnia and Herzegovina Council of Ministers met regularly, holding nine regular and nine extraordinary sessions during the reporting period. However, no ordinary sessions have been held since 22 July, holding the Council of Ministers hostage to the Republika Srpska policy of non-attendance and non-participation in State-level decision-making. The Council of Ministers adopted only one new law and amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the latter a requirement stemming from the opinion of the European Union Commission on the European Union membership application of Bosnia and Herzegovina.

44. The Council of Ministers reached no agreement on launching a procedure for the selection of the new Director of the Indirect Taxation Authority of Bosnia and Herzegovina, also reaching no agreement on decisions concerning the protection of domestic products, visa requirements and other issues. While the previous convocation of the Council of Ministers had adopted decisions declaring 11 July – the

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<sup>1</sup> On 20 September 2021, at a press conference in Banja Luka on Radio Television of Republika Srpska, Mr. Dodik said, "So my message is, if Mr. Secretary-General allows [Mr. Komšić's] address, then he will also be driving one of the nails into the coffin of this Bosnia and Herzegovina, because he gave the opportunity to only one side, illegally, without presence and without constitutional procedures conducted here in Bosnia and Herzegovina, to talk as a private person, offended by his personal position, his desire to ignore everything and to trick and deceive even the world's highest institution such as the United Nations General Assembly." Available at <https://lat.rtrs.tv/vijesti/vijest.php?id=446194>.

anniversary of the 1995 Srebrenica genocide – as a day of mourning in Bosnia and Herzegovina, the Council could not agree and issued no such declaration.

45. In June, in the absence of a State-level budget for 2021, the Council of Ministers adopted a decision on temporary financing for the third quarter of 2021. With that decision expiring on 30 September, and indications that the Republika Srpska would take over payments for Serbs from the Republika Srpska in the Bosnia and Herzegovina institutions, combined with a continuous blockade of the Council of Ministers, on 24 September I addressed a letter to the Chair and the Deputy Chairs of the Council of Ministers, urging them to adopt a decision for the fourth quarter of 2021 without delay. In an urgent session held on 28 September, the Council of Ministers unanimously adopted that decision, ensuring uninterrupted financing of the Bosnia and Herzegovina institutions through the end of 2021.

46. In October, the Minister of Defence of Bosnia and Herzegovina, Sifet Podžić (Bosniak, DF), postponed a joint military exercise between the armed forces of Bosnia and Herzegovina and those of Serbia shortly before it was scheduled to commence, at Manjača Mountain, near Banja Luka. In postponing the exercise, Mr. Podžić cited as justification a recent surge in COVID-19 cases and a low vaccination rate in the armed forces of Bosnia and Herzegovina, as well as the non-adoption of the Bosnia and Herzegovina budget for 2021 and of the corresponding defence budget for 2021 and the resulting lack of funds for the exercise.

47. Mr. Dodik criticized the move, claiming that only the Presidency of Bosnia and Herzegovina could postpone an exercise that it had authorized, and called for Mr. Podžić's removal. On the same day, the Chair of the Bosnia and Herzegovina Council of Ministers, Zoran Tegeltija (Union of Independent Social Democrats (SNSD)), issued a decision on Mr. Podžić's removal. Such a decision must be approved by both houses of the Parliamentary Assembly of Bosnia and Herzegovina, which is extremely unlikely.

48. At the request of the Joint Staff Commander of the armed forces of Bosnia and Herzegovina, Mr. Podžić postponed the exercise but did not cancel it, which is in line with the decision of the Presidency of Bosnia and Herzegovina to organize such a joint exercise in 2021 if it is rescheduled for later in 2021.

### **C. Parliamentary Assembly of Bosnia and Herzegovina**

49. The Parliamentary Assembly of Bosnia and Herzegovina has been most affected by the consecutive political crises in the country since its inauguration following the 2018 general elections. That is reflected in its poor functionality and its inability to exercise its legislative functions, one of the most important competences envisaged in the Constitution of Bosnia and Herzegovina. The situation has been greatly exacerbated by the ongoing boycott or blockade of decision-making in the State institutions, which has been pursued by the Republika Srpska-based parties.

50. During the reporting period, the Bosnia and Herzegovina House of Representatives held only five regular sessions, the most recent on 20 September, without the participation of Republika Srpska-based representatives. The Bosnia and Herzegovina House of Peoples held only three regular sessions, the most recent in early July. Legislative output remains poor, with only one new law and two amendments to existing laws adopted. The Bosnia and Herzegovina House of Peoples rejected three laws previously adopted by the Bosnia and Herzegovina House of Representatives, and the House of Representatives rejected five laws proposed by party representatives.

51. Agendas in both houses were largely taken up by legislative initiatives from various representatives with little chance of adoption, in part an effort to fill the void left by a lack of legislative proposals from the Bosnia and Herzegovina Council of Ministers. In late April, that led to a motion of non-confidence in the Council of Ministers, proposed by opposition parties, which the Bosnia and Herzegovina House of Representatives rejected.

52. In April, the Bosnia and Herzegovina House of Representatives reappointed Vlado Rogić as a Croat member to the Central Election Commission of Bosnia and Herzegovina. In July, the House of Representatives adopted the State-level budget for 2021 proposed by the Presidency of Bosnia and Herzegovina, but to date the House of Representatives has not taken it up in the second reading. The Bosnia and Herzegovina House of Peoples has yet to consider the issue.

### **III. Federation of Bosnia and Herzegovina**

53. The Federation Government from the mandate of 2014–2018 remains in place, in a caretaker capacity, with no new Government appointed following the 2018 general elections. Since 2020, the Federation Prime Minister, Fadil Novalić (SDA), and the Deputy Prime Minister and Minister of Finance, Jelka Miličević (Croat Democratic Union of Bosnia and Herzegovina (HDZ Bosnia and Herzegovina)), have been under criminal indictment for their role in the controversial procurement of 100 ventilators early in the COVID-19 pandemic. Mr. Novalić is accused of abuse of power, influence peddling, money-laundering and document forgery, while Ms. Miličević is accused of negligence. Both have pleaded not guilty.

54. Nevertheless, the Federation Government meets regularly, holding 22 regular sessions. Both houses of the Federation Parliament met infrequently, with the House of Representatives holding just five regular sessions and the House of Peoples holding only three. In terms of legislative output, only three new laws and three amendments to existing laws were adopted.

55. The collegiums of both houses remain incomplete, with the House of Representatives having failed to appoint a new Deputy Speaker from the ranks of the Serb people following a reshuffling of the parliamentary majority in June 2019, while the House of Peoples has not appointed a Deputy Speaker from the ranks of the Serb people since its inaugural session following the 2018 general elections.

#### **A. Appointment of members to the Federation Securities Commission**

56. In July and September, respectively, the Federation House of Representatives and the Federation House of Peoples adopted a decision on appointment of members to the Federation Securities Commission, which is responsible for regulating capital markets in the Federation, thus finalizing the appointments. The Federation President, Marinko Čavara (HDZ Bosnia and Herzegovina), with the consent of the Vice-Presidents, Milan Dunović (DF) and Melika Mahmutbegović (SDA), submitted the proposal to the Federation Parliament in late May.

57. Owing to the expiration of members' mandates and to retirements, the Securities Commission has functioned with only three of five members since 2018 and with only two of five members since November 2019, leaving the Commission with no quorum for decision-making. The House of Peoples rejected an earlier proposal on appointments in early May. When the House of Peoples adopted the proposal in September, Social Democratic Party (SDP) delegates criticized the proposed candidates as not meeting the required professional qualifications and being politically affiliated.

## **B. Federation Constitutional Court appointments still outstanding**

58. The continued failure of the Federation President, in agreement with the Vice-Presidents, to appoint four missing judges to the Federation Constitutional Court severely hampers the ability of the Court and its vital national interest panel to exercise their constitutional responsibilities. The Court operates with only five sitting judges out of the nine required under the Federation Constitution. All five sitting judges must be present for a quorum to exist, and the adoption of decisions requires unanimity. The situation means that the panel is completely unable to function, as it presently has only four sitting judges, which is insufficient for a quorum.

59. The process of filling the vacant positions in the Court has continued since the retirement of two judges in 2015 and 2016 and the retirement of another two in June 2019. In October 2019, the High Judicial and Prosecutorial Council submitted to the Federation President and Vice-President candidates for three vacant judges' positions pursuant to the vacancy published in February 2019 and submitted candidates proposed for the fourth position in February 2021. Mr. Čavara has refused to proceed with the nominations, and the process remains stalled. Should the Federation President and Vice-Presidents finally decide to forward the nominations to the Federation Parliament, all four judges could be appointed and the Federation Constitutional Court could be returned to full functionality.

## **C. Failure to adopt the Law on Forestry**

60. No progress was made in adopting the Federation Law on Forestry, which the Federation has been without since 2009. At the time, the Federation Government attempted to address the issue through a decree, but in 2010, the Federation Constitutional Court determined that the Government had no constitutional or legal basis to regulate the field of forestry by decree.

61. In September, the Federation Government urged the Federation Parliament to discuss the draft Law on Forestry adopted by the Government in 2017. The draft was on the agenda of a session of the Federation House of Representatives in late September, but it was withdrawn.

## **IV. Republika Srpska**

62. SNSD continues to lead the ruling coalition in the Republika Srpska. While opposition parties have increased their numbers and seats in the National Assembly of the Republika Srpska, they are hardly able to mount a coordinated defence against decisions or policies that they oppose and are most often forced to abstain or agree on issues framed by the ruling coalition as matters of Serb national unity.

63. During the reporting period, the Republika Srpska Government held 24 sessions, and the National Assembly of the Republika Srpska held 3 regular and 4 special sessions.

64. In May, Mr. Dodik used the commemoration of Serb, Jewish and Roma victims of the World War II concentration camp at Jasenovac, in Croatia, to directly attack me, implying a link between the Nazis of the Second World War and myself.<sup>2</sup> Mr. Dodik

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<sup>2</sup> On 8 May 2021, at Jasenovac, Mr. Dodik said, "We, the Serbs here in the Republika Srpska are carrying a difficult political battle for the right we got by the international agreement, which the very same international community violated...because [the international community] gets used to telling Serbs what they should do. Of all the High Representatives, we had two Austrians and one German here and as far as I see, they intend to appoint another German. Why do we need another High Representative?" Available at [https://www.youtube.com/watch?v=Jq5RGL\\_tIQM](https://www.youtube.com/watch?v=Jq5RGL_tIQM).

also continued his attacks against critical voices in the Republika Srpska, including in civil society. He again used negative stereotypes of Germans to attack a researcher working in Banja Luka for a chapter of the Friedrich Ebert Foundation, calling her a “quisling” and a spy for the Federal Intelligence Service of Germany.<sup>3</sup> Such comments could provoke violence against her, members of the international community, non-governmental organizations, independent media and opposition leaders.

65. The Republika Srpska authorities continued their policy of harmonization with the legislative and educational system of neighbouring Serbia, thereby further disengaging from the Bosnia and Herzegovina legal system. On 15 September, a new joint holiday, the Day of National Unity and Flag, was introduced with the declared aim of preserving the Serb identity and demonstrating unity.

66. On the same day, the National Assembly of the Republika Srpska and the Serbian Parliament simultaneously adopted a similar form of the Law on Protection, Preservation and Use of the Language of the Serb People and the Cyrillic Script, which foresees the language of the Serb people and the Cyrillic alphabet as intangible cultural heritage that provides a sense of identity and continuity to the Serb people. The law provides for the possibility of establishing tax and other administrative relief for economic and other entities that use the Cyrillic script in their businesses. In addition, the law provides that cultural and other events financed by public funds must have their logo and name indicated in the Cyrillic script. If they already use the Latin script, they are obliged to add Cyrillic.

67. Both the Bosniak and the Croat caucuses in the National Assembly of the Republika Srpska raised the issue of vital national interest, claiming that the law was discriminatory and contrary to the Bosnia and Herzegovina Constitution and the Republika Srpska Constitution. Following the failure of the joint commission of the Republika Srpska Council of Peoples and the National Assembly of the Republika Srpska to reach agreement on the law, it would be for the vital national interest panel of the Republika Srpska Constitutional Court to decide on the admissibility and/or merits of vital national interest.

68. According to the jurisprudence of the Constitutional Court of Bosnia and Herzegovina, the collective equality of constituent peoples prohibits the provision of any special privilege for one or two out of three constituent peoples. Furthermore, the Court has consistently pointed out that all constituent peoples and others must be granted equal rights, emphasizing that the principle of collective equality of constituent peoples imposes an obligation on the entities not to discriminate primarily against those constituent peoples who are a minority in that particular entity. There is not only a clear constitutional obligation not to violate individual rights in a discriminatory manner but also a constitutional obligation of non-discrimination in terms of a group right.

### **Srebrenica**

69. Following the rejection of their appeals during repeated local elections in Srebrenica in February, Bosniak political representatives of the coalition “My Address Srebrenica” accepted the mandates won and agreed to participate in authority formation. Although the boycott of the partly repeated elections resulted in a weakened Bosniak position in the municipal assembly, the Serb majority initially agreed to form the authorities through an even balance of ethnic representation.

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<sup>3</sup> European Federation of Journalists, “Bosnia-Herzegovina: Politician Milorad Dodik attacks yet another journalist”, 27 May 2021. Available at <https://europeanjournalists.org/blog/2021/05/27/bosnia-herzegovina-politician-milorad-dodik-attacks-yet-another-journalist/>.

70. The agreement did not last long, however, with Mr. Dodik's open call for the Serb majority in Srebrenica to remove the appointed Bosniak Speaker, Ćamil Duraković, owing to his public engagement in the reporting of a case of genocide denial in the Republika Srpska under the new provisions of the Criminal Code of Bosnia and Herzegovina, which the majority did in September. Although another Bosniak agreed to be appointed as Speaker, all the other Bosniak representatives left the session in protest. The balance of ethnic representation in Srebrenica, established as a practice in the previous period, continues to be challenged by the local Serb representatives.

## **V. Public security and law enforcement, including intelligence reform**

71. The practice of improper political interference in operational policing did not diminish during the reporting period.

72. In April, the Brčko District Assembly repealed the damaging October 2020 changes to the Brčko District police legislation, which were determined, inter alia, to not be in line with the Brčko District Statute and to undermine the principles of transparency, professionalization and open and merit-based appointments for the Police Chief, the Deputy Police Chief and members of the Independent Board. However, the appointments of the Police Chief and the Deputy Police Chief remain in effect pending further legal procedures that will test the commitment of the Brčko District authorities to the rule of law. It also appears that the problematic appointments of members of the Independent Board are in effect. A Brčko District working group has substantially completed major revisions to the District's police legislation.

73. In June, the Zenica-Doboj Cantonal Assembly adopted changes to the Law on Internal Affairs, assessed in March by my predecessor and the United States Ambassador as inappropriately circumventing the existing protocols and regulations and asserting direct political control over the Zenica-Doboj police system. On 12 May, my predecessor warned the Minister of the Interior of Zenica-Doboj Canton that related administrative actions represented unacceptable political interference in professional policing and disrespect for the law. The adoption in June of the changes to the law sparked widespread condemnation from the security establishment in the Federation and resulted in significant civil society opposition on social media. The Zenica-Doboj cantonal government appointed a new police commissioner on 16 September.

74. In June and September, respectively, West Herzegovina Canton adopted changes to the Law on Internal Affairs and the Law on Police Officials. On 14 September, Tuzla Canton adopted changes to the Law on Police Officials.

75. In September, the Tuzla Cantonal Assembly dismissed all serving members of the Independent Board in charge of the selection and dismissal of the Police Director and overseeing performance. Opposition political parties in the Tuzla Cantonal Assembly claimed that the Law on Internal Affairs only foresees the dismissal of individual members under the provisions listed therein. Subsequently, the Cantonal Assembly issued a public vacancy announcement for members of a new Independent Board.

76. In May, a working body of the Herzegovina-Neretva Cantonal Assembly issued a vacancy announcement for members of a new Independent Board. In August, the Assembly body conducting the vacancy procedure interviewed qualifying candidates. The process has meanwhile stalled. Herzegovina-Neretva Canton has not had a functioning independent board since March 2017 and has not had a duly appointed police commissioner since October 2018.

77. In July, the Federation Government, serving in technical mandate since 2018, decided not to appoint a new Federation Police Director on the basis of the list of proposed candidates prepared by the Independent Board in April 2019. The mandate of the previous Director expired in January 2019. The Deputy Police Director, appointed in February 2019, has replaced the Police Director in the interim.

78. The Posavina Canton authorities failed to insert a required provision in the relevant police law required by the letter of the President of the Security Council of 2007 on police denied certification by the former United Nations International Police Task Force, despite repeated assurances from canton authorities.

### **Intelligence**

79. The Bosnia and Herzegovina Council of Ministers has not yet appointed the next Director General of the Intelligence-Security Agency of Bosnia and Herzegovina. The mandate of the current Director General, who continues to serve in technical mandate, expired in November 2019.

## **VI. Economy**

### **A. Economic trends**

80. Available economic indicators for Bosnia and Herzegovina are mostly positive when compared with those from 2020. Still, they do not necessarily reflect the level of economic and social development in the country because there are areas in which statistical progress is attributable to the 2020 low base for comparison or external factors.

81. IMF projects the 2021 economic growth of Bosnia and Herzegovina at 3.5 per cent, while the World Bank projects 2.8 per cent, the lowest in the region. Compared with the corresponding period in 2020, industrial production in the first quarter of 2021 increased by 7.3 per cent, while exports and imports in the period from January to July increased by 31.1 per cent and 20.4 per cent, respectively. Foreign direct investments in the first quarter increased by 14.6 per cent, amounting to KM 271.8 million. In June, there were 393,781 unemployed persons (down by 6.5 per cent) and 820,979 employed persons (up by 2.1 per cent). The registered unemployment rate was 32.4 per cent. There were 696,276 pensioners, indicating a continued increase. The banking sector is assessed as generally stable and liquid. Its cumulative profit in the first half of 2021 was KM 215 million, a 50.8 per cent increase, indicating the recovery of the banks after the outbreak of the COVID-19 pandemic. At the end of August, Moody's and Standard & Poor's affirmed their credit ratings for Bosnia and Herzegovina and a stable outlook.

82. The average net salary of KM 997 and the average pension of KM 421 remain significantly below the average price of the basket of goods of over KM 2,000 for a family of four, suggesting that even those with steady incomes struggle to make ends meet. Pensioners, a majority of whom receive the minimum pension (KM 207 in the Republika Srpska and KM 382 in the Federation), are particularly vulnerable.

83. In August, the European Comparison Programme noted that the per capita gross domestic product of Bosnia and Herzegovina in 2020 was 33 per cent of the European Union average. A United Nations Children's Fund-United Nations Development Programme survey on social impacts of COVID-19 in Bosnia and Herzegovina showed that 48.5 per cent of households saw declines in their financial situation, with 12 per cent experiencing significant difficulties. The situation has forced 20 per cent of households with children and 23 per cent of families from vulnerable groups to borrow to meet basic needs. The Foundation for Social Inclusion in Bosnia and Herzegovina

calculated that 800,000 to 900,000 people in Bosnia and Herzegovina live at the absolute poverty line, with every sixth citizen in the extreme poverty category.

84. The economic situation and its discouraging outlook are likely to accelerate the already worrisome population outflow. According to research by Bosnia and Herzegovina experts on the impact of the COVID-19 pandemic on population migration, data for 2019 show that about 450,000 Bosnia and Herzegovina citizens resided in European Union countries and that the exodus of youth, along with the increased number of pensioners, further complicates the economic situation in Bosnia and Herzegovina. The Bosnia and Herzegovina diaspora is greater in Germany than in all other European Union countries, with 53,880 Bosnia and Herzegovina citizens emigrating there in the past seven years. In April, the German Federal Statistical Office reported that the number of citizens of Bosnia and Herzegovina residing in Germany at the end of 2020 was 211,335.

## **B. Fiscal issues**

85. There were no delays in debt servicing and regular monthly budget payments during the reporting period. That was largely attributable to the continued growth of indirect tax revenue, which accounts for most budget revenue for all levels of government, as well as continued borrowing and international financial disbursements, including IMF special drawing rights allocation and European Union macro-financial assistance.

86. On 2 August, the Board of Directors of IMF approved a general special drawing rights allocation to its member states equivalent to \$650 billion, intended to support their ability to mitigate the consequences of the COVID-19 pandemic. IMF transferred the Bosnia and Herzegovina share of KM 602.5 million to the Central Bank of Bosnia and Herzegovina on 23 August, but in-country distribution was stalled until 27 August, when the Central Bank received payment instructions from Bosnia and Herzegovina and entity Ministers of Finance to distribute the allocation in line with the June 2016 memorandum of understanding concluded by the relevant authorities in Bosnia and Herzegovina and in connection with the former IMF Extended Fund Facility programme. Accordingly, the Federation received two thirds of the total and the Republika Srpska received one third, with neither the State nor Brčko District receiving a share.

87. On 8 October, Bosnia and Herzegovina received the first tranche of its €250 million share in European Union macro-financial assistance intended for 10 enlargement and neighbourhood countries in the context of the COVID-19 pandemic. In all, €125 million was distributed within the country, with 61.5 per cent provided to the Federation, 37.5 per cent provided to the Republika Srpska and 1 per cent provided to Brčko District. Again, the State did not benefit from the assistance.

88. The Republika Srpska blockade stalled parliamentary approval of the State-level budget for 2021 and adoption of a decision by the Bosnia and Herzegovina Council of Ministers on temporary financing for the fourth quarter of 2021. The Fiscal Council of Bosnia and Herzegovina has thus far failed to adopt the Global Framework of Fiscal Balance and Policies for 2022–2024 as the basis for the budget process at the State level. The circumstances risk interrupting the financing – and, by extension, they risk impeding the functioning – of 75 State institutions, including the armed forces, law enforcement agencies, tax authorities and the judiciary.

89. The State institutions regularly face uncertain financing, which is contrary to the obligation in the Constitution of Bosnia and Herzegovina of the responsible authorities to ensure the financing of the State institutions so that they may fulfil without interruption their constitutional responsibilities. That compounds the



systemic unreliability and inadequacy of financing of the State institutions, directly undermining the functionality of the State and its key functions, with widespread consequences. Extending temporary financing is only a stopgap measure that restricts the amount of funds available to the State institutions and their scope of operations and makes them vulnerable to political calculations. Thus, the problem of financing of the State institutions requires a sustainable solution.

90. The Federation maintained budget stability during the reporting period. Moreover, in the consolidated budget execution report for the period from January to June 2021, a positive financial result of KM 328.5 million in total is noted for all levels of government in the Federation. That is attributable to the sustained growth of indirect tax revenues, continued domestic borrowing and the recent IMF special drawing rights disbursement.

91. Conversely, the Republika Srpska continues to operate in a fragile financial environment, financing almost one quarter of its regular budgetary needs through borrowing. In April 2021, owing to the financial crisis and a lack of a new arrangement between Bosnia and Herzegovina and IMF, the Government of the Republika Srpska decided to raise money to finance repayment of its previous debt and budget deficit through the sale of five-year bonds on the London Stock Exchange. According to the Ministry of Finance of the Republika Srpska, in March, Republika Srpska debt was KM 5.85 billion, 50.4 per cent of the gross domestic product of the Republika Srpska.

### **C. Additional developments relevant to the General Framework Agreement for Peace**

92. Bosnia and Herzegovina took no action to rectify its non-compliance with European Union requirements in the energy sector. As a result, the country has been subject to sanctions by the Ministerial Council of the Energy Community – an international organization composed of the European Union and the neighbouring countries from South-Eastern Europe – since 2015.

93. The uninterrupted financing of the Public Railways Corporation of Bosnia and Herzegovina in 2021 is mostly attributable to the Federation meeting its payment obligations to the Corporation, although only since April. The financial transfers of the Republika Srpska to the Corporation in the first eight months of 2021 were symbolic. The uncertainty of financing arising from dependence on entity financial transfers poses a risk to the sustainability of the Corporation, which is the only State-level corporation established under annex 9 to the General Framework Agreement for Peace in Bosnia and Herzegovina. It also jeopardizes the only mechanism for a harmonized approach to the reconstruction of railway routes, which would benefit the railway companies of both entities, all citizens of Bosnia and Herzegovina and the country's economy.

94. Although the mandates of all members of the management and the management board of TRANSCO expired more than three years ago, the appointment of new members remains stalled because the Republika Srpska has taken no action to elect and nominate its members. The Federation Government nominated its members to the TRANSCO management board in December 2020, but the Bosnia and Herzegovina Council of Ministers subsequently decided not to proceed with the appointments until the Republika Srpska submitted its nominees. Further delaying the appointments could complicate decision-making on issues of relevance to TRANSCO and electricity transmission in general. It could also provide a pretext for renewed challenges to the Company, which was established by the Law Establishing the Electricity Transmission Company, adopted by the Parliamentary Assembly of Bosnia and Herzegovina in 2004

following the agreement of June 2003 of the entities on the establishment of a transmission company and independent system operator, concluded on the basis of article III (5) (b) of the Constitution of Bosnia and Herzegovina.

95. On a positive note, another challenge to TRANSCO – which stemmed from a lawsuit by the Mostar-based power company claiming compensation for the transmission facilities invested in TRANSCO at the time of its establishment, in 2006 – was dismissed through the decision of 16 August of the Higher Commercial Court of Banja Luka in favour of TRANSCO. The lawsuit posed a financial threat to TRANSCO and a threat to the structure of its capital and the entity shares. The lawsuit, if successful, would have opened the door to challenges to other State institutions established on a similar basis.

## VII. Return of refugees and displaced persons

96. The appearance in Foča in April of a 20-metre-long mural of Ratko Mladić saluting passers-by is among a string of concerning developments in Foča and elsewhere in eastern Republika Srpska that has put Bosniak returnee communities on edge. The Mladić mural joins an earlier mural of a Second World War Chetnik leader, Draža Mihailović, whom several Serb paramilitary units in the 1992–1995 war in Bosnia and Herzegovina emulated. A third mural appeared, of the late Milorad Pelemiš, wartime commander of the Republika Srpska Tenth Sabotage Detachment, known for its involvement in the execution of war prisoners during the Srebrenica genocide of July 1995. In the same vein, the town assembly of Bijeljina supported the erection of a bust of Mihailović in one of the smaller central town squares.

97. In the period before the commemoration of the Srebrenica genocide, the Serb nationalist association Eastern Alternative announced that it would mark 11 July as the day of the liberation of Srebrenica under the slogan “Hail Krivaja”, a reference to the code name of the offensive of the Republika Srpska Army to take Srebrenica.

98. On 23 June, the Constitutional Court of Bosnia and Herzegovina passed a decision accepting an appeal from a group of Bosniak parents from the community of Konjević Polje, supporting their claim that Bosniak students were discriminated against in the education system of the Republika Srpska regarding the use of the Bosnian language in the school system. The decision nullifies an earlier decision by the Supreme Court of Republika Srpska, which had dismissed the claims of discrimination. The parents had initiated the legal battle in 2013, after which several other returnee communities protested against the same issue.

99. The decision of 23 June has yet to be implemented, and the start of the new school year brought the same issue to the surface in another Bosniak returnee community, Liplje, near Zvornik, where parents resorted to protest because no changes had been made in the meantime. Although students are taught the national group of subjects (the mother tongue, religious classes, geography and history) according to the curriculum in the Federation, the Ministry of Education of the Republika Srpska continues to refer to the Constitution of the Republika Srpska as the grounds for its refusal to use the term “Bosnian” in official school records and will only use the term “language of the Bosniak people”. The Constitutional Court of Bosnia and Herzegovina previously ruled that constituent peoples are entitled to call their language the name of their choosing.

100. In Glamoč municipality, in Federation Canton 10, Serb students are not offered the national group of subjects. Students in two other municipalities with significant Serb returnee populations in Canton 10 are offered the national group of subjects, with books in the Cyrillic script provided by the Ministry of Education of the

Republika Srpska. Several requests from parents to introduce the national group of subjects in Glamoč have been rejected owing to an “insufficient” number of students, although one third of primary students are of Serb nationality.

101. Political leaders throughout Bosnia and Herzegovina must recall their existing obligations under annex 7 to the General Framework Agreement for Peace to “undertake 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.”

## VIII. Media developments

102. The media landscape in Bosnia and Herzegovina remains burdened by political influence, biased reporting, poor implementation of media-related legislation and non-transparent ownership and financing. During the reporting period, the free media helpline of the Bosnia and Herzegovina Union of Journalists registered 34 cases of violations of the rights of journalists, including several death threats. Most cases were characterized as defamation, political pressure and verbal threats.

### Digitalization

103. The process of broadcast digitalization in Bosnia and Herzegovina began in 2009 with the adoption of the relevant strategy by the Bosnia and Herzegovina Council of Ministers. On the basis of the Law on Communications of Bosnia and Herzegovina, the international obligations of Bosnia and Herzegovina and the adopted strategy for transition to Digital Video Broadcasting – Second Generation Terrestrial (DVB-T2), the Communications Regulatory Agency has prepared a radio spectrum and migration plan that theoretically allows for the digital broadcasting of programmes for all licensed stations (about 230). The plan also allows for the construction of six multiplex digital platform networks. Under international agreements and the Law on Communications, the Agency is obliged to rectify interference affecting neighbouring countries owing to the operation of transmitters in Bosnia and Herzegovina.

104. On that basis, the Croatian regulator has requested Bosnia and Herzegovina to shut down 175 of 743 transmitters in Bosnia and Herzegovina, and the Communications Regulatory Agency expects similar requests from Serbia and Montenegro, as both neighbouring countries plan the introduction of 5G. According to the Agency’s estimate, a complete shutdown of analogue transmitters by the end of 2021 would result in 58 per cent of Bosnia and Herzegovina households having no television reception, while 42 per cent would still have reception through cable providers.

105. Although the public broadcasting system, which consists of the three public broadcasting services – the State-level Radio and Television of Bosnia and Herzegovina, Radio-Television of the Federation of Bosnia and Herzegovina and Radio-Television of Republika Srpska – is a licence holder for two digital platform networks, only the infrastructure for experimental broadcasting has been installed. The establishment of the two platforms was halted because Radio-Television of Republika Srpska conditioned the procurement of equipment necessary for digitalization on the transfer of ownership rights over the equipment to itself.