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Honouring of obligations and commitments by Bosnia and Herzegovina

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Report

Committee on the Honouring of Obligations and Commitments by member States of the Council of Europe (Monitoring Committee)

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Summary

The report welcomes the progress towards a functioning pluralist democracy and a state governed by the rule of law and respect for human rights, which was made by the authorities of Bosnia and Herzegovina in its first two years of membership in the Council of Europe. The Parliamentary Assembly notes that there have been improvements in the functioning of state level institutions but that the process of transferring a number of competencies from Entity to State level to create a modern functional state remains slow and painful.

Bosnia and Herzegovina fulfilled almost all major formal commitments due within a year of the accession, including the accession to key human rights treaties, the implementation of constitutional amendments and adoption of several laws in the field of justice and education. This must now be followed up with a concrete implementation of the adopted legislation and compliance with Council of Europe standards, notably in the field of education. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) also needs to be improved.

The Assembly regrets that much of the progress achieved in the last two years was a result of the constant pressure by the international community, and in particular the High Representative. It recalls that a key objective of Bosnia and Herzegovina's membership in the Council of Europe was to promote domestic ownership and responsibility for reform. Before the responsibilities for running the state are completely transferred to the domestic authorities, the country's leadership will however have to demonstrate a higher degree of political maturity and improve mutual readiness for dialogue and consensus.

The monitoring procedure should continue until the Bosnian authorities achieve further progress in the compliance with general obligations and specific commitments resulting from Council of Europe membership.

I. Draft resolution

1. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002. On its accession, it accepted the obligations incumbent on all member states under Article 3 of the Statute: compliance with the principles of pluralist democracy and the rule of law and respect of human rights and fundamental freedoms. At the same time, it entered into a number of specific commitments which it agreed to honour within set deadlines and which are listed in [Opinion No. 234 \(2002\)](#) on Bosnia and Herzegovina's application for membership of the Council of Europe.
2. The Parliamentary Assembly welcomes the slow but steady progress towards a functioning pluralist democracy and a state governed by the rule of law and respect for human rights which has been made by the Bosnian authorities in the first two years of membership of the Council of Europe.
3. For the first time since the end of the war, the October 2002 general elections were administered by the domestic authorities themselves and not by the OSCE. Given the country's unique constitutional framework, they were largely in line with international standards for democratic elections. The Assembly regrets, however, the lack of progress in the review of the electoral legislation which should, in line with Council of Europe principles, end the constitutional discrimination of all those not belonging to one of the three constituent people. The Assembly welcomes the recent constitutional changes allowing for direct election of municipal mayors and expects that the local elections scheduled for October 2004 will be free and fair.
4. Bosnia and Herzegovina fulfilled almost all major formal commitments due within a year of accession, including the accession to key human rights treaties, the implementation of constitutional amendments and the adoption of several laws in the field of justice and education. This must now be followed up with a concrete implementation of the adopted legislation and compliance with Council of Europe standards.
5. As regards the commitments due within two years of the accession, the Assembly calls for speedy ratification of a number of conventions which were signed on 30 April 2004 and 11 May 2004 but have not yet been ratified. It also urges Bosnia and Herzegovina to sign and ratify without further delay the European Charter for regional or minority languages.
6. In the past eighteen months there has been a surge in legislative activity which produced new laws in key areas of reform and notably the adoption of a new criminal code and a code of criminal procedure. In addition, a new state level High Judicial and Prosecutorial Council will soon be set up, the process of reappointment of judges and prosecutors is about to be completed and the court restructuring is underway. In the field of education, state level framework laws on primary, secondary and higher education were prepared. A major defence reform was carried out, laws on merging the Entities' intelligence and security agencies or customs administrations were adopted and the Chamber within the state court dealing with serious economic crimes, corruption and trafficking has started to operate. Reform of the public broadcasting services is also underway.
7. Although Bosnia and Herzegovina may now have a number of laws that meet European standards, the Assembly is concerned by the undue delay in setting up the implementing bodies, caused also by the shortage of domestic professionals capable of administering the reforms.
8. The functioning of state level institutions has improved. The chairmanship of the Council of Ministers no longer rotates and new State level ministries, including a Ministry of Defence in December 2003, have been created. The Assembly stresses that the slow and undoubtedly painful process of transferring competencies from entity to state level to create

a modern and functional state will in the long term serve the interests of all citizens of Bosnia and Herzegovina.

9. The last period has also seen an unprecedented attempt at inter-party dialogue and co-operation between the constituent people which – in spite of being fragile - demonstrates that there is an alternative to perpetual confrontation and obstructionism which has so far dominated Bosnian politics. However, the country's capacity to reform is impeded by the lack of human and other resources at state level and the overstaffing at entity and cantonal level. Furthermore, there is a lack of proper training and merit-based recruitment. The co-operation and co-ordination between the different - and far too numerous - levels of authority is generally too low.

10. The Assembly regrets that much of the progress achieved in the last two years was a result of the constant pressure by the international community, and in particular the High Representative. It recalls that a key objective of Bosnia and Herzegovina's membership of the Council of Europe was to promote domestic ownership and responsibility for reform. The Assembly notes that during the last year the number of laws imposed and the number of domestic officials dismissed by the High Representative has decreased. The Assembly urges the High Representative to continue with this trend and in particular to stop the practice of removing officials, including judges and elected representatives, from office. The Parliamentary Assembly expects the Council of Europe to stand ready to assist BH in all its efforts to build a peaceful, democratic, viable and sustainable state but before the responsibilities for running the state are completely transferred to the domestic authorities, the country's leadership will have to demonstrate a higher degree of political maturity.

11. The Assembly stresses that the functioning of the complex political and institutional system set up by the Dayton agreements requires a higher degree of mutual readiness for dialogue and consensus and, most importantly, a sense of common interest. While it appears that the time is not yet ripe for changing the existing constitutional set up – widely acknowledged as excessively complicated - the Assembly nevertheless calls on the domestic authorities and the political forces in the country to engage in a constructive dialogue on this issue.

12. The Assembly therefore calls on all political parties in the country to go beyond the sectarian political divides and to put the interests of citizens first. It deeply regrets the obstruction of certain cantons in the Federation which, more than a year after the passing of the Framework law on primary and secondary education, have so far refused to comply with the requirement of at least administrative reunification of schools. The Assembly also deeply regrets the Bosnian Croat parties' opposition to the adoption of a state level legislation on higher education. The Assembly also calls on the domestic authorities to actively co-operate in order to achieve complete reunification of Mostar, following imposition of its new Statute by the High Representative.

13. As regards refugees and internally displaced persons, the Assembly notes with satisfaction that, almost nine years after the war, around one million people have returned to their pre-war homes or elsewhere in Bosnia and Herzegovina and that implementation of property laws reached 93% throughout the country. It calls on the domestic authorities and international donors to pursue their efforts in order to achieve sustainable return. It hopes that Bosnia and Herzegovina's accession to the Council of Europe Development Bank will further enhance this effort. The Assembly is, however, preoccupied by the fact that there are still one million persons that have not returned and are unlikely to do so now.

14. The Assembly regrets that the fate of thousands of people who disappeared during the war is still unknown. It calls on the authorities to do their utmost to alleviate the families' grief and to co-operate fully with the Srebrenica Commission that was set up in December 2003.

15 The Assembly urges the authorities, especially in the Republika Srpska, to fully cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) and to take concrete action to arrest and transfer to The Hague both MM. Karadzic and Mladic, as well as other persons indicted and not yet in the custody of the ICTY. The support apparently enjoyed by these war criminals in certain parts of the country is an insult to the memory of the victims and a major obstacle to reconciliation.

16. The Assembly also urges the domestic authorities to continue to develop respect for and protection of individual human rights throughout the country, to provide the necessary support and finances to state level institutions such as the Constitutional Court and the state court, to ensure full compliance with all judicial decisions and to speed up the merger of the three existing Ombudsman institutions into one single state level institution with branch offices in the Entities and in Brcko district.

17. The Assembly decides to continue the monitoring procedure until the authorities of Bosnia and Herzegovina achieve further progress in the compliance with general obligations and specific commitments resulting from Council of Europe membership.

II. Draft recommendation

1. Referring to Resolution ... (2004) on honouring of obligations and commitments by Bosnia and Herzegovina, the Assembly considers that Bosnia and Herzegovina must continue to benefit from the Council of Europe's assistance and co-operation programmes in order to undertake and implement the reforms necessary to strengthen pluralist democracy, the rule of law and respect for human rights.

2. The Assembly therefore recommends that the Committee of Ministers:

i. pursue its assistance and co-operation programmes in order to assist the authorities of Bosnia and Herzegovina in their efforts to ensure compliance with European principles and standards, in particular in the fields of human rights, the rule of law, pluralist democracy and education ;

ii. continue its assistance in view of the merger of the existing Ombudsman institutions;

iii. continue its co-operation with the European Commission in the framework of the Joint Programmes for Bosnia and Herzegovina;

iv. maintain Council of Europe field presence in Sarajevo and possibly envisage the opening of a branch office in Banja Luka;

v. invite the authorities of Bosnia and Herzegovina to make best use of Council of Europe membership, in particular in forwarding its future draft legislation for Council of Europe expertise;

vi. invite the authorities of Bosnia and Herzegovina to take full advantage of its accession to the Council of Europe Development Bank,

vii. ask its member states to consider assistance by way of human, material and financial resources to support the Bosnia and Herzegovina Constitutional Court in particular its human rights commission, as well as the future War Crimes Chamber within the State Court.

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I. INTRODUCTION

A. THE MONITORING PROCEDURE

1. In becoming a member of the Council of Europe on 24 April 2002, Bosnia-Herzegovina consented to honour the obligations placed on all member states under Article 3 of the Organisation's Statute, together with a number of specific undertakings set out in [Opinion 234 \(2002\)](#) on Bosnia-Herzegovina's application for membership of the Council of Europe. With a view to ensuring compliance with these commitments, the Assembly decided, pursuant to [Resolution 1115 \(1997\)](#), to closely monitor the situation in Bosnia and Herzegovina as from its accession. It is to be noted that the Committee of Ministers of the Council of Europe, with a view to continuously adapting the co-operation and assistance programmes for Bosnia-Herzegovina, also decided to monitor the situation closely, on the basis of a quarterly report by the Secretary General.

2. In accordance with Resolution 1115 (1997) Mr Surjan (Hungary, EPP) and Mrs Akgönenç (Turkey, EDG) were appointed co-rapporteurs for Bosnia-Herzegovina. Mrs Akgönenç was replaced in January 2003 by Mrs Shakhtakhtinskaya (Azerbaijan, EDG). Mr Surjan was a member of the *ad hoc* delegation of the Assembly that observed the elections in October 2002 and undertook the first monitoring visit alone in December 2002. Both co-rapporteurs visited BH in May 2003 and had meetings with the various authorities in Sarajevo, Mostar, Banja Luka and Brcko.

3. This is the first report to be presented by the Monitoring Committee to the Parliamentary Assembly to take stock on the progress achieved by Bosnia-Herzegovina in honouring the obligations and commitments accepted during its first two years of membership of the Council of Europe.

4. This report is largely based on the interviews and the information obtained during our visits to Bosnia-Herzegovina from 1 to 4 December 2002 and from 19 to 24 May 2003. It also takes account of subsequent developments.

5. We extend grateful thanks to the Bosnia-Herzegovina parliamentary delegation for the excellent organisation of our visits and their hospitality. We were able to hold extremely frank discussions at all levels. Our thanks are also due to Dr. Sonja Moser-Starrach, Special Representative of the Secretary General of the Council of Europe in Bosnia-Herzegovina and her staff for their active assistance. We also benefited from the exchange of views held by the Monitoring Committee in January 2003 with the High Representative, Lord Paddy Ashdown.

B. THE CONSEQUENCES OF THE 1992-1995 WAR

6. In the region, Bosnia-Herzegovina (BH) [1] is the country that paid the heaviest price in the violent disintegration process of the former Yugoslavia. Out of a pre-war

population estimated at around 4.4 million people, the 1992-1995 war killed more than 230 000 people (of which 20 000 children) and displaced a total of 2.2 million people. 800 000 were internally displaced and 1.1 million fled the country. Around 30 000 people went missing. The country is still infested with 1.2 million unexploded mines that kill or maim around 200 people a year. More than a third of the housing was completely destroyed as well as major parts of the infrastructure. Sarajevo was under siege, shelled and bombed for 44 months, its population victim of sniper shootings, and some of the worst massacres committed in Europe since the Second World War happened in BH.

7 BH faces numerous challenges: it has not only, as was the case in other post-communist countries, to undergo a double transition, from communism to democracy and from a planified economy to a market economy. In addition, in a country where the three main ethnic communities were at war against each other, the mere creation of a desire to build a common future presents a difficult task after all the grief and suffering, and after all the atrocities that were committed. We think that this should be borne in mind when assessing the progress achieved since the end of the war in 1995. Reconciliation and trust cannot be imposed: the healing of minds and hearts will take time.

8. The present report will concentrate to a large extent on the functioning of institutions in BH because of the very special situation created by the Dayton Peace Agreements (DPA) signed in Paris on 14 December 1995, which set out the conditions for peace. Annex 4 to these agreements, dealing with the Constitution of Bosnia and Herzegovina, recognizes its existence as a state under international law, composed of two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. Annex 10 to the DPA creates the Office of the High Representative (OHR), who is the chief civilian peace implementation agency in Bosnia and Herzegovina and declares him the final authority in theatre to interpret the agreement on the civilian implementation of the peace settlement. Although BH is recognised as a sovereign state, with democratically elected institutions, it is undisputed that the international community, and especially the High Representative (HR), continues to exercise significant executive, legislative and judicial powers within the country.

II. THE TOP PRIORITY: OVERCOMING THE PAST

A. MISSING PERSONS, REFUGEES AND INTERNALLY DISPLACED PERSONS (IDPs)

1. Missing persons

9. Around 30 000 persons went missing during the conflict. The International Red Cross and the International Commission for Missing persons (ICMP) have done an unprecedented job in trying to locate, exhume and identify missing persons and to alleviate their families' grief. To date mortal remains of around 17 000 people^[2] have been identified, through an exacting process, made possible only by advances in DNA technology and a massive database of 100 000 blood samples provided by relatives. The identification process has also been hampered by the existence of so-called secondary mass graves: in an attempt to destroy evidence, bodies had been moved by construction machines to new mass graves, damaging the remains by dismembering and mixing them. This was the case for example in the biggest mass grave ever investigated in BH, near Zvornik, where exhumations conducted in 2003 allowed for recovery of 481 complete or relatively complete bodies.

10. However to date the process of recovery and identification of mortal remains is still administered by entity-level commissions on missing persons and is coordinated by the ICMP, in a procedure known as the Joint Exhumation Process (JEP). The practice in BH of segregating the search for the missing by ethnic, religious or national group, whereby, for example, the Federation commission could only conduct an exhumation in RS on condition

of reciprocity, has been replaced by a somewhat more cooperative approach and both entity level commissions now receive funding from the Entities.

11. We believe there is clearly a need to provide BH with a durable mechanism at State level to address this issue and to depoliticize it. The ICMP as early as August 2000 proposed the creation of a Missing Persons Institute (MPI) with a view to merging the existing two entity level commissions. Only on 4 June 2003, however, did the members of the Presidency recognize the need for a State-level institution and agree unanimously on a decision for BH to become a co-founder of the MPI, along with ICMP. This requires the passing at state level of a law on missing persons. We have heard with satisfaction that such a law has been prepared (it was presented by Human Rights and Refugees Minister Kebo at a public debate on 12 December 2003) and should go into parliamentary procedure soon. This law for BH acknowledges that families of the missing have the right to know the fate of a loved one and the right to demand answers from their own government, regardless of the ethnic, religious or national origin of the person missing; it will bring more rights to family members of the missing, and the government will need to establish funds for them. These persons are often women who have lost their husbands or fathers, and still find themselves, as single heads of households, unable to sign legal documents, transfer property or claim benefits and inheritances.

2. Return of refugees and internally displaced persons (IDPs)

12. The overall population of BH was 4.4 million before the war, based on the 1991 census. It is estimated today at around 3.8 million.

13. More than eight years after the signing of the Dayton Peace Agreement (DPA), it is uncontested that enormous progress in the return of BH refugees and IDPs has been achieved, with close to one million refugees and IDPs having returned to BH or to their pre-war homes in BH as at the end of March 2004, out of an estimated 2.2 million persons forcibly displaced during the war. Significantly, these returns include some 437,000 so-called minority returns as opposed to the so-called majority returns who returned to municipalities where their own constituent people of BH are in a numeric majority. One should note however that there are significant differences in return figures between the Entities or within particular areas of BH and that, according to the authorities, funds for reconstruction are not always evenly distributed to returnees throughout BH

14. These return figures provide the clearest indication to date that the demography of the region and BH specifically has been altered again in line with Annex VII of the DPA, which underlined the 'right to return' for all those displaced in the war who wish to do so. It is not exaggeration to state that the implementation of the right to return is the most remarkable achievement of the DPA, even if it is still a success story in the making.

15. There was a significant drop in the number of returns in 2003: only around 54,000 people returned, down from a peak of around 107,000 people in 2002. This may indicate that, some eight years after the end of the war, the bulk of people who wanted to return have now done so^[3], with the remainder having received foreign passports and created their homes elsewhere. But there is also the very major issue of sustainable return, of rebuilding houses^[4] and schools, of access to health care, jobs and education. Funds earmarked for refugee return amounted to around 90 to 95 million USD in 2003 (one third of this amount coming from the BH Government) but foreign aid is drying up and the UNHCR operation will scale down considerably as of 2004.

16. Moreover, we were informed by UNHCR that a large number of persons still remain displaced in the region as of today, including some 105,000 refugees from BH still residing in neighbouring Serbia and Montenegro (101,350 at end July 2003) and Croatia (4,068 at end July 2003), and some 337,000 IDPs still registered as displaced within BH, many of whom are still in need of a durable solution. These figures include some 5,000 BH refugees

still living in deplorable conditions in Collective Centres (CCs) throughout the region as well as some 800 IDPs still in CCs in BH, for whom individual tailor-made durable solutions will have to be found before these centres can be closed.

17. Although the overall security situation in BH is very good, it is to be noted that at least three return related homicides were reported in 2003 in Bugojno, Mostar, and Srpsko Gorazde as well as other violent attacks against returnees and their property. The number of serious mine accidents in return areas has also increased during the first months in 2003 with 37 mine victims already recorded by July 2003 (as compared to 72 in 2002).

3. Property repossession

18. A crucial element underpinning the return of BH refugees and internally displaced, especially over the past years, has been the successful implementation of the property laws in BH, thereby enabling an increasing number of refugees and IDPs to return home and repossess their property. By July 2003, the International Commission for Real Property Claims (CRPC), a body created under Annex 7 of the DPA[5], had issued 302,109 property decisions. These decisions provide incontrovertible proof of rights to property and legally require that domestic authorities free up occupied houses so that decision-holders can return. The CRPC, which closed down at the end of 2003, bequeathed a number of outstanding claims to the BH authorities. This will of course add to the burden on the municipalities that will thus still have to enforce property decisions for some 30,000 families/claimants during 2004 and beyond. We call on the domestic authorities to ensure the full implementation of the property laws and to fully abide by the decisions of the former CRPC.

19. We were told that Property Law Implementation had reached 93 per cent throughout BH as of the end of February 2004, and that the local housing authorities in BH had solved 201,902 of the total of 220,225 property claims recorded and had issued almost 99 per cent of first instance decisions. The implementation ratio in Brcko District remained at 96 per cent. Full implementation of the property laws was an accession commitment and we congratulate the BH authorities and the CRPC on this so far remarkable achievement.

20. While the significance of the achievement to date cannot be overemphasized, it represents only the beginning in the return process for those refugees and IDPs fortunate enough to have habitable property restored to them. The outstanding claims may also provide at least in part an explanation for the slowdown in recorded returns in 2003, as compared with 2002, coupled with the lack of adequate reconstruction assistance for destroyed properties. In addition, we have heard from reliable sources that the successful implementation of the property law is not necessarily proof of refugees' return to their pre-war homes: in many instances property is being repossessed by their rightful owners only to be sold or exchanged.

21. The BH Council of Ministers' and the international donor community's support for reconstruction activities have not kept pace with the recorded return trends. At the beginning of 2003, the overall housing shortage in support of refugee and DP returns was estimated by the BH authorities to be in the order of some 50,000 housing units while the resources for 2002 fell far short of the 160m € required for building 16,000 housing units for persons who had already returned.

22. At the beginning of June 2003, the State Commission for Refugees and Displaced Persons established the Joint Project Fund for 2003 with commitments from both Entities and the State of some KM 14 Million, to which Brcko District might add a contribution of KM one million, supplemented by a first contribution of the European Commission of KM 4 Million, subject to the satisfactory disbursements of these funds in 2003. To meet the demand of the displaced population for housing, it is vital that new and additional sources of funding are vigorously pursued. While the accession in December 2003 of BH to the Council

of Europe development Bank (CEB) represents such an opportunity, it is important that BH rapidly proposes some projects. None have been submitted to the Bank to date (May 2004). We therefore urge the authorities to prepare project proposals as soon as possible,

23. The BH authorities also have to address the problem of refugees within BH: some 19,477 Serb refugees formerly resident in Croatia still remain registered as refugees in BH, predominantly in the Northwest of the RS. Their situation will remain precarious for some time to come, chiefly due to their uncertain legal status in BH and obstacles remaining to their eventual return to Croatia and the return of their property there. While some progress has been registered in Croatia over the past year or so, during which some 3,500 Serbs from Croatia have returned to Croatia from BH, much more needs to be done to enable this population to return home and repossess their properties in Croatia. Of the 3,045 refugees from Serbia and Montenegro (SCG) re-registered by the authorities with UNHCR's assistance in mid-2002 - almost all of whom reside in the Federation of BH - 75 per cent continue to reside in Sarajevo Canton. The majority of this population are Roma from Kosovo, for whom no immediate solution appears to be in sight. We hope that the agreement on refugee return signed on 6 October 2003 between BH and Serbia-Montenegro will provide practical solutions in the near future.

24. Finally, notwithstanding the adoption of a new Law on the Movement and Stay of Aliens and Asylum in July 2003 (also an accession commitment), we regret the continued lack of national capacity providing for a functioning asylum system in BH: no bylaws have been passed and UNHCR is continuing to conduct refugee status determination under its mandate. At the end of May 2003, some 750 persons had pending requests for asylum in BH, the majority coming from Serbia and Montenegro and "the former Yugoslav Republic of Macedonia".

4. Mines and operation harvest

25. We were told that there are an estimated 1.2 to 3 million unexploded mines in BH. Many mine fields are not indicated on any map. By December 2003, mines had killed a total of 1,454 people since 1996. The BH Mine Action Centre, created following adoption of the de-mining law at State level in February 2002, depends largely on foreign donations and it will take another 70 years at the present rate to clear all the mine infested territory. There are plans for local authorities to take over from the Mine Action Centre in 2006 but, again, lack of domestic funding and a drop in foreign donations[6] will inevitably slow down the process. One of the solutions envisaged is sending BH soldiers, by now well trained and experienced, to other countries in need of de-mining during the winter months when nothing can be done in BH. Mines are not only an obstacle to return, they also impede agriculture and the development of tourism. In respect of weapons and ammunition, so-called "harvest operations" still have to be carried out by SFOR on a routine basis in order to collect weapons and ammunition from the population and destroy outdated and dangerous equipment.

B. WAR CRIMES

1. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)

26. All states of former Yugoslavia are required[7], by virtue of Article 29 of the ICTY statute, which was enacted by the UN Security Council under Chapter VII of the UN Charter, to cooperate with the Tribunal in both the investigation and the prosecution of persons accused of committing serious violations of international humanitarian law lying within the Tribunal's jurisdiction. Full and active co-operation with ICTY in handing over persons accused of war crimes, crimes against humanity and genocide was therefore also an accession commitment of the Council of Europe. We have to report that no substantial progress has been made, at least in one of the Entities: not one single suspect of war

crimes was handed over to the ICTY by the Republika Srpska. Furthermore, there is extremely poor co-operation between the Entity police forces in facilitating the arrest of war crimes suspects. As regards the responsiveness of the RS in relation to Federation Ministry of Internal Affairs' requests for the issuance of arrest warrants for war crimes suspects believed to be residing in the RS, it is to be noted that only seven such requests have been made to the RS Ministry since 1999, with one response. While Interpol arrest warrants initiated by either the RS Ministry or Federation Ministry are sent out to every country in the world, they are not exchanged between the Entity police forces.

27. Since 1996, SFOR has arrested 25 people, which is not so many. Searches were conducted in both the Federation Intelligence and Security Service (FOSS) on 14 October 2003 and RS Intelligence and Security Service (OBS) on 15 October 2003 for different reasons. However, the common element relates to obstructing the implementation of the DPA. While SFOR inspected the FOSS premises, for information on sources and collection of information, ICTY investigators conducted the OBS searches with the assistance of SFOR. The operation was carried out in 11 different locations throughout Republika Srpska in order to locate and seize documents which the RS authorities had consistently failed to provide to ICTY despite their legally binding obligation to co-operate with the Tribunal. In his annual report for 2003 to the Security Council, the President of the ICTY noted that there was still much room for improvement at all levels of co-operation with the Republika Srpska generally but that co-operation had improved to some extent with regard to access to documents (archives) and witnesses, namely former military and police personnel. He considered that the co-operation of the Federation of Bosnia and Herzegovina remained satisfactory.

28. On 18 April 2004, the RS police carried out on its own an operation in Visegrad with a view to arresting two war criminals indicted by the ICTY. During this operation, the brother of one of the indictees was killed in circumstances that will require investigation. Three police officers were immediately suspended.

2. Arrest of Karadzic and Mladic

29. More than 8 years after the end of the war, the most wanted suspected war criminals remain at large. Carla Del Ponte, the ICTY Chief Prosecutor, has repeatedly stated that the ICTY will not close^[8] down unless Karadzic and Mladic are arrested and brought to trial. While Karadzic is believed to be hiding in eastern RS, Mladic is allegedly living in Belgrade. On 6 October 2003, Pierre Prosper, US Ambassador-at-Large for War Crimes Issues, again stated that outstanding war crime indictees, particularly Radovan Karadžić, must be extradited to the ICTY in order to achieve progress in BH and full integration into the European Union. Referring to BH's candidacy in the NATO Partnership for Peace, the former NATO Secretary General, George Robertson, has also repeated this on a number of occasions.

30. On 7 October 2003, Republika Srpska (RS) President, Dragan Cavic and Ambassador Prosper signed a joint statement calling on all indicted war criminals to surrender immediately or to risk arrest by the RS Police or SFOR. Cavic and Prosper stated that "by working together and bringing all suspected war criminals to justice, we shall help the establishment of a lasting peace in BH, prosperity and a better life for all citizens in BH". A similar statement was issued on 14 April 2004 jointly by officials of the State and both Entities. This appears to date to be nothing more than lip-service paid to legitimate international pressure. When we met with President Cavic in May 2003, we also tried to convince him that the lack of progress on this issue was a major obstacle on the road to European integration but we were again given the official answer, i.e. that the RS authorities don't know where either Karadzic or Mladic are and that it was up to SFOR to find and arrest them. SFOR has conducted five raids during the last two years in an attempt to arrest Karadzic. The most recent ones were carried out in Pale, a small town 16 km from Sarajevo, in January 2004 and on 1 April 2004. The first one led to the arrest of two of Karadzic's former bodyguards and was considered a success with regard to collection of

information. During the second one, however, an orthodox priest and his son suffered serious blast related injuries while SFOR raided their home. We hope that the circumstances of this operation will be seriously investigated and the results made public.

31. Karadzic is still considered by some people in the RS as a national hero and allegedly benefits from support, including from the financial point of view. Both the EU and the US have taken measures to fight those who are believed to aid and abet war criminals in the Balkans: President Bush has issued an executive order blacklisting around 150 individuals and banning them from entering the US or conducting financial transactions there. The EU also banned 12 persons. In BH, since March 2003, the HR froze 26 individuals' or companies' bank accounts[9] and dismissed six people. Two of his decisions caused uproar in the SDS: on 10 February 2004, he decided to remove *inter alia* Mirko Sarovic, one of the former members of the Presidency, who had had to resign from this post in April 2003, from his position as vice-president of the SDS and to freeze all his bank accounts. This led the next day to the collective resignation of the SDS governing board. On 2 April 2004, the HR further decided to freeze all payments to the SDS from State to municipal level due to failure to cooperate fully with the ICTY. Moreover, because of suspicions that the SDS has not ceased its financial support to war criminals and crime syndicates, it was given until 19 April to present the HR with a financial report. On 7 May 2004, the HR stated that the report he had received was inadequate, incomplete and at times deceitful but that he would pass a final decision only after auditing all the SDS financial activities, including at local level.

32. We strongly urge the authorities in the RS to fully and effectively cooperate in the search and arrest of Karadzic and Mladic. Whether they like it or not, a large number of the atrocities committed in BH during the war are to be attributed to the Serb forces and the time has come to acknowledge this. Before being able to forgive, justice must be done.

3. The Srebrenica massacre

33. The Srebrenica massacre, which took place in July 1995 in a UN safe haven in and around the town of Srebrenica, is one of the worst atrocities committed since the Second World War: around 7,000 Bosniak boys and men were executed by the Serbian forces and their bodies thrown into mass graves. Although the ICTY already sentenced three individuals[10] for their role in the Srebrenica massacre, there was generally a low degree of acceptance of their responsibility by the RS authorities. The RS has consistently tried to minimize the number of victims, dispute the fact that they were civilians or even cast doubt on the reality of the event. This has changed, in particular since the Human Rights Chamber (HRC) issued its decision on the Srebrenica case on 7 March 2003. The Chamber expressly recognized the continuing pain and suffering of the relatives, concluding that the Republika Srpska had done "almost nothing to clarify the fate and whereabouts of the presumed victims of the Srebrenica events, or to take other action to relieve the suffering of their surviving family members, or to contribute to the process of reconciliation in Bosnia and Herzegovina." It further noted that the violations of articles 3 and 8 of the ECHR "reflect a total indifference by the authorities of the Republika Srpska to the suffering of the Bosniak community".

34. In this case, brought by 49 immediate relatives of the "disappeared", the Chamber ordered the Republika Srpska to disclose immediately all information relevant to establishing the fate and whereabouts of their relatives and on the location of mass graves containing the bodies of Srebrenica victims. Furthermore, the Republika Srpska was ordered to conduct an investigation into the events at Srebrenica and to publish its findings by the beginning of September 2003.

35. The Republika Srpska was also ordered to pay compensation for the collective benefit of all applicants and families of Srebrenica victims, in the form of a lump sum of 2 million Konvertible Marks (approximately 1million Euros) to the Foundation of the

Srebrenica-Potocari Memorial and Cemetery (where the first burials of 600 Srebrenica victims took place on 31 March 2003). They must then make four additional payments of 500,000 KM each in the next four years to the same Foundation.

36. On 15 October 2003, the Human Rights Chamber (HRC) publicly welcomed the steps undertaken by RS authorities to investigate the events in Srebrenica of 10 to 19 July 1995. In their report, the RS authorities publicly conceded for the first time that most of the Bosniak men and boys arrested by Serb forces after the fall of Srebrenica were later executed in the region of Zvornik. The HRC positively assessed the plan for establishing and financing an independent commission consisting of experts who would be tasked with forwarding a comprehensive report on Srebrenica to the RS government. However, the HRC remained critical of the steps undertaken by the RS government to fulfil the Chamber's decision, stating that there was continued obstruction in handing over the necessary information from the military, police and intelligence services.

37. The independent Commission was established by the RS Government in December 2003, with international participation and its first interim report was presented on 14 April 2004. This report again illustrated systematic obstruction and inaction by the RS authorities. This was acknowledged by the RS Government who requested an extension of the deadline to mid-October. The HR however lost patience and chose forcible action: on 20 April he issued a decision dismissing the RS General Chief of staff and the Head of the RS Secretariat responsible for liaising with the ICTY. He also invited the RS to dismiss the Commission's chairman and announced that the jobs of the RS interior and Defence ministers would likewise be forfeited if their ministries did not start cooperating wholeheartedly with the Commission, which was given another two weeks to produce a report. The HR also decided that the Commission's final report must be completed by 11 June 2004, before the NATO Istanbul summit.

38. On 30 April 2004, the newly appointed head of the Commission announced that Republika Srpska institutions appeared finally to be ready to co-operate with the Commission and that they had submitted information relating to six heretofore unknown mass graves. It was confirmed that the information had been submitted to the commission by the RS army and interior ministry within the past fortnight. The commission was thus able to include this evidence in its second preliminary report dated 30 April 2004. Lord Ashdown's office reported that, on first reading, the Srebrenica Commission's second report did suggest that it had received important new information.

39. We strongly hope that the work of the Srebrenica Commission will be conducive to establishing the truth and to fostering reconciliation and we urge the competent authorities to fully cooperate with it.

4. Lawsuit before the ICJ

40. In 1992, the then existing State of Bosnia-Herzegovina^[11] started a lawsuit for genocide against the Federal Republic of Yugoslavia before the International Court of Justice in The Hague. The issue of who should finance this lawsuit was among the first disagreements expressed by the three member Presidency following the October 2002 elections: the Serb member simply opposed any funding by the State budget^[12].

41. Even the legality of the BH lawsuit against what is now Serbia and Montenegro (SaM) continues to be questioned. Borislav Paravac, member of the BH Presidency, contends that the charge is not legal or grounded since it was voted for despite Serb opposition. Therefore, he has announced renewed discussions into the matter. Foreign Minister Mladen Ivanic also contends that BH's lawsuit against SaM for genocide was not a lawsuit filed by BH institutions but by the Federation of BH. Nikola Špiric, Speaker of the BH House of Representatives, has called for the lawsuit to be debated in the BH Parliamentary Assembly. On 1 October 2003, the Republika Srpska National Assembly formally adopted a

declaration against the lawsuit, which has been viewed by the Bosniak deputies of the RS parliament as undermining their vital national interests.

42. We mention this only as an illustration of how much still needs to be done to bring about reconciliation and mutual trust in this country. More than eight years after the war, it still seems difficult to set up, on the basis of the South African model, a Commission for Justice, Truth and Reconciliation, as has been suggested on a number of occasions by Carla Del Ponte and also by Jakob Finci, the present head of the Civil service agency and a respected Jewish leader in BH.

5. Prospects for establishing a domestic war crimes court

43. There are quite a number of domestic war crime trials going on in Bosnia-Herzegovina, on the basis of the Rules of the Road agreed upon with ICTY on 18 February 1996, according to which any domestic order, warrant or indictment for war crimes must first be reviewed by the ICTY Prosecutor. During 2002, the ICTY Prosecutor's office reviewed 192 such files involving some 1,134 suspects. There are a dozen domestic war crime trials pending in the Federation and only one in Republika Srpska.

44. In the spring of 2003, the ICTY put in place a major element in the external component of its completion strategy by reaching an agreement with the Office of the High Representative for Bosnia and Herzegovina concerning the establishment of a special chamber for war crimes prosecutions in the State Court of Bosnia and Herzegovina. The establishment of that chamber, endorsed by the steering board of the Peace Implementation Council on 12 June 2003, should enable the Tribunal to begin transferring some cases of mid- and lower-level accused by the end of 2004 or early 2005. The Prosecutor remains committed to ceasing investigations by the end of 2004. As the U.N. tribunal struggles to handle dozens of cases in just three courtrooms, the special court in Bosnia will help meet deadlines for wrapping up all trials by 2008 and appeals by 2010. ICTY president Theodor Meron has already warned that this deadline is overly optimistic with 17 suspects still at large and more indictments expected.

45. This is a very welcome development but extensive funding will be required in order to make this special chamber operational. The court will need its own security staff, detention facility, witness protection program and investigators. A number of laws need to be passed, in particular on witness protection, and a State prison will have to be built. On 30 October 2003, the United States and 29 other countries pledged 18.4 million USD to create this war crimes court. It is to be noted, however, that the money promised so far meets the requirement for the first two years only: around 44.5 million USD will be needed in the first five years. The new tribunal - scheduled to open in 2004 - will have a staff of around 100, with seven prosecutors and 11 judges. It will initially be run by international employees, but power will gradually be handed over to Bosnian officials and the court will become fully national after five years.

C. REUNIFICATION OF MOSTAR

46. The city of Mostar is famous for its Old Bridge, a marvel of medieval ottoman craftsmanship. This bridge was destroyed during the war and was reconstructed with the help of UNESCO and donations from various governments. Rebuilding the bridge is also seen as a symbol for the reunification of the city, which has remained divided since the war. The city itself has also been seriously damaged and we were struck by the number of buildings still bearing the marks of the war.

47. The Interim Statute of the City of Mostar, issued on 7 February 1996, was a direct result of the Washington Agreement (confirmed by the Dayton Peace Agreement) and of its basic purpose of ending the bloodshed in Bosnia and Herzegovina. Unfortunately, virtually all of the provisions of the Interim Statute have remained dead letters, and none have been

implemented in accordance with its original intentions. Mostar has in the past 10 years become emblematic of the political divisions and structural inefficiencies that have often prevented reform and progress in Bosnia and Herzegovina.

48. Today, eight years after 7 February 1996, instead of a normal or close to normal situation, the City of Mostar is still physically divided into two parts, so called "east" and "west," with six City-Municipalities (3 Croat and 3 Bosniak) established and organized according to the warring demarcation lines, exclusively on national grounds. The City-Municipalities have become virtual fiefdoms, which, without any common standards and criteria, administer natural, economic, social and other resources.

49. The central City Administration consists of a City Council with 29 councillors, employs 124 officials and employees and spends significant budget resources, yet in reality performs virtually no tasks useful to the citizens or for the functioning of the City. At the same time, virtually identical municipal administrations have been established within the six City-Municipalities, who employ over 550 people. As a result, Mostar today has divided institutions and functions in health and child care and in elementary, secondary and higher education; two universities; two financial, fee and tax policies; two spatial, urban and regulatory planning agencies overseeing the use and exploitation of natural resources; and a divided communal infrastructure (including public city transportation, water supply, sewage systems, fire protection systems, city waste facilities, environmental protection measures, etc.)

50. On 17 September 2003, the HR decided to set up a Commission for Reforming the city of Mostar, chaired by an international, Norbert Winterstein, to actively engage local authorities in determining the future structure, administration and functioning of Mostar, and to develop by December 2003 a long-term legal framework capable of ensuring that Mostar can develop as a normal, unified city in line with European norms and standards.

51. On 15 December 2003, the Chairman of the Commission presented a proposal for a new statute, which envisages Mostar as one unit of local self government without the current municipalities. The proposal envisages a single city municipality, while the current municipalities would become administrative and electoral districts. The Commission reached a consensus on several important issues, including the need for a single budget, a single law regulating the City and the importance of mechanisms to protect vital national interests. The Commission was unable to reach consensus on the status or structure of the City as a unit of local self-government, or on the design of the electoral system, but did propose several alternatives for consideration. None of them were considered to be acceptable by either the SDA or the HDZ. After last minute negotiations, the HR finally imposed the new Statute by decision dated 28 January 2004. It came into force on 15 March 2004.

52. We regret the fact that the decision on the organization of Mostar is again one that had to be imposed by the HR because of the lack of trust between the Bosniak and the Croat communities. We strongly urge both of them to cooperate in good faith as regards the implementation of this new Statute, which has become a matter of urgency in view of the municipal elections to be held in October 2004. According to the new Statute, a total of 35 councillors will be elected to the City Council, in which at least four representatives of each constituent people will be represented, as well as one of the group of "Others", but no constituent people will have more than fifteen councillors. The mayor will not be directly elected. The solution imposed by the HR aims at ensuring that none of the constituent people has a majority in the city Council. Whether this solution will be accepted in the long term as coherent with the democratic, direct and free will of the electorate remains to be seen.

D. THE BRCKO DISTRICT: A THIRD ENTITY?

53. The pre-war municipality of Brcko, located in the Posavina region of northeast Bosnia, owed its relative affluence in particular to its status as a commercial and transport hub providing links to the republics of Croatia and Serbia. Brcko's Sava river port, which served the Tuzla industrial and mining basin to the south, is BH's most important [13].

54. Ownership of the divided and strategically vital [14] Brcko municipality in north-east BH proved too contentious to settle at Dayton in 1995. The question was left for binding, post-war arbitration. The result, in a series of three arbitral awards between 1997 and 1999, was to establish a fully-fledged international administration separate from and more all-embracing than that of the High Representative in Sarajevo. The Final Award of March 1999 decreed that the three wartime municipalities should be unified as a neutral and de-militarized district under the direct sovereignty of the state.

55. On 8 March 2000, the first Supervisor, Robert W. Farrand, proclaimed the creation of the district and promulgated its statute. He proceeded to appoint an interim government and a 29-member assembly. These interim authorities are still in place. The Arbitral Tribunal left it to the Supervisor to decide when to call elections, but the Final Award does nonetheless require that they be held before the Supervisor can assure either the Peace Implementation Council (PIC) or the Tribunal that implementation is complete and secure. For the time being BH citizens from Brcko are the citizens of one of the Entities and are eligible to vote in that entity's elections.

56. The Final Award of the Brcko Tribunal established Brcko District as a self-governing territory in Bosnia and Herzegovina, with administrative, legislative and judicial powers. The Award requires the Brcko Supervisor to create a body of laws that will be applicable throughout the District, replacing the existing Entity legislation which applies on one side or the other of the former inter-entity boundary line. Former Brcko Supervisor Henry Clarke issued on 16 July 2003 a new Supervisory Order advancing the process of harmonizing and replacing Entity legislation in Brcko District.

57. Once seen as the most likely flashpoint for any renewed warfare in BH, Brcko has since prospered to such an extent that it is regularly and rightly invoked both as the shining example of international stewardship in BH and as a model for emulation by the rest of the country [15]. Brcko's reforms of the civil and criminal justice systems, of education and of municipal government have led the way in BH. There is allegedly a truly multi-ethnic police force in Brcko as well as a multi-ethnic school system. The establishments of fiscal discipline, a sensible and effective tax regime, and a business-friendly environment have resulted in significant foreign investment, a promising privatization program, and the highest average wages in the country. Unemployment is at 25 per cent as compared to 40 percent in the rest of BH. These reforms were perhaps easier to introduce in Brcko than in the rest of the country, because of its small size (the District has a population of only around 45 000 people) but it has also been argued that the international Supervisor has been able to be more effective, because he did not have to bother with elections and was given more extensive powers than the High Representative. Finally, and this seems to be much resented by the two Entities, Brcko directly benefits from the customs and excise duties levied on imports from Croatia.

58. Be that as it may, we have been very much impressed by what we saw and heard in Brcko during our visit [16] in May 2003, when we met the local authorities, including Mayor Kusic [17] and some of his deputies, and the speaker of the Brcko Assembly. We were shown the draft budget and informed of the future development projects. There clearly was optimism and the willingness to cooperate and we did not sense the guarded atmosphere that often still prevails in meetings with representatives of all three constituent people. Cooperation with former Supervisor Clarke was not always easy but was said to be very constructive, which he confirmed when we met him. Supervisor Clarke also told us that the main item on his agenda before leaving his post in November 2003 [18] was the drafting on an electoral code for Brcko, with a view to - finally - organize elections in the District, to be held at the same time as the municipal elections throughout the country in October 2004.

59. A draft of the Brcko District Election Law was presented to the Assembly on 5 June 2003, and adopted on 19 September, with one important amendment. The law is fully compatible with the Election Law of Bosnia and Herzegovina. All permanent residents of the District will be able to vote, whether they are currently living in the District or not. The District was not subject to the Constitutional Court decision requiring minimum representation of national groups in Entity parliaments – Brcko's three major groups are large enough to be represented without it. Nevertheless, in a gesture of their desire to include the smallest group, the Croats, the Brcko Assembly amended the draft law to include a provision for a minimum representation of three seats (out of 29) for each of the three national groups. This compares, for example, to the minimum representation of four seats in the much larger assemblies of Republika Srpska or the Federation.

60. Whether Brcko District is considered ready to take over its own fate is a matter for the Arbitral Tribunal to decide. How to fully integrate the District into the State of BH is one of the challenges facing the domestic authorities in the not too distant future.

E. FROM RECONSTRUCTION TO MARKET ECONOMY

61. Bosnia and Herzegovina's transition to a market economy has been undertaken in peculiar circumstances: the years immediately after Dayton were dominated by issues of security, reconstruction, refugee returns and primary peace-keeping, into which the International community has invested[19] around 5.1 billion USD. Peace and stability have now been re-established, and the country participates in the most important regional initiatives, including the Stability Pact and South East European Cooperative Initiative.

62. However, the extremely decentralized governing structure, in particular in the Federation of BH, with its intrusive party influence, bequeathed by Dayton, has produced an exceptionally unwieldy decision-making process, resulting in urgent economic reforms being put off. Against a backdrop of declining aid flows and a need to find solutions to bread-and-butter issues such as unemployment, low pensions and wages, political priorities have had to change. The economic and social situation in BH is still perceived by many as being disastrous: 2003 has been a year of considerable social unrest, with many strikes and demonstrations as people not only complain of low salaries and pensions but also demand the payment of arrears.

63. On the monetary side, BH has been successful. The currency board system that has been operational since 1997 has resulted in a trusted and stable currency. Thus, the Central Bank of BH, one of the few State-level institutions created by Dayton[20], is currently enjoying substantial foreign currency reserves, which could provide about three months of import cover. The KM has enjoyed remarkable stability against the Deutsche Mark and now the Euro, having remained fully convertible since its introduction, and the inflation rate in BH is low and stable, hovering in the 0.7 to 0.9 percent range since 2001.

64. Gross Domestic Product (GDP) has risen consistently since 1997 and official per capita GDP is now estimated at around 1,800 USD. At the same time, the data suggest that annual real GDP growth is around 5%. Economic growth, however, has slowed down to 3.3% in 2002, which is lower than in most other countries in the region, and well below the 6% necessary to return to the 1991 GDP level... by 2010.

65. As far as public finances are concerned, a positive trend has been recorded in all three levels of government in BH. While the State budgets have almost always been balanced, the Entity deficits of the 1990s have been all but eliminated. However, the various external obligations of BH amount to some 50 percent of GDP. More worrying is the growing current-account deficit that BH has been recording on a consistent basis since the end of the war. This deficit totalled more than 2,000 million USD in 2002 alone – an equivalent of some 40 percent of GDP. The deficit is indicative of the ailing domestic industrial base and its lack of competitiveness both at home and abroad.

66. Although international aid is diminishing, it still makes up around 9% of GDP, so any further reduction of foreign aid would cause serious problems. The country also relies to a great extent on frequent money transfers from citizens living abroad, which reach the aggregate amount of around 7% of GDP. Public expenditures are excessive (56% of GDP), while the allocations for salaries of the administration make up its largest part. More than half the companies are still state-owned and privatization has not been a success so far. Furthermore, audits carried out at the request of the HR have highlighted considerable mismanagement[21] of public utilities in both Entities, if not downright siphoning of their resources by political parties[22].

67. Unemployment, according to the official data, is around 41 %. The trade deficit is high, which threatens the macro-economic stability of the country: BH is importing four times more than it exports. The investment climate is still not good enough to attract more significant foreign investments.

68. There are also wide variations in the development level between the Entities, cantons and municipalities. This obstructs development and presents a threat to the political stability of the country. Spending on defence and security is still high (around 10.5% of GDP). Public services are inefficient, characterized by high level of corruption. The social protection system is inadequate and ineffective and soldiers and other war victims have priority over the general population[23]. We were also told that the country suffers worryingly from a brain drain: many of those who emigrated to foreign countries were educated people and a large part of the youth[24] sees no future in BH. We have seen long queues in front *inter alia* of the Austrian embassy in Sarajevo and we were told that around 100,000 requests for visas are submitted every year. Finally, for those that study abroad and would like to come back, the procedure to obtain recognition of their diplomas and qualifications is long, complicated and costly.

69. Eight years after the end of the war, BH is far from having a functional market economy: to date the country still has three separate customs administrations[25] and VAT will only be introduced in 2006. Exports, in particular of agricultural products, are hampered by the fact that there are no credible state level agencies for quality supervision and certification[26]. International transport of goods is difficult[27] and free trade agreements concluded with neighbouring countries make it cheaper to import goods than to produce them locally. The industrial capacity is outdated and not competitive.

70. The transition to a market economy is to a great extent slowed down by the institutional complexity in BH (see below). We believe however that creating a single economic space throughout BH is a necessity and should be a top priority for the domestic authorities.

III. BUILDING A COMMON FUTURE WITHIN THE DAYTON FRAMEWORK

A. INSTITUTIONAL COMPLEXITY OF THE DAYTON PEACE AGREEMENT

71. BH declared its independence from FRY in 1992, the Federation of BH was created following the Washington agreement in 1994 and the present state of BH is a result of the 1995 Dayton peace agreement. The DPA comprises 11 Annexes, including the State Constitution (Annex 4) and other provisions designed to build a peaceful, stable country.

72. The Peace Agreement established Bosnia and Herzegovina as a state comprising two Entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation of BH. It has often been said that the DPA ended the war but froze the conflict, that it acknowledged the forceful division of the country, by referring to the three constituent people, and that the institutions it provides for are totally unsuited to the development of a functioning democracy based on the rule of law. This is probably unfair but it is true that the institutional framework foreseen in the DPA is extremely complex.

73. In short, BH can be defined as an international *de facto* semi-protectorate in which the international authorities intervene when necessary. It is one of the most decentralised states in Europe. The following formula is sometimes used to sum it up: One State, 2 Entities, 3 constituent people, around 4 million inhabitants, 5 levels of authority^[28] and at least 6 international organisations taking care of everything.

74. The State of BH is composed of two Entities and one District:

- the Republika Srpska (RS), whose territory is located in the north-western part and in the eastern part of BH;
- a Federation of 10 cantons, grouping mainly Croats and Bosniaks. This entity is called the Federation of BH (FBH);
- the District of Brcko, which has a special statute since the 8 March 1999 arbitration award (see above).

75. The quasi-independence of the Entities, the weakness of the State and the constitutional necessity to ensure full equality at every level between the 3 constituent people have led to a situation where around 60 percent of the GDP is spent on maintaining state and entity apparatus: there are 14 prime-ministers, over 180 ministers, 760 members of various legislative bodies, 148 municipalities, 2 to 3 armies and 3 official languages with two alphabets.

76. Each Entity has its own Constitution, Government and bi-cameral Parliament, its own army, its own judiciary (including supreme and constitutional courts) and legal system as well as its own education system and tax and customs system. In the Federation the situation is even more complicated: each canton also has its own constitution, government and cantonal assembly and exclusive competences, for example in the field of education or internal affairs.

B. THE CONSTITUTIONAL DOGMA OF EQUALITY BETWEEN CONSTITUENT PEOPLE

77. On 19 April 2002 a constitutional reform was enacted in both Entities on the basis of the Mrakovica-Sarajevo Agreement concluded under the auspices of the High Representative, by the main political parties in the country. The crux of the reform was to revise the constitutions of the Federation and the Republika Srpska (RS) in accordance with the landmark decision issued in 2000 by the BH Constitutional Court in the constituent peoples' case.

78. The constitutional amendments aimed at giving equal status to the Bosniaks, Croats and Serbs in both Entities. In other words, as of the date of this reform, the RS is not exclusively a Serb entity anymore, the same applying to the Federation in the sense that it is not solely Bosniak and Croat. This reform aimed at ensuring a fairer distribution of posts among the constituent peoples in the Entities' governments, the administration and the judiciary. At the same time it also provided for a complex mechanism to allow representatives of one constituent people to invoke the vital interests' clause, under a procedure involving the Parliament's House of Peoples in each entity.

79. According to the corresponding accession commitment, this decision has been partly implemented: the House of Peoples in the Federation for example still lacks seven Serb delegates. Equality before the law of each constituent people has however led to collective rights being put before every individual's right in the country. We consider the constitutional discrimination of so-called "Others" as being very questionable: all other people other than Bosniak, Croat or Serb are simply called "Others" in the Constitution. They include not only minorities such as Jews or Roma but also everybody who does not wish to define him or herself as belonging to one of the three so-called "constituent" people.

80. Given the high number of mixed marriages before the war, a high number of people in BH have had to choose to define themselves as Bosniak, Croat or Serb. "Others" cannot stand for election to, for example, the State Presidency[29]. Reviewing the electoral legislation within one year of accession in the light of Council of Europe standards was an accession commitment. It has not been fulfilled. We note with satisfaction, however, that in view of the October 2004 local elections, the Federation Constitution was amended on 14 April 2004 to allow for direct election of municipal mayors for a four year term[30].

81. Apart from electoral discrimination we also regret that "Others" have access to jobs in the public service only if a member of one of the constituent people steps down in their favour or if no suitable candidate is found. Since the affiliation to any of the three constituent people is based solely on self-declaration, one could very well apply to one position claiming to be a Serb and to another claiming to be a Croat or a Bosniak. It is to be noted in this connection that the legislation does not give any definition of ethnicity, maybe because, apart from religion, there is no fundamental difference between a Croat, a Serb or a Bosniak.

82. This has led to posts being distributed on a purely party affiliation basis, either on a total equality basis[31] or based on the ethnic proportional key as defined by the 1991 census. The constant fighting for posts and the squabbles about fair distribution and respect for each constituent people's rights have led to a complete sterilization of political debate and to complete disregard of the notion of the common interest of the country as a whole. The general attitude of most political parties is: each constituent people's interests[32] whenever possible, State building when unavoidable and power at all times. We strongly believe this attitude has to change, for the benefit of all the people living in this country.

C. SHOULD THE DAYTON CONSTITUTION BE CHANGED?

83. Until recently, it would have been impossible to even mention the possibility of changing the Dayton constitution. Both Entities, for different reasons, were adamantly claiming that Dayton and only Dayton should regulate their relations with the very weak state level institutions. Both wanted to keep all the sovereign parallel structures that had been created during the war or immediately afterwards. This has changed: when we met in May 2003 with RS President Cavic for example, he was ready to discuss defence reform and the possibility of placing the RS army under state level command. This is a very welcome development.

84. There is now an ongoing debate among political circles[33] and intellectuals in the country and it seems widely acknowledged that there are too many levels of authority, that the institutional set-up is far too complicated and that something needs to be done. How to proceed and what model to choose for the future are still big questions. The debate has also been fuelled by a reflection on the role of the HR: some western think tanks produced very critical reports during 2003 on his exercise of his powers and on the absence of a clear exit strategy of the international community[34].

85. Structural complexity and numerous levels of authority exist in other European states. Such systems can work as long as there is a clear agreement on who does what, when and how. Without a minimum amount of trust, a willingness to achieve consensus and, most importantly, a sense of common interest, any complex system such as the one existing in BH is bound to fail. For our part, we think that it is up to the people of BH (all the people, not just the three constituent peoples) to decide how best to organize the country. Any proposal for change should come from within, not from outside. The time is probably not yet ripe: all political forces agree on the common goal of European integration but there is still not enough trust and confidence and the compromise making process remains slow and painful.

D. TAKING OVER OWNERSHIP OF THE ELECTION PROCESS: THE OCTOBER 2002 ELECTIONS

86. According to Articles II and III of Annex 3 to the DPA, the OSCE was given the primary responsibility for organizing and supervising elections. Six rounds of elections were thus organized between 1996 and 2002: general elections on September 1996, 12-13 September 1998 and 11 November 2000, municipal elections on 13-14 September 1997 and 8 April 2000, as well as special election for the RS national assembly in November 1997.

87. The 2002 general elections were the first to be organized mainly by the Bosnians themselves and not directly by OSCE. This was a major development in the so-called ownership process. They were also the first to provide for a 4 year term of office at every level. General elections took place on 5 October 2002. Elections were conducted for the BH Presidency, BH House of Representatives, Republika Srpska (RS) Presidency, RS National Assembly, Federation House of Representatives, the 10 Cantonal Assemblies, and Žepče Municipal Assembly.

88. A total of 57 political parties, nine coalitions and three independent candidates presented themselves. Some 514 international monitors, including a delegation of the Parliamentary Assembly^[35], and 6,909 local monitors observed the elections. According to the ODIHR International Election Observation Mission, elections “were largely in line with international standards considering the country’s unique constitutional framework.” Despite substantial efforts to encourage voting, however, the voter turnout was low at 53.94% (turnout in the 2000 elections was around 65%).

89. Representatives of the SDA, SDS, and the HDZ, won the Bosniak, Serb, and Croat seats in the three-member BH Presidency. At the State level, and in the elections for the Entity parliaments, the HDZ and SDS saw their vote drop slightly, while the SDA increased its vote by five percentage points. Zlatko Lagumdžija’s Social Democratic Party (SDP), the leading party of the ruling moderate coalition (Alliance for Change) at the State and Federation level that had been in power since 2000 lost the biggest share of votes when it dropped from 27.3% to 16.2%.

90. The low turnout represented no doubt a protest at the slow pace of reform in BH, directed above all at punishing the parties that had been in government for the last two years. A degree of election fatigue was undoubtedly at play as well, as BH voters were called to the polls for the sixth major election in only six years. In an encouraging development, the main campaign issue in this election, for all parties including the three nationalist ones, was reform, not nationalism.

91. During the lengthy process of government formation^[36], the High Representative made it clear that the International Community (IC) would judge the new governments by their commitment to genuine reform, which should be demonstrated by a focus on programs and actions, rather than personalities and individuals. He has been harshly criticized on occasions for “collaborating” with those same parties that were in power during the war, but his answer has always been that in a genuine democracy, respect has to be paid to the free will of the people and that the three parties in question (SDA for the Bosniaks, HDZ for the Croats and SDS for the Serbs) now had a chance to prove they had changed^[37].

92. On 10 October 2002, the High Representative set out a “Jobs and Justice” agenda of six reforms to be undertaken during the first six months of the newly elected governments^[38]. He has also published a Mission Implementation Plan which sets out in detail his agenda for reform and at what stage of implementation the national authorities could be considered as being able to assume full responsibility.

1. The problem of dual citizenship

93. Article 1.7(d) of the Constitution of Bosnia and Herzegovina provides, *inter alia*, that "Citizens of Bosnia and Herzegovina may hold the citizenship of another state, provided that there is a bilateral agreement between Bosnia and Herzegovina and that state governing this matter". Article 39 (1) of the Law on Citizenship of Bosnia and Herzegovina of 1999 provided, *inter alia*, that "All persons who before the entry into force of this law voluntarily acquired another citizenship lose the citizenship of BiH, if they do not, within 5 years from the date this law enters into force, renounce the other citizenship, unless a bilateral agreement provides otherwise."

94. Notwithstanding efforts made by the Ministry for Civil Affairs and Communications on approaching various countries regarding the conclusion of dual citizenship agreements, only one such agreement has been signed to date, with Serbia-Montenegro, and there was consequently a high risk of a number of people losing their BH citizenship by January 2003. On 31 December 2002, the HR therefore enacted the law on amendments to the law on citizenship, which had been passed only by the House of Representatives, to extend the deadline for concluding bilateral agreements on dual citizenship to 2013. This law was later passed by the State parliament on 13 February 2003. We regret this very long extension of the deadline as this enables citizens from BH to also vote at elections held in Croatia and Serbia-Montenegro. We find it strange that the three people who have the status of "constituent" people in Bosnia-Herzegovina and the citizenship of that country can vote in the neighbouring countries for so-called diaspora seats.

E. UNDEMOCRATIC REFORMS OF DEMOCRATIC INSTITUTIONS: THE ROLE OF THE HIGH REPRESENTATIVE

1. Function and role of the HR

95. There are numerous international organizations present in Bosnia-Herzegovina. To mention but a few, all of whom have offices or delegations in the country: IMF, World Bank, OSCE[39], UNHCR, UNDP, European Union, Council of Europe, plus a large number of NGO's. The Office of the High Representative (OHR) is, however, the chief civilian peace implementation agency in Bosnia and Herzegovina. The mandate of the High Representative is set out in Annex 10 of the DPA. It declares him the final authority in theatre to interpret the agreement on the civilian implementation of the peace settlement. The High Representative has no authority over the NATO-led military Stabilization Force (SFOR).

96. The Steering Board of the Peace Implementation Council (PIC), a group of 55 countries and international organizations that sponsor and direct the peace implementation process, nominates the High Representative[40] and has subsequently elaborated on his mandate. The United Nations Security Council, which approved the Dayton Peace Agreement and the deployment of international troops in Bosnia and Herzegovina, then endorses him. The OHR is funded by the PIC[41].

97. Under Annex 10, the OHR has the same status as a diplomatic mission to Bosnia and Herzegovina. It is made up of diplomats seconded by the governments of the PIC countries, international experts hired directly, and national staff from Bosnia and Herzegovina. In January 2004, the OHR employed 108 internationals and 467 national contractors.

98. Among the most important milestones in the peace implementation process was the PIC Conference in Bonn in December 1997. Elaborating on Annex 10 of the Dayton Peace Agreement, the PIC requested the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and to impose laws as he sees fit if Bosnia and Herzegovina's legislative bodies fail to do so. These are called the "Bonn" powers.

99. So far, removals or suspensions from office have concerned (at 15 May 2004), since 1998, a total of 139 individuals including judges, civil servants and elected officials both at entity or State level (members of the Presidency, ministers, parliamentarians or mayors), accompanied by decisions to freeze individual bank accounts. These individual decisions are taken without the person concerning being previously heard and, in some cases, the banning on holding office is imposed for life. Furthermore the decisions taken by the High Representative are final and cannot be appealed before any court in BH or elsewhere. Following the October 2002 general elections, the High Representative also decided to submit all candidates proposed by the political parties for major ministerial positions, both at Entity and State level, to a vetting procedure. The HR also nominates post holders to major judicial functions such as the State level prosecutor's office. We note however a welcome trend to diminish this practice, which is very questionable from the point of view of due process: 21 individuals were dismissed in 2002 and "only" seven in 2003.

100. Since 1997, to take the example of laws imposed in the field of State symbols, State level matters and constitutional issues, the High representative has imposed a total of 67 laws, amending *inter alia* the State's and Entities' Constitutions on a number of occasions or imposing the Law on the composition and functioning of the Council of Ministers, following the October 2002 elections. Here again, the HR has become less intrusive: 28 laws were imposed in 2002 and only half that number in 2003. Although this seems to indicate a welcome increase in the process of ownership, it remains to be seen whether the national authorities are willing and able to take over legislative and constitutional activities. Today the High Representative is still resorting to threats rather too often to get things done.

101. To quote Lord Paddy Ashdown, the powers afforded to the HR by the DPA would make any liberal blush. We believe that in any democracy, the exercise of such extensive legislative, executive and even judicial powers by one single person would be unheard of. Granting such powers was justified by emergency but they lose legitimacy with the passing of time.

102. We consider that, more than two years after accession to the Council of Europe, the time has come to define a clear strategy for transferring responsibilities from the High Representative to domestic authorities. The question indeed arises as to the extent to which the current role of the HR is compatible with membership of BH in the Council of Europe. Full ownership is crucial for the country becoming a credible candidate for further integration into European structures. For the political parties to rely on the High Representative to impose unpopular reforms instead of doing things themselves will not improve their credibility with voters.

2. Imposing reforms of state institutions

103. On 3 December 2002, the day of the inaugural session of the State Parliament, which we attended^[42], the HR imposed a Law on the Council of Ministers. The law established a permanent Chair of the Council of Ministers (CoM) and 8 Ministries, compared with the 6 existing before. Two of the Ministers are nominated as Deputy Chairs of CoM. There is no longer a rotation of the Chair Further there will be only one Deputy Minister and not two. At State level, BH now has a Minister of Foreign Affairs, a Minister of Foreign Trade and Economic Relations, a Minister of Finance and Treasury, a Minister of Communications and Transport (splitting of the former Ministry for Civil Affairs and Communications, MCAC), a Minister of Civil Affairs (also split, formerly MCAC), and a Minister of Human Rights and Refugees. Two new ministerial posts were created: a Minister of Justice and a Minister of Security. The Ministry of European Integration became a Directorate under the authority of the Chair of the CoM. A Defense Ministry was created in December 2003 (see below, defence reform).

104. The tri-partite Presidency^[43], composed of a representative, directly elected by the people, of each of the three constituent peoples, still functions in accordance with the rotation principle: every eight months, the Chairmanship of the Presidency changes. Following the 2002 elections, the first disagreements between the members of the Presidency concerned the question of who should finance the lawsuit BH is filing against Yugoslavia before the International Court of Justice in the Hague (i.e. whether or not this should be financed via the Presidency's 5.7 million KM budget for 2003), the pending discussions with Croatia concerning dual citizenship and the celebration of the National day on 25th November, which the Serb member refused to attend.

105. The Parliamentary Assembly (Parliament) comprises a House of Peoples, made up of 15 delegates, and a House of Representatives, with 42 members. Its powers relate mainly to the State budget, ratification of treaties and all other matters that the Entities assign to it (Article IV, paragraph 4 of the Constitution)^[44]. The HR had imposed a law on conflict of interest on 23 May 2002, ahead of the elections. We are pleased to note that this law, which regulates the responsibilities of elected and appointed officials and defines incompatible positions at all levels of power in the BiH institutions, has been fully implemented by the BH Election Commission: in 96% of the cases where the BiH EC has established incompatibility of office, the officials decided to resign from their elected positions. The HR also imposed on 7 October 2002 three decisions at all levels enacting the laws on immunity. This should contribute to stopping the often unhealthy mingling of business and politics.

106. Both Parliament and the Council of Ministers have been criticized because of their relatively poor performance, compared with other countries in transition: in 2003, the BH Parliament adopted a total of only 55 laws, of which 20 had been previously imposed by the HR. Although some progress has been noted, the same applies to the Council of Ministers, which does not meet often enough. It is to be noted however that according to the DPA, State level institutions have very limited powers and attributions, are funded by entity contributions only and have limited administrative capacity.

IV. TAKING OVER OWNERSHIP OF THE STATE BUILDING PROCESS

107. Laws imposed by the HR are usually imposed on a provisional basis: they enter into force immediately but have to be formally passed by both houses of parliaments, be it at state or entity level, without any possibility of amending them, to become part of domestic law. It is only natural that this creates considerable frustration in the parliaments, who are basically just rubber-stamping legislation they have not elaborated themselves. In 2003, instead of imposing laws from above as before, the HR, in agreement with the main political forces in the country, completely changed the decision making process. A number of very important reforms were thus carried out in 2003 in very sensitive fields such as defence reform, intelligence service, education system, or in the economic field. These reforms would have been unimaginable a few years ago and represent remarkable progress.

108. In the course of 2003, the HR decided to create joint commissions, chaired by an international expert and composed of national and international experts as well as members of all main political forces at state and entity level. These Commissions have drafted legislation for adoption by the State parliament, following which the Entities agreed to make amendments to their legislation, including constitutional changes, so as to transfer a number of their competences to the State level. With the exception of the Commission for the reforming of Mostar, this has worked and seems to indicate a new willingness to reach consensus and compromise on issues vital for the future of the country. Other initiatives have concerned the drafting of Framework laws at state level, which was a novelty, or the direct involvement of civil society in the decision making process. This process has enabled parliaments at all three levels to participate to some extent in the drafting process, since amendments could (at least theoretically) be tabled to the various laws put before them.

A. DEFENCE REFORM

109. According to the DPA and the BH Constitution contained therein, defence and military questions were within the jurisdiction of the two Entities and not of the State. The armed forces consist of the Army of the Federation of BH and the Army of the Republika Srpska. The Federation army consists of two components, a Bosniak one and a Croat one. Ensuring the forces are (theoretically) under civilian control, each entity has a Ministry of Defence. Also, the three members of BH Presidency serve as the Supreme Commanders of the armed forces in BH.

110. Although steady personnel reductions over the past years helped to bring the number of troops down – especially from a 1995 end-of-war estimate of 430,000 – in a country of 4 million people, supporting 20,000 troops (estimate for the end of 2003) is a great economic burden when levels of unemployment reach (officially) 40 percent in BH and when the BH defence budget is approximately 10 percent of the country's Gross Domestic Product (GDP). Severance pay which will have to be given to demobilized soldiers (between 6 000 and 10 000 KM each) will be a further burden on the Entities' budgets.

111. To restructure the armed forces in BH aiming at compatibility with international standards and procedures, in particular with regard to the principles of democratic control of defence forces and transparency in defence planning and budgeting was an accession commitment. A series of events in 2002 enabled this process to be accelerated.

112. In mid-October 2002, SFOR obtained documents showing that the state-owned ORAO aviation institute in RS had sold arms to Iraq in violation of the UN embargo, in co-operation with Yugo-import in FRY. The RS Defence Minister and the army chief of staff resigned, 3 ORAO managers were prosecuted. The recently elected Bosnian Serb Member of the BH Presidency Mirko Šarovic also resigned on 2 April 2003 following discussions with the High Representative, who had repeatedly called on him, as President of the RS (his previous function), to bear political responsibility for the fact that the ORAO military institute had signed arms contracts with Iraq, thus contravening UN Security Council resolutions. It also turned out around the same time that the RS Army had been spying on BH institutions and the international community.

113. One of the first consequences of the ORAO affair was the decision that by 15 November 2002 only the State Ministry for Foreign Trade and Economic Relations would be competent to issue permits for import and export of arms and military equipment. On 13 February 2003, the BH Parliament then passed a law on the control of imports and exports of weapons.

114. On 2 April 2003, in the wake of Šarovic's resignation, the HR introduced a package of military reform measures. These measures addressed the systemic weaknesses in civilian control over the entity armed forces, and were designed to strengthen state-level command and control, as had been requested by the Assembly in 2002. In particular, the HR abolished the Supreme Defence Council of Republika Srpska for failing to prevent the violation of UN resolutions and passed decisions amending certain provisions of the Entity constitutions, the RS Laws on Defence and the Army and the Federation Law on Defence, removing references that either declare or infer that the Entities are sovereign states in their own right. These decisions were aimed at strengthening state-level command and control of BH's armed forces and at harmonizing the entity constitutions with the BH constitution in military matters.

115. Although most RS political parties strongly opposed the creation of a state level defence responsibility and the unification of the entity armies, in May 2003 Paddy Ashdown issued a decision establishing a Defence Reform Commission (DRC). The Commission's mandate was to reach an agreement on the legal requirements to reform the defence

structures in BH and propose legislation and other legal instruments in accordance with basic principles and in line with modern European practice.

116. On 25 September, the Defence Reform Commission agreed on its Final Report, which established the way forward to codifying the respective armed forces in BH under the administrative and operational command of a State level defence structure. The Defence Ministries of both Entities agreed that their respective armies will work under the BH flag and wear the same uniform. They have also set about reducing the number of military personnel from 19,000 to 12,000 and the reserves from 240,000 to 60,000, (downsizing of both the military personnel and reserves would be divided between the FBH and RS in accordance with the 2:1 ratio set out in the Defence Policy), the training for recruits is reduced from six to four months and the number of people working for the entity defence ministries is reduced by 25 per cent. The reform will also introduce a joint system of ranks and salaries, ethical standards and rules of service.

117. The draft legislation on defence reform was then submitted for parliamentary procedure and its adoption in December 2003 represents a crucial step for BH towards membership in the NATO Partnership for Peace (PfP) program.

118. The benefits of Partnership for Peace membership are many. NATO has assisted Partner countries in improving their defence and security capacities in numerous areas. Beyond such tangible benefits, an invitation to Partnership for Peace signals an acceptance by NATO and member nations that a country has been accepted into an association of like-minded democratic nations. An invitation also reflects a strengthened political legitimacy, with favourable implications for the political and economic viability of an emerging democracy.

119. Both Entities applied as early as 1997 for membership in NATO's Partnership for Peace but former NATO Secretary General George Robertson has repeated on a number of occasions (in particular at the NATO summit in Prague on 20-21 November 2002) that it would be impossible for NATO to accept a country that still has two, if not three, different armies: accession to the Partnership for Peace is out of the question until a common military structure is created at State level, with a state ministry responsible for defence. He has also stated that full co-operation with the ICTY is a prerequisite for joining.

120. We have also learned that in the near future (end of 2004) the European Union might take over from the NATO led SFOR. From 60,000 troops in 1995, the IFOR and then SFOR have been downsized to around 12,000 soldiers. Most local politicians we met want the US to stay on and do not trust the EU's capacity to maintain security in BH.

121. Although the overall security situation is very good, it is generally accepted that an international military presence is still necessary a) because there are still many "harvest" operations to be conducted to collect and destroy the weapons in possession of the population, b) because of attacks on returnees and c) because Ashdown's authority depends to a large extent on SFOR. In particular it is SFOR which carries out searches and seizures in private as well as public companies or buildings and which arrests people suspected of terrorism^[45] or war crimes.

122. The Defence law entered into force on 5 January 2004. This is a major success but needs to be implemented quickly. Again, setting up the necessary structures and institutions at state level has taken an inordinate amount of time: it took the main political parties (SDA, HDZ and SDS) about a month to agree to the fact that the first Defence Minister should be a Serb and another two months to find a suitable candidate that would be a credible partner for the IC. Finally, after two candidatures were rejected by the IC, the new state-level Defence Minister, Nikola Radovanovic was appointed on 15 March 2004: he is a Serb but not a member of any Serb political party, has no wartime past, studied abroad, and has professional experience in the field.

123. SFOR also took over responsibility for vetting the fifteen future generals to be appointed at state level. This proved problematic and was a source of considerable argument between the IC and the domestic authorities: while the five Serb candidates were approved of without any problem, six Bosniaks and four Croats did not pass the test, it seems without any reasons given by the IC to the authorities. At the time of writing this report (15 May 2004), this appointment process is still not terminated. In any event, this law has to be implemented also at Entity level and this is not done yet[46].

124. On a more positive note however, we welcome the fact that, on 21 April 2004, in response to a common request made by BiH Prime Minister Adnan Terzic, RS Prime Minister Dragan Mikerevic and FBiH Prime Minister Ahmet Hadzipasic the High Representative Paddy Ashdown amended the Entities' and BH's Civil Service Laws allowing Civil Servants to move from Entity to State Ministries. This is an essential part of the process of giving the new state institutions the resources they need. It is particularly important for the process of defence reform, as it will free up defence officials at the entity level to move to positions at the State level.

125. We urge the BH authorities to take without delay the measures that are necessary to implement the recent defence reform, because, again, the window of opportunity might close fast: everything that needs to be done must be done by June 2004, in time for the next Istanbul NATO summit.

1. Conscientious objection

126. Before the 1992-1995 conflict in BH, conscientious objection was virtually unknown. In accordance with the list of commitments to be fulfilled by Bosnia and Herzegovina after its accession to the Council of Europe, BH is required to "adopt, within 3 years after its accession, laws on conscientious objection and alternative service". In this sense, the most relevant standards for BH are set out in the Council of Europe Council of Ministers' Recommendation No. R (87) 8, which sets out standards for both determination proceedings and alternative service.

127. BH's human rights obligations in the area of conscientious objection should not be confused with blanket exemptions from military service for returning refugees and displaced persons called for in Chapter 1, Article II (2) of Annex 7 ("Refugees and Displaced Persons") of the DPA and other return-related documents.

128. The Law on Defence of Bosnia and Herzegovina of 29 December 2003, states under Article 51: "The right to conscientious objection shall be secured to all persons who are subject to the common conscription policy. The process of confirming conscientious objector status and the administration of alternative service shall be regulated by a separate law in accordance with Article II - Humans Rights and Fundamental Freedoms, of the Constitution of Bosnia and Herzegovina". Further, Article 79 under the "Transitional Provision" provides for a six month period for all laws and bye-laws to be adopted. A working group should be set up soon under the Ministry of Human Rights and Refugees to elaborate a draft law.

129. It is to be noted that according to Article 14 of the Statute of the Brcko District of BH, Brcko District residents are not subject to Entity military service and may only be required to perform alternative service in accordance with Brcko District Law. To date, no regulations on alternative service have been adopted in the Brcko District.

130. Under the constitutional arrangement in BH, the Entities each have their own armies for the time being. The right to conscientious objection in BH is therefore regulated by provisions of entity law. Both Entities of BH require all males at the age of 18 (FBH) or 19 (RS) years to perform a six-month stint of military service and remain available afterwards for reserve service. The Entities will have to revise their legislation after the passing of the state level defence law. To date no concrete implementation of the

alternative civil service has taken place, except in the Federation where, after the competent Ministry, signed contracts on 14 April 2004 with legal entities, it will now be possible to do six months of civil service as of 10 May.

B REFORM OF THE INTELLIGENCE AND SECURITY FORCES

131. In May 2003, following a number of spying scandals in 2002 and 2003, involving illegal wire tapping or information leaks to political parties or the press, the HR established an expert Commission on Intelligence Reform, charged with drafting a State-level law to form a single, modern, democratically accountable intelligence-security agency in BH. This will entail merging the existing Entity intelligence agencies (FOSS in the Federation and OBS in the Republika Srpska). The expert Commission completed its work already in September but, since there were serious disagreements on the draft in the Council of Ministers, the HR decided on 18 December 2003 to put the law into parliamentary procedure himself. It was finally adopted by both houses of the state parliament on 22 March 2004. The law set a deadline for 11 May 2004 for establishing the new State level Security Agency. On 4 May, 2004, this deadline was extended by the HR to 1 June 2004, in order to allow for the appointment process of the necessary officials to be completed.

C. THE EDUCATION REFORMS

1. The Framework law on primary and secondary education

132. After intensive cajoling and pressure by the IC, the State level Framework Law on Primary and Secondary Education was adopted by Parliament on 30 June 2003. To adopt and implement the Law on Schools in conformity with Council of Europe standards within two years after becoming member of the Council of Europe was an accession commitment.

133. However several key aspects of the law have not yet been implemented: the shift from eight-year compulsory education to nine-year compulsory education was introduced in Republika Srpska already for the 2003-2004 school year but will be piloted in the Federation only from the beginning of the school year 2004-2005, with full compliance the following academic year. Delay is due to financial and organizational reasons. Catchment areas are not yet fully implemented. Some parents still insist on sending their children to the school of their ethnicity, rather than to the local school in their catchment area. The various Ministers of Education adopted the Common Core Curriculum (CCC) in August 2003 and its Implementation Plan was introduced in schools at the beginning of the school year 2003-2004, but the national group of subjects still exists: efforts are being made to ensure that as many subjects as possible are common for the whole of BH, especially in the areas of history and geography.

134. As regards the Curriculum Agency: in December 2003 the CoE produced and distributed to all Ministries of Education a feasibility study on the setting up of the CA; the EU has launched a new project which will provide technical assistance to the Agency. Political negotiations must now take place in order to establish the Agency.

135. In order to facilitate the implementation at entity/cantonal level of the Framework State law, the CoE finalized a prototype law with a group of BH experts in October 2003; the intention of this law was to provide the ten Cantons in the Federation and the RS with a model, based upon best European practice and standards, which would comply with the newly-adopted state-level Framework Law on Primary and Secondary Education. According to the Framework Law, harmonized lower level legislation should have been adopted by 31 December 2003.

136. Only the District of Brcko adopted in due course new legislation based upon the prototype law. The RS attempted to introduce harmonised legislation twice; on both occasions, it was blocked by the IC because of non-conformity. It was finally passed on 21

April 2004. In the Federation, harmonisation of lower level legislation with the State Framework law met with very strong resistance in a number of predominantly Croat cantons (see below).

2. Segregation and bussing continues

137. To maintain and continue reform in the field of education and to eliminate all aspects of segregation and discrimination based upon ethnic origins was also an accession commitment. It has not been fulfilled.

138. During the summer of 2003, the IC exerted enormous pressure on the authorities in Cantons 6 and 7 where 52 "two schools under one roof" exist (one school where one part is reserved for Croat children and the other for Bosniak children). Instructions were issued for the administrative and legal unification of the schools at the cantonal level, but in 5 out of 10 cantons in the Federation the municipalities have failed to implement the new instructions.

139. On 30 March 2004, the HR issued a directive freezing until 23 April 2004 all party funding for the HDZ at state and entity level and in five cantons for non compliance with the instructions on administrative integration of schools. On 27 April, he issued another directive reducing the HDZ party funding by 5 % for non compliance in the Central-Bosnia canton. Beyond 30 April 2004, an additional 5 % will be deducted on a weekly basis. Beginning of May, the Una-Sana and Tuzla Cantons adopted fully harmonised legislation. The Posavina, Herzegovina-Neretva and West Herzegovina Cantons adopted legislation that is not in accordance with the Framework Law. Central Bosnia Canton and Canton 10 have thus far failed to adopt any legislation as required under the Framework Law.

140. One exception is the Mostar gymnasium, which we visited in May 2003: under IC pressure, the municipality is now completing the required legal measures to unify the school; this procedure is also linked with the overall process of unifying the city of Mostar. On the ground, however, it seems that reunification only implies, for the time being, that children come together for extra-curricular activities but that they still don't share the same classrooms.

141. In its Opinion 234(2002), the Assembly insisted that it was essential to refrain from any remark in children's education, especially in schoolbooks, which reinforces hatred or mistrust. Some slight progress can be recorded in this field: in June 2003, the Inter-Entity Textbook Review Commission finalized its work to remove inappropriate terminology from current textbooks, supplementary textbooks and workbooks on the national group of subjects (language and literature, history, geography, religion, knowing nature/society) that were currently in use in all Primary and Secondary Schools in Bosnia and Herzegovina.

142. While positive progress was made in the subjects of geography, religious instruction and nature and society, the issue of one-sided, biased representation of other constituent peoples continues to be problematic in history and language and literature textbooks. In order to deal with this issue systematically, a separate body, the Independent Textbook Commission will be established in June 2004 to resolve these issues by developing guidelines for authors of history textbooks.

3. Higher Education Legislation

143. The state-level Framework Law for Higher Education^[47] was developed over a period of one year by BH and CoE experts. Besides major policy changes in line with BH's international commitments and European standards (Bologna Process, Lisbon Recognition Convention, etc), the law also foresees a major structural and constitutional change: the deferral of power in Higher Education from cantonal to entity level in the Federation. Many

competences will be assigned to the State-level, especially those involving international co-operation and co-ordination.

144. Within two years of accession BH ratified the Lisbon Recognition Convention on 9 January 2004 and the Convention entered into force with respect to Bosnia and Herzegovina on 1 March 2004. Regarding its implementation, under the terms of the Lisbon Recognition Convention, BH must establish a National Information Centre and become part of the European Network of Information Centres (ENICs). The state-level Framework Law for Higher Education foresees the establishment of not only an Information Centre, but also a more comprehensive state-level body called the Centre for Information, Recognition and Quality Assessment (CIRQA). Establishment of the Information Centre is therefore contingent upon the adoption of the draft law.

145. The Ministry of Civil Affairs submitted the draft law to the Council of Ministers on 29 January 2004 but following disagreement within the Council of Ministers, it was forwarded to parliament only on 22 March 2004. Major resistance to these amendments was to be expected, especially from the Croat community which prefers competencies in Higher Education to be transferred from cantonal or entity level to State level, whereas the RS advocates maintaining exclusive competencies of the Entities. The International Community warned on a number of occasions that if this law is not adopted soon, BH risks losing a 42 million USD grant by the World Bank. Although the deadline was extended from March to May 2004, this is precisely what happened: on 7 May 2004, the caucus of Croatian delegates in the House of Peoples invoked the vital national interest clause and therefore blocked the adoption of the Framework law. The World Bank immediately withdrew a credit of 12 million USD.

D. BULLDOZER COMMITTEES

146. In late 2002, the High Representative noted that BH needed a bulldozer to push aside the huge amount of pointless bureaucracy and job-destroying regulations that make it harder rather than easier to do business. This led to a Bulldozer Initiative, through which businesspeople were invited to recommend changes to laws and regulations. The success of the scheme surprised even hardened sceptics. A total of 50 reforms were enacted in a period of 180 days.

147. In Phase I, the Committee received input from more than 500 firms. Reform proposals covered issues such as double taxation, cumbersome administrative procedures, and bureaucratic requirements that actually make it harder to run successful businesses and therefore to create and sustain jobs. During three Plenary Sessions, the Committee voted on the best 50 proposals. These were presented to the governments in the spring of 2003. Certain reforms were adopted by means of a government decision; others (amendments to existing laws) were sent to the parliaments. The parliaments passed all the Bulldozer amendments, just 30 days beyond the original 150-day deadline. On average, the Bulldozer Initiative produced one economic reform every four days.

148. Bulldozer Phase II was launched on 4 June 2003. In view of the lessons learned during Phase I, six regional Bulldozer Committees were established by organizations representing local businesses in their areas. In addition, a specialized Bulldozer Committee on Agriculture, Agribusiness and Natural Resources was set up. The Committees' focus has been to identify new reforms at the municipal/cantonal/regional level and to oversee the implementation of Phase I reforms at the local level. In the summer of 2003, the three Prime Ministers, the six Heads/Speakers of Parliaments, the Mayor of Brcko, and seven Bulldozer local representatives signed an agreement called "The Protocol for Prosperity", which commits them to continuing and deepening their support for the Bulldozer reform process. Phase II has produced another set of 50 reforms that are currently being reviewed by the governments. Adoption of these reforms, through parliamentary procedure or by government decision, is expected in the course of spring 2004. In Phase III, due to start in

early 2004, the International Community will assume a completely subsidiary role, supporting the Bulldozer process only when invited to do so.

E. THE INDIRECT TAXATION SYSTEM (ITA)

149. On 12 February 2003, the High Representative issued a Decision on the establishment of an Indirect Tax Policy Commission. The main tasks of the Commission were to define the legal requirements for the formation of a single Customs Administration and the introduction of VAT at the State level by 2006. The Commission comprised seven members with two members coming from each of the Federation of BH, Republika Srpska and State Institutions, while the chair of the Commission was a representative of the International Community. The draft Law drafted by this Commission enables the Indirect Taxation Authority (ITA) to administer customs and, ultimately, value added tax, in a single, efficient operation, in accordance with European requirements.

150. The Headquarters of the Indirect Taxation Authority will be in Banja Luka. The existing 19 customs branches will be reduced to four branch offices organized on the basis of the need for a single economic space and economic efficiency. These will be centred in Sarajevo, Mostar, Banja Luka and Brcko.

151. On 29 December 2003, the BH Parliament adopted the ITA Law. This law has now come into effect, meaning that legally the Entity Customs Administrations have ceased to exist and there is one countrywide Indirect Taxation Authority. During the last quarter of 2003, the Entity Governments signed an agreement that allowed for the transfer of competence in the field of Indirect Taxation from the Entity level to the State Level. This agreement was made under Article III 5 (a) of the BH Constitution and was the first time that such an agreement had been reached under this provision. Additionally, the new Director of the Indirect Taxation Authority, Kemal Caušević, was selected and subsequently appointed by the Council of Ministers on 8 December 2003. Mr. Caušević confirmed that his first priority would be to merge the three existing customs administrations in BiH. Such merging is expected to be completed in the second half of 2004. Subsequently, the introduction of a Value-Added Tax is expected to take place on 1 January 2006. These measures are designed to contribute significantly to increased tax and customs revenue.

152. We have also learned with satisfaction that on 29 April 2004, at a meeting in Mrakovica, near Prijedor, the Prime Ministers at state and entity level signed an agreement to eliminate double taxation and tasked the respective finance ministers to prepare legislation within 60 days. These news laws will include full harmonisation of indirect taxes, deposit of excise duties and other indirect taxes in a single account, and payment of excise duties by domestic producers only once, at the place of production. If implemented, this agreement would represent an important step towards the creation of a single economic space in BH.

V. REESTABLISHING THE RULE OF LAW

A. THE STATE BORDER SERVICE

153. Control of a State's border is a fundamental element of State sovereignty and State identity. Effective border institutions are also essential in the fight against organized crime, smuggling and trafficking.

154. In January 2000, the High Representative imposed the Law on Border Service which was finally adopted by the BH Parliament in June 2001. In September 2002, according to Mr Jacques Klein, Special Representative of the UN Secretary General, there had been progress made from virtually no State border control to a situation where 1200 officers cover 62% of the border in addition to Sarajevo airport. The State Border Service, which is multi-ethnic, is now fully deployed and operational: by December 2002, the State

Border Service had achieved 100 % control of the land borders together with 3 international airports (Sarajevo, Banja Luka and Mostar) and the number of suspected illegal migrants has been reduced from nearly 25 000 in the year 2000 to a few hundred in 2002. This does not mean that the borders are tight: BH is considered as one of the main transit routes for various trafficking.

B. BUILDING A MULTIETHNIC POLICE FORCE

155. The UN Mission in BH and the International Police Task Force (IPTF) were responsible under Annex 11 of the Dayton Agreements for the restructuring, monitoring and training of the local police forces. Police academies are now operating in both Entities. With regard to police reform, the IPTF Commissioner and UNMIBH had by November 2002 almost completed the process of final certification of the 16,832 local police officers who in 1999 were only provisionally allowed to work in BH. Establishing multi-ethnic police forces was an accession commitment: we consider it has been achieved, although there continue to be concrete problems of implementation in some areas.

156. Every police officer in the country had to pass seven different checks including: wartime background, professional performance, lawfulness of housing, verification of education credentials, completion of compulsory training, proof of citizenship and a clear criminal record. In addition to the 234 officers already dismissed for misconduct or wartime background, around 500 to 600 officers were refused certification and 274 have lodged an appeal before an independent review panel outside the command structure of the IPTF Commissioner. This review panel cannot overrule the Commissioner, but if there is new information or evidence that was not available at the time of the Commissioner's original decision, the panel will refer cases back to the Commissioner for reconsideration of his decision.

157. The press and political parties (especially SDP) violently criticized the absence of certification for 19 police officers in Sarajevo canton and also in the RS (in Bjelnina). Zlatko Lagumdžija, leader of the SDP, even went as far as stating this was the most serious incident in the relations with the IC in the past two years. IPTF and UNMBH moved out of BH on 31 December 2003 and were replaced by the EU Police Mission (EUPM). EUPM was given the possibility of recommending dismissal of any police officer.

C. FUNCTIONING OF THE JUDICIARY

158. In BH, the judicial system had operated according to the principle of parallelism since the war. Both Entities developed their own judiciary, with courts at different levels [48], applying different laws, either inherited from former Yugoslavia or newly adopted by the respective parliaments. The judiciary was generally deemed to be inefficient, costly, corrupt and ethnically biased and the HR dismissed a number of judges for that reason [49].

159. Already in 2000 the HR imposed measures meant to help root out corrupt or partial judges and prosecutors and restore public confidence in the courts. Existing judicial appointments were to be subjected to an internationally supervised review process, and there were rigorous procedures for dismissing judges and prosecutors found to be corrupt or biased. A new international organization, the Independent Judicial Commission (IJC), with a staff of 64 and a monthly budget equivalent to more than 200,000 USD in 2002, was established in order to oversee things.

160. By 2002, however, it had become clear that this reform - which relied on complaints from citizens using the court system - was not yielding satisfactory results. In November 2002, the OHR therefore decreed that all judges and prosecutors would have to reapply for their positions. This decree made no exception for those judges who had been promised life tenure after passing an earlier comprehensive review in 2000. The High

Judicial and Prosecutorial Councils (HJPCs), transitional bodies existing at State and entity level with international staffing, were entrusted with this countrywide reappointment process for all posts in the first- and second-instance courts^[50] in the Entities and also at state level. By mid February, 2004 98% of the 260 prosecutors at every level of the judiciary and 87% of all 646 judges had been selected, interviewed and appointed. The process should be completed by 31 May 2004.

161. On 1 November 2002, the HR also imposed a complete restructuring of the court system within Bosnia and Herzegovina, closing and consolidating courts throughout both Entities in order to achieve a more efficient and more accountable judicial system. The number of first-instance courts was reduced from 78 to 47, subject matter jurisdiction was harmonized and commercial departments are to be created in 15 first-instance courts.

162. On 1 November 2002, the HR imposed amendments to the laws establishing Judicial Training Centres in order to make them operational and begin to provide much-needed training to judges and prosecutors throughout Bosnia and Herzegovina. In December 2002 the HJPCs adopted two training programmes on Criminal Procedure for judges and prosecutors.

163. This combined process of court restructuring and reappointment of judges and prosecutors is certainly the most ambitious and radical overhaul carried out so far in any post-communist judiciary. In the case of BH, this lustration process was made more complicated and emotional by the fact that judges were not screened as in other countries because of their participation in a communist regime but also as regards their war-time past. We regret that all reforms aiming at establishing an independent, qualified and professional judiciary have been carried out by the HR. We have heard a number of complaints regarding the reappointment process, in particular arbitrariness, lack of explanation of the decisions and absence of any appeal procedure.

164. The "continuation of the reforms aimed at the establishment of a professional and independent judicial and prosecutorial system" was an accession commitment (para. 15.v.g of Opinion 234). The establishment of a single State High Judicial and Prosecutorial Council - necessitating a transfer of competencies from the Entities to the State - will be an important benchmark. It remains to be fulfilled.

165. The transitional period (including transitional HJPCs) was supposed to end in September 2003. It was extended to 31 March 2004 and again to 31 May 2004. The single State level HJPC should have started functioning on that date. On 11 June 2003, the HR issued a Directive directing the Entities to begin negotiations for the creation of a single HJPC at the end of the transitional period. Progress has been recorded: the Inter Entity Draft Agreement - to transfer certain responsibilities for the affairs of the judiciary to a BH-HJPC - was submitted to the Entities on 15 August 2003. On 29 January 2004 the FBH Government adopted and forwarded to the Parliament a draft Amendment to the Federation Constitution replacing the Federation HJPC with the State HJPC. At the end of February 2004 the RS National Assembly gave the green light for the RS Government to sign the transfer of powers Agreement but stipulated three conditions, one of which being that the seat of the State level HJPC be in Srpsko^[51] Sarajevo. On 13 May the law on the single state-level HJPC was adopted by the BH House of representatives and will be examined by the House of Peoples on 21 May. If adopted, this body will be ultimately responsible for hearing disciplinary procedures against judges and prosecutors and for making any appointments as judicial vacancies arise.

1. The State court

166. The Court of BH is a State-level institution that was not provided for in the Dayton Peace Agreement. On 12 November 2000, the HR enacted the Law on the Court of Bosnia and Herzegovina to deal with criminal offences perpetrated by public officials of Bosnia and

Herzegovina in the course of their duties, and with administrative and electoral matters. However it was only following adoption in 2001 of the BH election law, which gave the State court competence to hear appeals from Decisions of the Election Commission of Bosnia and Herzegovina and of the Election Complaints and Appeal Council, and in view of the elections scheduled for October 2002, that the HR, by decision of 9 May 2002, established the Court and nominated its seven judges.

167. The setting up of the State court chamber that deals with serious economic crime, trafficking or corruption was delayed until the adoption of the State level criminal code and code of criminal procedure. Both were imposed by the HR on 24 January 2003 and entered into force on 1 March 2003. This represents a radical leap in the process of reforming the criminal justice system of Bosnia and Herzegovina.

168. The HR also imposed the law on protection of witnesses, on the State Prosecutor's office and on judicial police. He also appointed a number of international prosecutors, and judges. The new Chamber has already delivered its first judgment in a serious trafficking case in January 2004. We consider this to be a commendable improvement of the rule of law in BH, although the implementation of the new criminal codes at entity level seems to be problematic in a number of cases.

169. The proposal to set up yet another Chamber of the State court to deal with war crimes is also a very welcome development, although there is a risk that BH will be burdened with high profile cases that the Hague court was unable to deal with in due time.

D. COMBATTING CORRUPTION AND TRAFFICKING

170. The latest report issued by the US State Department on 'Trafficking in Persons' upgraded BH to a Tier 2 country. In June 2003, BH had been ranked as a Tier 3 country ('country whose government does not fully comply with the minimum standards and is not making significant efforts to do so'). The developments in BH that prompted the State Department to upgrade BH were the appointment of a national co-ordinator for anti-trafficking in human beings and the outline of a national co-ordination mechanism on anti-trafficking. The essential requirement of establishing effective victim identification and witness protection systems in order to respect the rights of victims and ensure successful prosecutions of trafficking cases, however, has not yet been met. As regards corruption^[52], high hopes are invested in the new State level chamber for serious economic crimes, corruption and trafficking which has become operational recently. The fight against corruption must absolutely be continued in the following years because corruption, by money or by favors rendered, is an evil deeply rooted in society

VI. MECHANISMS TO ENSURE RESPECT FOR HUMAN RIGHTS

A. THE COMMISSION FOR HUMAN RIGHTS

171. In a country where collective rights of groups prevail, it is very difficult to protect individual rights, which by definition, are afforded to everyone, independently of their ethnicity. The DPA tried to solve this paradox a) by incorporating into domestic law, in Article 2, paragraph 2, of the constitution, the European Convention on Human Rights (ECHR) and its protocols, which is therefore directly applicable in Bosnia and Herzegovina, together with a number of other international Human rights conventions and b) by setting up a new type of body to examine individual complaints: the Commission for Human rights. This body comprised a Statelevel Human Rights Ombudsman institution and a Chamber of Human Rights, with judicial powers. Both these institutions, at least partly staffed with internationals, were supposed to cease operations in 2000. Both were then extended until December 2003.

1. The Human Rights Ombudsman of BH

172. The Human Rights Ombudsman of BH was established through the BH Constitution as outlined in Annex 4 to the General Framework Agreement on Peace in Bosnia and Herzegovina of 14 December 1995, and further regulated through Annex 6 to that Agreement. On this legal basis the Institution began in 1996^[53] to operate two offices, a head office in Sarajevo and a main office in Banja Luka, and at the end of 2000 a branch office in the District of Brcko. The Institution was established with the purpose to protect Human Rights and to promote good governance and the rule of law in BH. To this aim the Institution considers individual complaints, undertakes investigation and initiates various proactive measures. It could also refer cases to the Human Rights Chamber.

173. On 3 January 2001 the Law on the Human Rights Ombudsman of BH entered into force, following a decision of the High Representative. On 25 June and 3 July 2002 this Law was endorsed by both Houses of the BH Parliament, paving way for an Ombudsman Institution under complete domestic liability. This new domestic institution was however still partially funded by the IC and the law provided that, for a transitional period ending on 31 December 2003, the Ombudsman would not be a citizen of BH.

174. This transitional Ombudsman, Frank Orton, a Swedish judge and former Swedish Ombudsman for ethnic discrimination, took up duties in May 2000 and has since then tried to promote good governance and the rule of law, notably by launching public awareness campaigns (including a telephone hotline for citizens) and carrying out ad hoc inspections of prisons or psychiatric hospitals. He also held a number of thematic seminars and organized training sessions for judges, in particular to promote court mediation of civil law suits. According to his annual reports, compliance by the authorities with his recommendations in individual cases or general recommendations has reached a quite satisfactory level.

175. He was replaced as of 1 January 2004, by three nationals of BH, in accordance with the relevant provisions of the Law. These three Ombudsmen were elected^[54] by the BH House of Representatives on 27 November, and by the BH House of Peoples on 28 November 2003, following nomination proposals by the BH Presidency. The commitment to work "towards establishing multi-ethnic ombudsmen" at State level has therefore been fulfilled.

176. Ombudsman institutions however also exist at the level of the Entities^[55]. Each of them is composed of three Ombudsmen, one from each constituent people. This means that there are at present 9 Ombudsmen in BH and three different and from each other independent institutions, with at least partly overlapping competences, and different levels of remuneration^[56]. This is unsustainable in a country already plagued with too many competing parallel institutions and low resources. To consider establishing, in the long term, a single, unified human rights ombudsman's Office at state level, which would include the present ombudsman institutions at entity level, is another accession commitment: little has been done so far either by the domestic authorities or the international community to try and come forward with concrete proposals on this issue. The former state ombudsman is the only one who prepared before his departure a draft on merger for consideration by the domestic authorities. A working group within the state level ministry for human rights has been established recently to put forward concrete proposals to this end.

2. The Human Rights Chamber

177. Article 2, paragraph 2, of the constitution incorporates the European Convention on Human Rights (ECHR) and its protocols, which are directly applicable in Bosnia and Herzegovina. The Human Rights Chamber was created under the Dayton Peace Agreement (DPA) to address cases of violations of the European Convention on Human Rights and Fundamental Freedoms and violations of a range of other human rights treaties. The HRC was given a competence *ratione materiae* which goes well beyond the one exercised by the European court of Human Rights under the ECHR: it can deal also with violations of social and economic rights and its competence to deal with alleged discrimination is not limited, as

in article 14 of the ECHR, to the substantial provisions of the ECHR. Furthermore it can apply provisions of other international treaties than the ECHR and the provisional measures it can impose are binding on the authorities. The HRC may also prescribe detailed measures to be taken by the authorities with a view to implementing its decisions, which go well beyond the power of the ECHR Court to award compensation. The work of the HRC has been much praised over the years and it has delivered a number of landmark decisions for the country.[57]

178. The DPA provided that, five years after the signing of the Agreement in 1995, responsibility for the continued operation of the HRC would transfer from the Agreement's parties to BH institutions (Annex 6, Article XIV). The mandate of the HRC was however extended until the end of 2003 by agreement of the parties to Annex 6 of the DPA, in particular because BH had not yet become a member of the Council of Europe and could therefore not ratify the European Convention of Human Rights.

179. However, by the end of 2002, the HRC had accumulated a backlog of around 10 000 cases, due to the fact it was meeting only a week per month to accommodate the 8 part-time international judges, its liberal approach to the requirement of prior exhaustion of local remedies and a great number of cases concerning the same issues, such as property repossession, delays in court proceedings, frozen bank accounts or the Srebrenica cases. Merging the HRC with the Constitutional court, as was required by Opinion 234, therefore presented a serious challenge, aggravated by the fact that the HRC did not stop registering new cases as of 12 July 2002, date of ratification of the ECHR by BH and continued to do business as usual.

180. On 25 September 2003, after lengthy discussions between the HRC, the Constitutional court and the International community, the "Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in BH", signed to this effect by the Entities and the State of BH, entered into force. According to this Agreement, the mandate of the HRC ended on 31 December 2003 and a Human Rights Commission within the BH Constitutional Court started to operate. The Human Rights Commission will comprise five judges from the HRC, and will work from 1 January to 31 December 2004 at the latest. It has competence to decide those cases registered at the HRC before 1 October 2003, and those provisionally registered between 1 October and 31 December 2003.

181. There have been quite serious disagreements between the Constitutional court and the HRC as to whether it would legally[58] be possible for the Constitutional court to examine allegations of violations of human rights in the same way the HRC did. This will probably require a revision of the Constitution, i.e. of Annex 4 to the DPA.

182. We ask the domestic authorities, who still haven't adopted (at 1 March 2004) the State budget to provide the necessary appropriations for the Constitutional court to be able to function and the international community to continue funding the Special human rights commission within the constitutional court in 2004 and beyond if necessary.

B. THE CONSTITUTIONAL COURT

183. Annex 4, Article VI, of the Dayton Peace Agreement (the Constitution of Bosnia and Herzegovina) also provides for a Constitutional Court. It is composed of nine members, four members from the FBH, two from the RS and three non-citizens of Bosnia and Herzegovina or of neighbouring States selected by the President of the European Court of Human Rights. The Constitutional Court has jurisdiction to decide any dispute that arises under the Constitution between the Entities and the central Government and between the Entities themselves or between institutions of Bosnia and Herzegovina, including the question of compatibility of an Entity's Constitution with the Constitution of Bosnia and Herzegovina. (Article VI, para. 3 (a)). The Court has jurisdiction over issues referred by any court in the country, on whether a law on whose validity its decision depends is compatible with the

Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols or with rules of public international law pertinent to a court's decision (Article VI para 3 (c)). It shall also have appellate jurisdiction over constitutionality issues arising out of a judgement of any other court in Bosnia and Herzegovina (Article VI para 3 (b)). The Constitutional Court gives final and binding judgements.

184. In the course of 2002 and 2003, the Constitutional court was confronted with quite serious difficulties: the appointment of two of its judges from the RS was cancelled by the High Representative for procedural reasons on 16 September 2002 and the Court could not hold any sessions because of a lack of quorum. The RS National Assembly delayed the election procedures and, as a result, the Constitutional Court only resumed its plenary meetings in May 2003. It is also to be noted that the Court meets only once a month for plenary sessions lasting two days. It has held 9 sessions since May 2003 at which around 40 cases are examined. This is clearly not enough. We note however with satisfaction that in January 2004, the Court changed its Rules of procedure which now allow most admissibility decisions and a good number of decisions on the merits to be taken by panels, or chambers, consisting of the national judges without international involvement.

185. Funding and staff^[59] are also a problem that needs to be addressed in the near future, especially now that the Constitutional court has taken over jurisdiction as from 1 January 2004 for all new human rights cases that could previously be addressed to the HRC.

VII. BH ON THE ROAD TO EUROPEAN INTEGRATION

A. WHAT HAS CHANGED SINCE ACCESSION TO THE COUNCIL OF EUROPE?

186. Bosnia-Herzegovina became a member of the Council of Europe in April 2002. This was the first step undertaken on the long road to European integration. Upon accession, it was given a long list of commitments to be fulfilled within specific deadlines. We are pleased to report that BH has honoured most of its formal commitments within the first two years of membership. We have to stress however that ratifying conventions and adopting laws is easy, but that implementing them is even more important. We have serious doubts as to the present capacity of the BH authorities to implement the necessary reforms on their own, without constant cajoling or pressure by the International Community, in particular the High Representative.

187. In the field of Council of Europe Conventions, the European Convention for the protection of Human Rights, together with its Protocols 1 to 11, has been ratified on 12 July 2002^[60] without any reservations, but so far without any compatibility exercise having been carried out, without creation of the Office of the government Agent responsible for proceedings before the Court ^[61]and with delay in presenting the list of candidates for the position of judge in the Court ^[62]. The European Convention on the Prevention of Torture and the European Charter of Local Self-Government were also ratified on 12 July 2002. No concrete progress has been made in implementing the principles of the local government Charter, but legislative work is in progress in both Entities. The General agreement on Privileges and Immunities and its Protocol were ratified on 3 October 2003, together with the European Convention on the Suppression of Terrorism. All the other Conventions listed in Opinion 234 have not been ratified (at 15 May 2004) and time is running out^[63]. We therefore urge the BH authorities to honour all outstanding commitments as regards ratification of Council of Europe instruments as soon as possible.

188. We must also mention the Framework Convention on the Protection of National Minorities^[64], which was ratified before accession on 24 February 2000. BH failed to present its first report to the Advisory Committee within the 12 month time limit provided for in Article 25 § 1 of the Framework convention, and on 3 September 2003 the Committee of Ministers took the unprecedented decision of allowing commencement of monitoring without a state report. When we raised this issue in Sarajevo, we were told that the

competent Ministry simply lacked the qualified staff and administrative capacity to draft such a report^[65] and that they were behind schedule also as regards reports due for the United Nations.

189. This is unacceptable but appears to be a common feature of the concrete implementation of many reforms, both at state and entity level. Understaffing of state level ministries, which until recently were but empty shells, overstaffing at entity and cantonal level, lack of proper training and merit-based recruitment and the generally low level of co-operation and harmonization between the different levels of authority are clearly impeding the country's capacity to carry out reforms in any meaningful way. We hope that the establishment at State level of the Civil Service Agency, imposed by the HR on 23 May 2002, and enacted by Parliament in July 2002, will increase the professionalism of the civil service^[66].

190. Trying to assess progress made in the last two years in Bosnia-Herzegovina is like watching grass grow: one has to come back at regular intervals to notice any change. Building a functional State in a country whose three main communities have been at war is a long and undoubtedly painful process. What causes concern, however, is the slow pace of the process of assuming ownership. On the other hand, we had heard a number of complaints at all levels of domestic authorities relating to the fact that the different international organisations present in BH also slow down the reforms because they interfere in all stages of law making and sometimes provide conflicting advice. There appears to be a need also for the international community to streamline its operations and to clearly define who does what, when and how. To date however, it is clear that without the International community, nothing much would have been achieved: we have indeed wondered on occasions whether the credit for fulfilling Council of Europe commitments should not be given to the international community instead of the BH authorities.

191. This is true for accession commitments in the field of domestic legislation such as, for example, the law on citizenship, the criminal code and criminal code of procedure, the law on the civil service, the constitutional and legislative amendments necessary to comply with the decision on constituent peoples, the cantonal laws on internal affairs, all of which were imposed by the High Representative in 2002 and 2003. Extensive assistance, if not direct bullying, by the International Community was also very much needed for the adoption of the law on asylum or the framework laws on primary and secondary education. If BH wants to move away from the status of a semi-protectorate, its political parties will have to change radically. Fighting for posts and wasting energy mainly if not exclusively on power sharing issues will not take the country forward.

B. ACCESSION TO THE EUROPEAN UNION: A DREAM OR A CONCRETE PERSPECTIVE?

192. BH's first step in this process came in early 2000 when work began on a "Road Map" of 18 priority reform steps. The Road Map was substantially completed in September 2002, and at that stage the EU Commission initiated work on the Feasibility Study. In March 2003 a questionnaire covering all sectors relevant to a future Stabilization and Association Agreement (SAA) was given to the BH Directorate for European Integration. BH's answers were discussed with the Commission in a series of working groups between May and September 2003. The Feasibility Study is the latest stage of the EU's Stabilisation and Association Process (SAP), designed to integrate BH gradually into EU structures.

193. Success in the reforms outlined in the Feasibility Study would open the way to SAA negotiations. An SAA helps to prepare the countries of the Western Balkans in the same way as the Europe Agreements helped prepare the countries of Central and Eastern Europe for accession.

194. On 18 November 2003, the European Commission approved a Feasibility Study assessing the readiness of Bosnia and Herzegovina (BH) to take its next steps towards European integration, by opening negotiations for a Stabilization and Association Agreement (SAA). The Commission concluded that it hopes to be able to recommend the opening of SAA negotiations in 2005 - on the condition that BH makes significant progress by June 2004 in 16 areas identified as priorities for action: the first of the 16 pre-conditions includes the " implementation of the Council of Europe's post-accession commitments, especially in areas of democracy and human rights, compliance with existing conditionality and international obligations; more effective governance; more effective public administration; European integration; effective human rights provisions; effective judiciary; tackling crime, especially organized crime; managing asylum and migration; customs and taxation reform; budget legislation; budget practice; reliable statistics; consistent trade policy; integrated energy market; BH single economic space and public broadcasting. This is obviously an extensive agenda.

195. The High Representative has been insisting since November 2003 that the window of opportunity would be closing fast if the BH Authorities do not accelerate the pace of reform: at least 48 new laws need to be passed and 25 new institutions created by June 2004.

196. Both the Prime Minister and the Director for European Integration, whom we saw in May 2003 in Sarajevo, were overly optimistic and considered that accession could already be envisaged for 2009. We have warned against disappointing the public with unfeasible promises and it seems we were right. Visa free travel, better job opportunities and prospects for a better future is what the population wants, but the specific problems of BH will not be diluted with accession to a greater ensemble such as the Union and much more needs to be done to transform BH into a credible, sustainable and functioning partner. Today BH is still unable to agree what sort of a State it is and even whether it is a State at all. BH leaders still lack the most basic political consensus about where its future lays. The only thing that unites all the citizens of BH, whatever their nationality, is a yearning for the prosperity and security summed up by the word "Europe". This is not enough and will not solve the problems faced by BH today.

APPENDIX 3

PARLIAMENTARY ASSEMBLY

OF THE COUNCIL OF EUROPE

Opinion No. 234 (2002)1

Bosnia and Herzegovina's application for membership of the Council of Europe

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to Committee: [Resolution 1115 \(1997\)](#) from 29 January 1997

Draft resolution and draft recommendation unanimously adopted by the Committee on 26 May 2004

Members of the committee: **Mrs Durrieu (Chairperson)**, **Mr Frunda**, **Mrs Tevdoradze**, **Mrs Severinsen (Vice-Chairpersons)**, Mr Agramunt Font De Mora, Mrs Aguiar, **Mr Akçam**, Mr Akhvlediani, **Mr B. Aliyev**, Mr André, Mr Arzilli, **Mr Atkinson**, Mr Baška, Mrs Bauer, Mr Bernik, Mrs Bilgehan, Mr Bindig, Mrs Bousakla, Mr van den Brande, Mr Budin, **Mrs Burbiene**, Mr Cabrnoch, **Mr M. Cavusoglu**, Mr Cekuolis, **Mr Christodoulides**, Mr Cilevics, Mr Colombier, Mr Debono Grech, Mrs Delvaux-Stehres, Mr Einarsson, Mr Elo, **Mr Eörsi**, Mr Glesener, Mr Gross, Mr Gusenbauer, Mr Hancock, Mr Hedrich, Mr Hegyi, **Mr Herkel**, **Mr Holovaty**, Mrs Jäätteenmäki, Mr Jakic, Mr Jaskiernia, Mr Jurgens, **Lord Kilclooney**, Mr Kirilov, Mrs Konglevoll, Mr Kosachev, **Mr Kristovkis**, **Mr Kvakkestad**, Mrs Leutheusser-Schnarrenberger, Mr van der Linden, Mr Lintner, Mr Martínez Casañ, Mr Marty, Mr Medeiros Ferreira, **Mr Melcák**, Mr Mikkelsen, **Mr Mollazade**, Mr O'Keeffe, Mr Olteanu, **Mr Pangalos**, Mrs Petrova-Mitevaska, Mrs Petursdottir, Mr Prijmireanu, **Mr Rakhansky**, Mrs Ringstad, Mr Rivolta, **Mr Rustamyan**, **Mr Sasi**, **Mrs Shakhtakhtinskaya**, Mr Shybko, **Mr Slutsky**, **Mr Smorawinski**, Mr Soendergaard, Mr Spindelegger, Mrs Stoyanova, **Mr Surjan**, Mr Tepshi, **Mr Tkác**, Mr Vis, **Mrs Wohlwend**, Mr Yáñez Barnuevo, **Mr Zacchera**.

N.B. The names of the members who took part in the meeting appear in bold.

Head of the secretariat: Mrs Ravaud

Secretaries to the committee: Mr Gruden, Mrs Odrats, Mr Cupina

[1] Its population was always mixed: based on the pre-war census of 1991, there were 43, 7 % Muslims, 31, 3 % Serbs and 17, 3 % Croats, plus a number of other groups such as Roma or Jews.

[2] Including 2 541 bodies exhumed from mass graves in the area of Srebrenica.

[3] The total number of returnees in the first three months of 2004 is 1 367 (including 1 032 so-called minority returns). This represents a 75 % decrease as compared to the first three months of 2003.

[4] Around 40 000 houses were damaged during the war.

[5] The CRPC, established in March 1996, is composed of 3 international members, appointed by the President of the European Court of Human Rights, and of 6 national members.

[6] Since 1998 Canada, for example, has donated more than 8,2 millions USD and announced on 12 May 2004 another donation of 3,3 million USD. A total of round 6, 5 million € is to be spent on de-mining in 2004, of which 1,7 million € will be financed from the State budget.

[7] The Security Council has recently reiterated this requirement in its resolution 1534, adopted on 26 March 2004.

[8] All further indictments should be notified by the end of 2004, all 40 pending trials should be concluded by 2008 and all appeals by 2010.

[9] Two individual and one company bank account were frozen on 7 March 2003, 13 on 13 July 2003 and 10 on 10 February 2004.

[10] In 2001, General Radislav Krstic was sentenced in first instance to 47 years. On 19 April 2004, the ICTY appeal chamber confirmed its verdict of genocide for the Srebrenica

massacre but reduced General Krstic's sentence to 37 years of prison, considering that, as a commanding officer, he had aided and abetted genocide but not committed it. In 2003; Momir Nikolic was given 27 years and Dragan Obrenovic 17 years.

[11] Following a referendum that was boycotted by the Serbs, BH declared its independence from the former Yugoslavia on 1 March 1992. On 22 May 1992, it was admitted to the United Nations, after having been recognised both by the EU and the USA

[12] At present, the lawsuit before the ICJ is financed by the Foundation Justice for BH, composed of the Bosniak intellectual Congress, the Croat's People Council, the Mothers of Srebrenica and Podrinje and the Society for endangered people. The Federation Government also contributed with a sum of around 500 000 KM.

[13] One of the few successful international agreements concluded since the end of the war concerns the establishment of the Sava river basin management agency.

[14] Vital in particular for the RS, as there would be no territorial continuity between Western and Eastern RS save for a five km wide corridor passing through Brcko district.

[15] For more information on the Brcko district, see the Report by the International Crisis Group "Bosnia's Brcko: getting in, getting on and getting out".

[16] Everything is of course not perfect in the Brcko district: there was in particular a lot of resentment over the way the Supervisor handled the issue of Arizona Market, a tax free area.

[17] On 11 November 2003, the Acting Supervisor of Brcko, Gerhard Sontheim, revoked the appointments of Mr. Sinisa Kistic to the position of the Mayor of Brcko and of Mr. Ismet Dedic to the position of Head of Department for Urbanism, Real Estate and Economic Development. The Supervisor's action followed the confirmation of an indictment against them and 5 public employees.

[18] Supervisor Clarke has been replaced by Susan Johnson, another American diplomat, who was appointed to this post by the High Representative on 1 January 2004.

[19] As was pointed out by the authorities, this sum also includes the overhead expenses of the International Community, although the real figure has never been determined.

[20] The Central Bank (CBBH) is one of the few institutions headed by an international (presently, until the end of 2004, Peter Nicholl, from New Zealand) against which we never heard a single word of criticism: it seems to enjoy everybody's trust and confidence.

[21] The State Auditor General also audited State institutions in 2003: the only ones that got a clear bill of health were the Central Bank and the Office of the State Ombudsman. The Presidency, for example, had already spent its yearly budget by July 2003.

[22] On 29 September 2003, the results of the special audit of BH Telecom and Croat Posts and Telecommunications (HPT) Mostar revealed chaotic management, incorrect tender practices and evidence of large expenditures of public funds by senior officials with little or no checks and balances, causing millions of KM in losses every year (losses of approximately 60 million KM and 18 million KM per annum in BH Telecom and in HPT Mostar, respectively). On 1 October 2003, the results of special audit on Telekom Srpske revealed annual losses of 38 million KM due to poor management and violations of law. The findings, which indicate that Telekom Srpske has written off debts for telephone bills of some political parties in the amount of 300,000 KM, are being referred to the BH Election Commission for further consideration.

[23] The Living Standard Measurement Survey (LSMS) of 2002 determined that 19.5% of BH population may be classified as poor. According to international standards, the level of inequalities in BH is relatively low: as a result, the percentage of the poor is relatively small, but there are a large number of people (additional 30%) who are just above the poverty line, with very limited revenues, who are sensitive to shocks such as employment insecurity or poor health condition. The poverty level is higher in the RS (25%) than in the FBH (16%), which is caused by lower income levels in the RS. As a result of extensive relocations of the population during the war, around 80 percents of the population now lives in urban areas.

[24] According to a recent UNDP study (May 2004), around 96 000 young people left BH in the period 1996 to 2001; 60% of the young are unemployed and 77,7 % of young people would like to leave the country, of which only 40% would consider returning if the situation improves.

[25] The entity customs administrations will finally be merged, after much pressure from the International Community: see below, Chapter IV.

[26] A State level phyto-sanitary law was adopted in August 2003 but the relevant state level body has not yet been set up.

[27] The BH Association of International Road Transport Operators became a full member of the International Road Transport Union (IRU) only in February 2004 and will be able to issue TIR carnets only by the end of 2004.

[28] Municipal level in RS and Federation, cantonal level in the Federation, entity level, State level and the Brcko district, plus the Office of the High Representative.

[29] According to Article 5 of the State Constitution, the tripartite Presidency consists of one Bosniak, one Croat and one Serb. The same applies to the House of Peoples, which according to Article 4 of the Constitution, comprises 15 Delegates, 5 Serbs, 5 Bosniaks and 5 Croats. Only Serbs, Croats or Bosniaks can serve as chair or vice chair of both Houses of Parliament. For the 2002 elections to the State Presidency there were 2 separate lists. Voters registered to vote in the RS could only vote for the Serb Member. Voters registered to vote in the Federation received the Bosniak and Croat list and could choose only one candidate. This is a clear discrimination against "Others".

[30] The Republika Srpska had already amended its Constitution to provide for direct election of mayors in February 2004.

[31] For example, in the respective Parliaments of the Entities, the Speaker must have two vice-presidents of the two other ethnicities. The same applies to the Presidency of the Entities. Both the Croat and Bosniak vice-presidents of the RS National Assembly, for example, have complained on a number of occasions that they were just "Ikebana", i.e. flower decoration, and were not given any duties.

[32] According to the latest polls, 70% of the population in the RS feels "Serbian" rather than Bosnian; the Croats still fight for total control of "their" cantons in the Federation and consider themselves to be discriminated as a constituent people and the Bosniaks consider themselves to be under-represented in particular in the judiciary.

[33] On the initiative of the HDZ caucus in the BH Parliament, the Constitutional and legal affairs committee initiated on 5 May 2004 a procedure for holding a public debate on possible constitutional changes. President Tihić has also stated on a number of occasions that the Dayton constitution needs to be amended.

[34] See, in particular, the ESI article "Travails of the European Raj", published in the Journal of Democracy in July 2003 and the ICG report of July 2003 "Paddy Ashdown and the paradoxes of state building".

[35] See Doc. 9621, Addendum II, 8 November 2002, Addendum II to the Progress report of the Bureau of the Assembly and of the Standing Committee, Report of the Ad Hoc Committee for the Observation of the Parliamentary Elections in Bosnia and Herzegovina (5 October 2002).

[36] This process took about 4 months at all levels, except for the Herzegovina-Neretva canton, where, by June 2003, the parties had still not agreed on the repartition of posts.

[37] See the International Crisis Group report of 22 July 2003 : "Bosnia's nationalist governments : Paddy Ashdown and the paradoxes of state building".

[38] For details, see the OHR's website at www.ohr.int

[39] The OSCE mission in BH is one of the largest in the Balkans: it currently employs around 800 people, of which 500 are nationals of BH. No data is available as to its budget.

[40] The first High Representative in Bosnia and Herzegovina was Carl Bildt (December 1995 - June 1997). He was succeeded by Carlos Westendorp (June 1997 - July 1999). Carlos Westendorp was succeeded by Wolfgang Petritsch (August 1999 - 27 May 2002). The current High Representative, since May 2002, is Lord Paddy Ashdown. He has also been appointed Special Representative of the European Union. His mandate has been recently extended to May 2005.

[41] Its budget for 2004 is 21, 1 million Euros. Contributions to the OHR budget break down as follows: EU 53 %, USA 22%, Japan 10%, Russia 4%, Canada 3.03 %, OIC 2.5%, others: 5.47%.

[42] This inaugural session lasted exactly five minutes: all Serb delegates walked out in protest against the imposition of the Law on the Council of Ministers.

[43] At present the members of the Presidency are: a Serb (Mirko Sarovic, SDS, former president of RS, who resigned in April 2003 and was replaced by B. Paravac), a Croat (presently Dragan Covic, HDZ) and a Bosniak (presently Sulejman Tihic, president of SDA).

[44] The members of the House of Representatives are elected through direct universal suffrage by the electorate of the Federation and RS. The delegates to the House of Peoples are appointed by the Parliaments of the Entities.

[45] The arrest of Fiuljanin, on suspicion of having spied on SFOR Eagle base, was severely criticised because he was kept incommunicado in SFOR detention facilities for over 3 months; he has now been released and was sentenced with 5 months of prison for illegal possession of weapons.

[46] This implementation will undoubtedly be complicated by the fact that in the Federation, 13 000 Croat and 24 000 Bosniak soldiers have sued the Federation for unpaid salaries and allowances between 1999 and 2002.

[47] Today BH has seven universities, as compared with four universities before the war.

[48] "Municipal" courts in the Federation and "basic" courts in RS are first instance courts. "Cantonal" courts in the Federation and "district" courts in RS have appellate jurisdiction plus first jurisdiction for a reduced number of cases. Supreme Courts deal with an

assortment of criminal, civil and administrative matters in the first and second instances, as well as extraordinary legal remedies. Both Entities also have constitutional courts.

[49] 10 judges, one minister of justice and one prosecutor were dismissed or suspended on 24 May 2002.

[50] Judges in the supreme and constitutional courts are elected, not appointed.

[51] The state level Constitutional Court unanimously ruled on 26 March 2004 that the prefix « srpsko » or "srpski" before the names of 13 towns was unconstitutional.

[52] See the first evaluation report concerning Bosnia-Herzegovina adopted by GRECO (Group of States against Corruption) in July 2003 (Greco Eval I (2002) 10).

[53] The first Human Rights Ombudsperson was Gret Haller, a former Swiss parliamentarian.

[54] One of the three ombudspersons resigned on 19 January 2004, barely 2 weeks after having taken up her duties. The new Serb member, Vitomir Popovic, was appointed at the end of February 2004.

[55] The Federation Ombudsmen have been operating since January 1995. The Republika Srpska Ombudsmen started functioning in 2000. One of the three RS Ombudsmen resigned in 2003 and has not been replaced.

[56] The status and rank of the Ombudsmen of the Federation of BH is assimilated to that of the President of the Supreme Court of the Federation whereas in Republika Srpska, their rank and salary are assimilated to that of a judge of the Supreme Court. The State Ombudsmen's rank and salary are equated with that of members of the Presidency of the Council of Ministers of BH. This being considerably lower than the rank and status afforded to the Entity Ombudsmen, the first action taken upon their nomination by the State Ombudsmen on 14 January 2004 was to ask the Venice Commission for an opinion on this subject.

[57] See the Srebrenica case mentioned in Chapter II.

[58] In its opinion on the Constitutional situation in Bosnia and Herzegovina with particular regard to human rights protection instruments (see Venice Commission, Annual Report of Activities for 1996, pp. 44-60; CDL-INF (98) 15) the Venice Commission found that the fields of respective competences of the Constitutional Court and the Human Rights Chamber were partially overlapping.

[59] We were informed by the Secretary General of the Constitutional court, whom we met during our December 2002 visit that the amount of appropriations for the Court in the State budget for 2003 was 1 951 056 KM. 38 people were on the payroll, including 9 judges. Among them there are only 6 lawyers who are working on cases.

[60] Protocols 12 and 13 were ratified on 29 July 2003.

[61] Although "preparations" have started, according to the authorities.

[62] The BH judge was finally elected by the Assembly in January 2004, after the second round had to be postponed in September 2003.

[63] On 30 April 2004, BH signed the European Convention on extradition and its two Protocols, the European Convention on mutual assistance in criminal matters, the

Convention on transfer of sentenced persons, the Convention on compensation of victims of violent crimes, the Convention on the transfer of proceedings in criminal matters and the outline Convention on transfrontier co-operation between territorial communities or authorities and its two Protocols. On 11 May 2004 it signed the revised European social charter.

[64] A framework convention for the protection of minorities was also adopted at State level, without intervention by the High Representative, in April 2003. It has however remained a paper tiger, since the Entities did not transpose it into their legislation within the required six months time limit.

[65] The report was eventually submitted on 20 February 2004, i.e. more than two and a half years later than the fixed date (1 June 2001).

[66] It is to be noted however that the corresponding law on civil service was enacted in the Federation only in June 2003.