

**Security Council**

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**Letter dated 28 October 2020 from the Secretary-General  
addressed to the President of the Security Council**

Pursuant to Security Council resolution [1031 \(1995\)](#), I have the honour to transmit herewith the fifty-eighth report on the implementation of the Peace Agreement on Bosnia and Herzegovina, covering the period from 16 April to 15 October 2020, which I received from the High Representative for Bosnia and Herzegovina (see annex).

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

*(Signed)* António **Guterres**



## Annex

### **Letter dated 21 October 2020 from the High Representative for Bosnia and Herzegovina addressed to the Secretary-General**

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

This is my twenty-fourth regular report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina and European Union Special Representative on 26 March 2009. The present report covers the period from 16 April to 15 October 2020.

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

*(Signed)* Valentin **Inzko**  
High Representative for Bosnia and Herzegovina

## **Fifty-eighth report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina**

### *Summary*

The present report covers the period from 16 April to 15 October 2020. More than six months have passed since the outbreak of the coronavirus disease (COVID-19) pandemic in Bosnia and Herzegovina, where it has, as elsewhere, become the “new normal”. The authorities in the country have abandoned wholesale lockdown measures and pivoted towards efforts to shore up the economy while also preparing for the local elections to be held on 15 November 2020, coping with virus outbreaks on an ad hoc basis. The pandemic revealed long-standing problems in Bosnia and Herzegovina, in which certain politicians pursued their divisive political agendas at the expense of a unified fight to contain the spread of the virus and its impact on the economy. The crisis again exposes the country’s enormous dependence on international assistance, which highlights the failure of certain nationalist political elites to focus on policies and issues that truly matter to the citizens of the country. In short, the current crisis revealed that the focus by some politicians on making Bosnia and Herzegovina and one of its entities (the Federation) dysfunctional has resulted in the country’s increased economic and material dependence on the international community and contributed to financial, health-related and other vulnerabilities that will have a negative impact on the population.

In October, as part of its 2020 enlargement package and economic investment plan for the Western Balkans, according to which Bosnia and Herzegovina is eligible for European Union assistance, the European Commission delivered its report on Bosnia and Herzegovina. The Commission assessed that the country still had work to accomplish in terms of its ability to meet the obligations of European Union membership, with limited progress in most key reform areas. For the political leaders in Bosnia and Herzegovina, who unanimously continue to publicly express support for the country’s membership in the European Union, this assessment should serve as a call to action for them to set aside their differences and enact the reforms necessary to move forward.

On 7 May, the Central Election Commission of Bosnia and Herzegovina announced that the local elections for 2020 would be held on 4 October. However, left without the necessary funding for their preparatory activities owing to the dissatisfaction of two political parties, the Republika Srpska-based/Serb-majority Union of Independent Social Democrats and the Federation-based/Croat-majority Croat Democratic Union (HDZ Bosnia and Herzegovina), with the election and composition of the Central Election Commission, the Commission was forced to postpone the date to 15 November. During the process of organizing the elections, the Commission has faced numerous politically motivated obstructions by some institutions and/or their principals. It is certain that the COVID-19 pandemic will add an additional layer of difficulty to the holding of the elections. Despite all these challenges, the Commission has been successful in preparing for the elections and trying to reduce risks of election fraud. We support the Commission’s efforts in this regard.

There was movement on at least one key outstanding issue. In June, the leader of the Bosniak-majority Party for Democratic Action, Bakir Izetbegović, and the leader of HDZ Bosnia and Herzegovina, Dragan Čović, signed an agreement to amend the Election Law of Bosnia and Herzegovina to enable the holding of local elections in Mostar for the first time since 2008. This landmark achievement after so many years could not have been accomplished without the involvement of the international community. Elections in Mostar will be held on 20 December.

With the twenty-fifth anniversary of the signing of the General Framework Agreement for Peace approaching, it is to be hoped that the political parties campaigning in the local elections would use the opportunity to reflect not on the wartime past but on the ensuing 25 years of peace, and offer forward-looking platforms to the citizens of Bosnia and Herzegovina. Unfortunately, we have not seen enough positive developments. The impending political campaign period – which has not even officially begun – is already again characterized by divisive, negative rhetoric that deepens existing divisions and makes reconciliation in Bosnia and Herzegovina increasingly difficult. In this backward-looking political environment, other issues, such as gender equality, are completely sidelined, which is unacceptable for a country aspiring to membership in the European Union.

I am particularly concerned by relations among the political leaders in Bosnia and Herzegovina, which are increasingly antagonistic and unproductive. Among other issues, there are continued threats of secession, blockages at the State and Federation levels and too much inflexibility on certain positions, none of which contributes to moving the country forward or improving the lives of its citizens.

Highly divergent positions also impede the country's ability to effectively cope with the security and humanitarian aspects of the increasing inflow of refugees and migrants who enter the country attempting to transit to the European Union. While the Federation in general hosts the largest number of refugees and migrants, the Republika Srpska continues to refuse the establishment of reception centres on its territory and has also actively transported individuals they identify as refugees or migrants to the inter-entity boundary line. The State-level authorities seek the means to return those who have arrived irregularly while still continuing to uphold their obligations under international and national law.

As Bosnia and Herzegovina moves through another election cycle, I must also once again note that the results of the general elections held in October 2018 have still not been fully implemented. A new Federation Government has not been appointed for more than two years, and the Federation Government from the previous mandate is still sitting, along with the previous Federation President and Vice-Presidents; the same is true for governments in the Herzegovina-Neretva Canton and Canton 10. In addition, the Federation President continues to block the appointment of judges to fill the vacancies on the Federation Constitutional Court.

Election matters will remain a concern after the upcoming local elections as disputes between political parties continue to prevent the implementation of important decisions of the European Court of Human Rights and the Constitutional Court of Bosnia and Herzegovina, which is long overdue. These issues, along with the recommendations of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the Group of States against Corruption, will continue to dominate discussions between political parties before the next general elections. They will require compromise on matters that highlight the fact that the parties in power have different and often incompatible understandings of the existing Bosnia and Herzegovina constitutional framework, including decisions of the Constitutional Court of Bosnia and Herzegovina.

Now more than ever, at a time when Bosnia and Herzegovina is confronting a global pandemic while trying to preserve and strengthen its economy, the authorities must live up to their commitments to building a peaceful and viable State that is irreversibly on course for Euro-Atlantic integration.

I am duty-bound to report that, a quarter of a century since the signing of the General Framework Agreement for Peace, there are still some very negative political tendencies in Bosnia and Herzegovina that potentially pose serious risks to peace and stability. After a decade of positive reintegration, the dynamic in the country has shifted and political forces are attempting to roll back reforms and progress. As a result, and because they rely on power-sharing structures that provide opportunities to block work and decision-making in key institutions, the State and Federation levels, in particular, are in many aspects dysfunctional. Unfortunately, the current policies have a tendency to abuse positive processes, such as European Union integration, to achieve political goals. Meanwhile, political leaders skilfully manipulate differences within the international community, including on such issues as the Office of the High Representative's role and presence in Bosnia and Herzegovina and the presence of international judges, in accordance with the General Framework Agreement for Peace, in the Constitutional Court of Bosnia and Herzegovina, both of which are institutions that have legal powers to remedy moves that could endanger peace and stability in Bosnia and Herzegovina and/or moves that endanger the constitutional order of Bosnia and Herzegovina.

While the unity of the international community is crucial to positively influencing the situation in Bosnia and Herzegovina, such influence is increasingly difficult to achieve in the shifting global and regional political environment. Now, more than ever, it is time to call on the political leaders with a single voice to put aside their differences and focus on uniting to face the common challenges of this moment, in the interests of, as is written in the General Framework Agreement for Peace, "an enduring peace and stability".

## **I. Introduction**

1. This is my twenty-fourth regular report submitted since assuming the post of High Representative for Bosnia and Herzegovina in 2009. It contains a narrative description of progress made towards goals outlined in previous reports, information on factual developments, relevant citations and my impartial assessment of the degree of implementation of the General Framework Agreement for Peace in key areas within my responsibility to uphold the civilian aspects of the Agreement.

2. I continue to focus on fulfilling my mandate in accordance with annex 10 to the General Framework Agreement and relevant Security Council resolutions. To that end, I have continued to encourage the authorities of Bosnia and Herzegovina to make progress on the five objectives and two conditions necessary for the closure of the Office of the High Representative, which presupposes full compliance with the Agreement. The authorities must remain focused on full compliance or else risk encouraging further rollback of the reforms enacted to implement the Agreement. My office also fully supports the European Union integration aspirations of Bosnia and Herzegovina, as reflected in the adopted decisions of the institutions of Bosnia and Herzegovina.

## **II. Political update**

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

3. Despite some promising developments, numerous problems still exist in the political environment in the country.

4. Despite having announced that the local elections for 2020 were to be held on 4 October for 143 units of local self-government (municipalities, cities and the Brčko District), two weeks after the announcement, the Central Election Commission of Bosnia and Herzegovina was forced to postpone the date to 15 November, as it was left without the necessary funding for preparatory activities – despite a clear obligation by the State to provide part of the funds for the conduct of local elections within 15 days of the announcement of elections – due to political wrangling among the State-level authorities over the 2020 State budget. Continued political machinations over the budget, and issues related to the dissatisfaction of the Republika Srpska-based party Union of Independent Social Democrats (SNSD), and even more so of the Croat Democratic Union (HDZ Bosnia and Herzegovina), with appointments to the Central Election Commission, resulted in the State budget not being adopted until 29 July, which the Commission warned was the latest date the budget could be adopted to enable the Commission to carry out all activities necessary to organize the elections for the date as scheduled.

5. The delay in the adoption of the budget was coordinated by HDZ Bosnia and Herzegovina and SNSD as part of their effort to demand changes in the composition of the Central Election Commission. In March, the Party for Democratic Action (SDA), along with the Federation-based party Democratic Front (DF), the Republika Srpska-based Serb Democratic Party (SDS) and the Party of Democratic Progress, secured votes in the Bosnia and Herzegovina House of Representatives to appoint two new members of the Central Election Commission from the ranks of Serbs and reappoint two members from the ranks of Bosniaks. Representatives from HDZ Bosnia and Herzegovina and the bloc led by SNSD walked out of the session prior to the vote, accusing SDA of betraying their political coalition and using opposition parties from the Republika Srpska to secure control over the Commission. The representatives alleged a violation of the procedure for replacing members of the

Commission prescribed by the Election Law of Bosnia and Herzegovina. On 20 May, the Bosnia and Herzegovina House of Representatives adopted the decision on the appointment of Željko Bakalar as a Croat member of the Commission, replacing member Stjepan Mikić, whose mandate had expired. Mr. Bakalar was proposed by DF and strongly opposed by HDZ Bosnia and Herzegovina, whose representatives called his appointment illegal. Several cases concerning the legality of the election of the Commission were initiated before the State Court of Bosnia and Herzegovina and are still pending resolution.

6. On 28 April, I sent a letter to the President of the Central Election Commission expressing my support to the newly elected members and I also called on all authorities to assist the Commission in discharging its legal responsibilities. Both HDZ Bosnia and Herzegovina and SNSD continued their verbal assaults on the composition of the Commission throughout the period, frequently referring to the institution as illegitimate. In this regard, I recall the communiqué of the Steering Board of the Peace Implementation Council dated 3 June 2020, in which the Steering Board (minus the Russian Federation) supported the work of the Commission as “an independent body whose work is derived from the BiH Election Law”. I urge the Bosnia and Herzegovina authorities to support the Central Election Commission and abide by its decisions.

7. The local elections will, of course, take place under the circumstances of the coronavirus disease (COVID-19) pandemic. This has forced the political parties that will compete in the elections to rethink their campaign activities, with many opting for increased presence on social media and door-to-door canvassing rather than large gatherings that had been the norm in previous elections. It remains to be seen how the campaigns will actually play out, bearing in mind that the campaign period does not officially begin until 30 days before the elections, on 16 October. There are also practical concerns to consider in terms of voting during a pandemic, and to that end the Central Election Commission has sent instructions on the conduct of elections to the local authorities outlining the necessary measures, and has requested them to provide personal protective equipment. To date, however, a number of local authorities have not responded with regard to whether they can fulfil the conditions and provide the necessary equipment.

8. I must express my grave concern over some of the rhetoric already heard from political parties prior to the official start of the election campaign period, which I regret to note includes at least one instance of a political party using ethnic slurs and stereotypes in a promotional video. At the time of writing, the Central Election Commission had reviewed the video in question and annulled the party’s certification for the local elections because of the use of language that could provoke or incite violence or spread hatred. I have expressed my support for the Commission’s determination to sanction violations of the Election Law.

9. In addition to the agreement signed in June by the leaders of SDA and HDZ Bosnia and Herzegovina to enable the holding of elections in Mostar, which also considered amending the statute of the city of Mostar, the leaders signed a second agreement on principles for amending the Election Law of Bosnia and Herzegovina in which they committed to the implementation of relevant court decisions concerning the elimination of inequality and discrimination in the electoral process, and agreed to secure the legitimate political representation of constituent peoples and citizens across all administrative and political levels in the Presidency of Bosnia and Herzegovina and the Bosnia and Herzegovina House of Peoples and the Federation House of Peoples. The agreement specified that the two parties would agree on necessary changes within the next six months – by 17 December – and secure their adoption in the Parliamentary Assembly of Bosnia and Herzegovina by the end of 2021.

10. This agreement was problematic from the beginning, owing to the two parties' competing visions of Bosnia and Herzegovina as a State and divergent interpretations of its Constitution, whereby their respective concepts of "legitimate representation" are completely different. In this context, HDZ Bosnia and Herzegovina favours an ethnic model in which each constituent set of peoples elects its own representatives, and SDA favours a model in which "legitimate representation" extends to "others" and to citizens. As a result, each party has a different interpretation of what they actually agreed to. In addition, HDZ Bosnia and Herzegovina maintains the position that political conditions for the adoption of amendments to the Constitution do not exist, which limits the discussion on implementing the agreement solely to the adoption of amendments to the Election Law of Bosnia and Herzegovina.

11. Moreover, the very concept of "legitimate representation" is difficult to reconcile with the implementation of *Sejdić and Finci* and other similar cases of the European Court of Human Rights. In this regard, at its 1383rd meeting, from 29 September to 1 October, the Committee of Ministers of the Council of Europe adopted a decision concerning the execution of the judgment of the Court in *Sejdić and Finci* in which they reiterated their concern that the authorities and political leaders of Bosnia and Herzegovina had not yet achieved consensus on the content of the required amendments to the Constitution of Bosnia and Herzegovina despite repeated calls by the Committee of Ministers, and recalled that the retention of the present discriminatory election system constituted a clear violation of the requirements of the European Convention on Human Rights and a manifest breach of the unconditional obligation by Bosnia and Herzegovina under article 46 of the Convention, and thus also of its undertakings as a member State of the Council of Europe.

12. By September, the differences between HDZ Bosnia and Herzegovina and SDA became clear. Božo Ljubić (HDZ Bosnia and Herzegovina), President of the Main Council of the Croat People's Assembly (HNS) – an umbrella organization of Croat parties dominated by HDZ Bosnia and Herzegovina – warned that any attempt to block changes to the Election Law would legitimize Croat demands for the concept of territorial autonomy, a reference to the long-time desire of HDZ Bosnia and Herzegovina for a third, Croat-majority entity in Bosnia and Herzegovina. SDA leader Bakir Izetbegović countered that there would be no third entity and added his view that legitimate representation entailed the right to proportional representation and to defend a vital national interest.

13. Following a subsequent meeting between Mr. Izetbegović and the leader of HDZ Bosnia and Herzegovina, Dragan Čović, each introduced new ultimatums. Mr. Izetbegović stated there would be no further talks on changes to the Election Law until the appointment of a new Federation Government and the appointments of judges to the vacancies in the Federation Constitutional Court. Mr. Čović countered that there would be no new Federation Government before an agreement on changes to the Election Law, adding that the two agreements signed in June – one enabling the holding of local elections in Mostar and the other on the principles for amending the Election Law – were inseparable, and if there was no agreement on amending the Election Law by 17 December, neither agreement was valid. It remains to be seen whether this was meant as a threat to the Mostar elections scheduled for 20 December.

14. Two weeks prior to the completion of the present report, Mr. Čović addressed a letter to the international community in Bosnia and Herzegovina, in which he held SDA entirely responsible for the lack of progress in reaching an agreement on the Election Law, warning that Croats would not tolerate unconstitutional solutions, and called on the international community to assist in finding a compromise solution. Subsequently, Mr. Izetbegović recalled that the June agreement sought to implement not only decisions of the Constitutional Court of Bosnia and Herzegovina but also

decisions of the European Court of Human Rights in the *Sejdić and Finci* and *Zornić* cases, which were difficult to reconcile with the ethnic model that HDZ Bosnia and Herzegovina advocated.

15. These disputes show how far the parties are from the required compromise needed to undertake such complex electoral reforms, which, to a great extent, is caused by the fact that the parties in power have different and often incompatible understandings of the constitutional framework of Bosnia and Herzegovina, which highlights, as I have underlined many times, the need for a strong and independent Constitutional Court of Bosnia and Herzegovina that is able to resolve such constitutional disputes. A functioning Constitutional Court is of vital strategic importance for the long-term self-sustainability of the General Framework Agreement for Peace, and it is within this context that the international community should continue to fully support the Constitutional Court and all its members, particularly its international (European) judges, who are too often subject to political and media attacks by Republika Srpska political leaders.

16. In July, as an end to the latest round of persistent negative rhetoric on the presence of international judges in the Constitutional Court of Bosnia and Herzegovina, the House of Representatives of Bosnia and Herzegovina rejected the proposal submitted by HDZ Bosnia and Herzegovina and SNSD in February of a law on the appointment of judges of the Constitutional Court, which was intended to immediately terminate the mandates of the three international judges and replace them with domestic judges. As noted in my previous report (S/2020/345, para. 85), this proposal is incompatible with the Constitution of Bosnia and Herzegovina. While I recognize that there will come a time in the future when the Constitutional Court is comprised entirely of domestic judges, it is my assessment that the country has a very long way to go before that should happen. In any case, political leaders and above all, citizens, demand “more Europe” and more European values. Therefore, the existing international (European) judges are the heralds of things to come and to welcome. Their presence is highly beneficial.

17. I firmly believe that no real progress will be made and no long-term stability will be achieved in Bosnia and Herzegovina without strengthening the rule of law. The rule of law is a fundamental value on which most democratic countries are founded. It is also a basic principle contained in the Constitution of Bosnia and Herzegovina, which establishes that Bosnia and Herzegovina “shall be a democratic state, which shall operate under the rule of law”. However, the lack of the rule of law remains a fundamental problem in Bosnia and Herzegovina that needs to be addressed urgently, in particular by strengthening judicial independence and standards and fighting organized crime and corruption, which is widespread, systemic and an obstacle to the faster development of Bosnia and Herzegovina into a true European country.

18. Relations within the Presidency of Bosnia and Herzegovina are also worrisome, as the members are increasingly at odds with each other. SNSD President and member of the Presidency Milorad Dodik frequently invoked the principle of vital entity interest over decisions he claimed were harmful to the interests of the Republika Srpska, and promised to do the same in the second round of voting over the sensitive issue of the recognition of Kosovo independence by Bosnia and Herzegovina. In the first-round vote in mid-September, Bosniak member and current Chair of the Presidency of Bosnia and Herzegovina, Šefik Džaferović (SDA), and Croat member and President of DF, Željko Komšić, outvoted Mr. Dodik in favour of recognition. The atmosphere of that session was not improved by Mr. Dodik’s request for a minute of silence as a mark of respect for former Republika Srpska official Momčilo Krajišnik, convicted by the International Tribunal for the Former Yugoslavia for crimes against humanity, who had passed away a few days earlier. The request was

rejected. The Presidency did not hold a regular session again until 15 October, when it took no decision on the recognition of Kosovo, as Mr. Komšić, as its initial proponent, withdrew his proposal and then – following Mr. Dodik’s disagreement with the procedural manoeuvre and his insistence on a vote on the proposal – Mr. Komšić and Mr. Džaferović completely refrained from voting, and Mr. Dodik voted against. Mr. Dodik has repeatedly linked the status of Kosovo to the status of the Republika Srpska, warning that if Kosovo independence is recognized – even by Serbia – the Republika Srpska would declare independence.

19. Meanwhile, the Republika Srpska authorities are persistent in their calls to revert to the so-called “original Dayton”, wrongly asserting that any constitutional responsibility not expressly listed in the Constitution of Bosnia and Herzegovina as belonging to the State in article 3 (1) of the Constitution belong to the entities, and that the only Bosnia and Herzegovina institutions that should exist are those explicitly mentioned in the its Constitution.

20. Moreover, the Republika Srpska authorities have frequently called for the adoption of a new Republika Srpska Constitution, which would eliminate the Republika Srpska Council of Peoples, an institution specifically designed for the protection of the vital national interests of the constituent peoples of the Republika Srpska. In June, the President of the Republika Srpska, Željka Cvijanović, complained that the Republika Srpska Council of Peoples was “created to be a potential problem”.<sup>1</sup>

21. Mr. Dodik, the de facto leader of the Republika Srpska, has on several occasions attempted to draw the President of Serbia, Aleksandar Vučić, into the internal political issues of Bosnia and Herzegovina. In August, he led a delegation from Republika Srpska to meet with Mr. Vučić in Belgrade to discuss Republika Srpska complaints over what it claimed were unjust interventions in the Bosnia and Herzegovina constitutional order by the High Representative and the Constitutional Court of Bosnia and Herzegovina. Ahead of the meeting, the Republika Srpska authorities reportedly sent a document comprising conclusions and accompanying reports on those issues that had been adopted by the National Assembly of the Republika Srpska in November 2019 and February of 2020. Commendably, Mr. Vučić reiterated the commitment of Serbia to the General Framework Agreement for Peace.

22. The authorities at all levels continue to disregard or reject final and binding decisions of the judiciary, including, for example, in the Federation with regard to decisions of the Federation Constitutional Court requiring a number of cantons to harmonize their constitutions with the Federation Constitution to ensure, among other things, the full equality of Serbs as a constituent people, and, in the Republika Srpska, judgments of both the Constitutional Court of Bosnia and Herzegovina and the State Court of Bosnia and Herzegovina concerning the registration of defence property.

23. While the flow of refugees and migrants entering the country in an attempt to transit to the European Union decreased during the initial phase of the COVID-19 pandemic, it has returned to the pre-pandemic level, and there are currently between 6,000 and 8,000 refugees and migrants in Bosnia and Herzegovina. The Federation in general, and Una-Sana Canton in particular, in the north-west of the country, host the largest number of refugees and migrants owing to Una-Sana Canton’s proximity to neighbouring Croatia and relative proximity to Slovenia and the Schengen area. The Republika Srpska authorities continue to refuse to allow the establishment of reception centres on Republika Srpska territory. The Republika Srpska has also actively transported individuals they identify as refugees or migrants to the inter-entity boundary line. While the State-level authorities seek the means to return

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<sup>1</sup> Statement by Ms. Cvijanović, *Glas Srpske*, 20 June 2020.

those who have arrived irregularly, either to neighbouring countries (Serbia or Montenegro) or to their countries of origin, they must nonetheless continue to uphold their obligations under international and national law – providing access to rights, including the right to seek asylum in Bosnia and Herzegovina, in accordance with human rights and humanitarian standards.

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

24. Despite frequent challenges to the core principles of the General Framework Agreement for Peace during the reporting period, I continued to refrain from using my executive powers, pursuant to the policy of the Steering Board of the Peace Implementation Council, which seeks to promote local ownership over international decision-making.

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

### **1. Progress on objectives**

25. My office continues to urge progress towards the full implementation of the five objectives and two conditions established by the Steering Board of the Peace Implementation Council in 2008 as essential steps towards the closure of the Office of the High Representative. The intention of the Steering Board in establishing that agenda was for Bosnia and Herzegovina to assume full responsibility and demonstrate its credibility. Thus, the agenda is for the Bosnia and Herzegovina authorities to deliver, but regrettably, except for recent positive trends in Brčko District, they show no serious commitment to implementing it. Many areas covered by the agenda have seen stagnation and even rollbacks.

### **2. State and defence property**

26. Following the adoption by the Constitutional Court of Bosnia and Herzegovina in February of two important decisions related to public property, as extensively covered in my previous report (see [S/2020/345](#)), there were no substantial attempts at implementing the relevant court decisions or achieving progress towards the acceptable and sustainable resolution of the issue of State property during the reporting period.

27. As a reminder, as established in the 2012 decision of the Constitutional Court of Bosnia and Herzegovina, the State of Bosnia and Herzegovina is the titleholder of all State property, and the Parliamentary Assembly of Bosnia and Herzegovina has exclusive competence to regulate the issue of the apportionment of assets between the State and lower levels of government. In that context, the Court specifically underlined the constitutional principle of the legal continuity of the State, as well as the fact that State property “reflects the statehood, sovereignty and territorial integrity of Bosnia and Herzegovina”. Moreover, the decisions mentioned in paragraph 26 above issued by the Court in February confirmed the legal principles established by the 2012 decision on State property and further elaborated that – pursuant to the same constitutional principle of legal continuity – the State is the titleholder of former “general people’s property” (i.e., socially or State-owned property), including public goods such as agricultural land and inland waters.

28. In addition, in April and May the Constitutional Court of Bosnia and Herzegovina issued two decisions addressing the registration of prospective defence property under the ownership of Bosnia and Herzegovina. As a reminder, since the

so-called process of “direct registration of prospective defense property” started in 2015, the Public Attorney’s Office of Bosnia and Herzegovina has submitted requests for the registration of the country’s ownership rights of such properties to the competent domestic institutions. In the Federation, these registration requests are considered, and most often adopted, by the competent land registry offices of the municipal courts, resulting in numerous successful registrations of the right of ownership in favour of the State of Bosnia and Herzegovina. In the Republika Srpska, the registration requests are considered by the Republika Srpska Geodetic Administration, and are routinely rejected for various procedural and/or substantive reasons, owing primarily to an alleged lack of valid legal basis for registration. As previously reported, the Republika Srpska has been blocking the registration of prospective defence property in its territory under the ownership of the State of Bosnia and Herzegovina for several years, despite the existing legal framework (e.g., the Constitution of Bosnia and Herzegovina, the Bosnia and Herzegovina Law on Defence (2005) and relevant decisions of the Presidency), and final and binding court decisions, such as the State Court’s 2016 decision in the case of the prospective location at Han Pijesak in the Republika Srpska.

29. After the competent Republika Srpska institutions rejected several registration requests, the Constitutional Court of Bosnia and Herzegovina, in its decisions in April and May, upheld the appeals submitted by the Public Attorney’s Office of Bosnia and Herzegovina concerning the rejected registrations in two particular cases. In its decisions, the Constitutional Court established violations of relevant rights guaranteed by the Constitution of Bosnia and Herzegovina, annulled the disputed decisions of the Republika Srpska courts and instructed the courts to issue new decisions in an urgent procedure. Furthermore, in the view of the Constitutional Court, the decision of the Presidency of Bosnia and Herzegovina on the size, structure and locations of the armed forces of Bosnia and Herzegovina was to be considered as the decision of the competent body and thus as a valid legal basis for the requested registration of the State’s ownership rights. In that regard, the Constitutional Court also cited the constitutional obligation of the entities and their bodies to fully comply with the Constitution of Bosnia and Herzegovina and with decisions of the Bosnia and Herzegovina institutions – in this case, the Presidency.

30. The adoption of comprehensive State-level legislation on the apportionment and management of State property, based entirely on the legal principles established by the Constitutional Court of Bosnia and Herzegovina, represents the only acceptable and sustainable resolution of the issue of State property. Meanwhile, as noted in previous reports, based on numerous laws, declarations, resolutions, conclusions and statements adopted and issued by competent Republika Srpska institutions and authorities, this issue has become a vehicle for promoting the unilateral policies of the Republika Srpska aimed at undermining the fundamental principles of the General Framework Agreement for Peace and depriving the State of Bosnia and Herzegovina of its right to own and administer its property, its constitutional competences and ultimately its sovereignty and territorial integrity. Addressing these very serious issues requires the swift and proactive engagement of the international community.

### **3. Brčko District**

31. The COVID-19 pandemic has accentuated the importance of good governance, infrastructure development and private sector growth reforms to reinforce Brčko District’s resilience to challenges. The Office of the High Representative has provided and will continue to provide expert and technical support to the Supervisor of the Brčko District in encouraging and guiding the District to that end, including at all stages of reforms, which will also advance the District to the stated objectives of the Final Award. In this endeavour, the Supervisor and the Office of the High

Representative also engage with international community representatives to ensure a targeted, coordinated and results-oriented approach.

32. The fiscalization process has been successfully completed and has proven supportive of the common goal of the District and Bosnia and Herzegovina of fighting tax evasion and generating revenues more efficiently. A new budget law has set the District on a course to improve its fiscal discipline, transparency and responsibility in spending. The law's key principles were applied in the adoption of the 2020 District budget and of the law on its execution, laying the groundwork to generate funds to help prevent the spread of COVID-19 and mitigate its economic consequences. This was also reflected in subsequent budget rebalances. The pandemic has somewhat delayed the by-laws required for the full application of the budget law to the 2021 budget cycle, but the drafting process has resumed, and the by-laws are expected to be adopted in the fourth quarter of 2020.

33. Complementary good governance reforms are also on track. A law on peaceful assembly, which protects the right of assembly in accordance with international standards, and is the first of its kind in Bosnia and Herzegovina, was adopted on 29 July. On 14 October, a law on foundations and associations was adopted that established transparent, equitable and merit-based support to the non-governmental sector. The same day, a law on national minorities was adopted that regulates the equal participation of minorities in the District in alignment with European legal norms. An online register of public sector employees and appointees and their holdings was launched on 20 August to further foster transparency and fiscal discipline in the District. The register may also serve to identify and prevent conflicts of interest, thereby complementing the efforts of the District to draft a new law on conflict of interest that would leave no room for misinterpretation and abuse.

34. Ensuring a credible electoral process is key to re-establishing voter trust in elected officials. As a result, the list of voters in Brčko District is being updated, the abuse of public funds for election purposes is being curbed and the presence of independent observers for every polling station in Brčko has been organized for the local elections on 15 November. Following the elections, additional good governance reforms will need to be implemented to maintain this positive trend.

35. Infrastructure development projects have been impeded by the COVID-19 pandemic, but nonetheless have been recognized as the most effective response to mitigating its economic consequences. Preparatory activities relevant to the modernization of Brčko Port and the reconstruction of the Brčko-Gunja Bridge are close to completion, with construction works currently planned for the fourth quarter of 2020. The new police building is nearly ready to house not only the District police but also the local detachment of both the Bosnia and Herzegovina State border police and the Service for Foreigners' Affairs.

36. The vulnerability of the electricity supply remains a concern in Brčko District, as the supply options are limited. In September, the District authorities launched a tender for electricity supply for 2021, but as in previous years, the District received only one bid and to date no arrangement has been concluded despite the promising tone of the ongoing negotiations. This situation once again highlights the need to diversify and strengthen the District's energy security. The District has therefore also undertaken steps to adopt energy legislation to create a modern and European Union-compliant legal framework for the energy sector, promoting energy efficiency and renewable energy sources, as well as investing in energy infrastructure. With regard to such investments, the transfer by the District of ownership rights over the electricity transmission facilities to the Bosnia and Herzegovina Electricity Transmission Company, in accordance with the State-level law, is expected to be completed by the end of the year. This will ensure continued investments in and the

maintenance of key electricity transmission infrastructure and contribute to the security of the electricity supply.

37. The dynamic achieved during the reporting period has encouraged new infrastructure projects in Brčko District, such as expanding and improving the water supply system. Negotiations between Bosnia and Herzegovina and the European Bank for Reconstruction and Development on a loan agreement amounting to €6.5 million for this purpose are expected in the fourth quarter of 2020.

38. While the steps taken by the District leadership are crucial for strengthening the stability and sustainability of Brčko District, additional efforts are needed to ensure that the ongoing pandemic, the local elections in November and tensions in the rest of the country do not hinder or roll back the path of progress towards the stated objectives of the Final Award.

#### **4. Fiscal sustainability**

39. In accordance with its mandate, including coordination responsibilities, the Office of the High Representative continued to follow, analyse and report on developments and legislative actions relevant to fiscal sustainability. This included monitoring and reporting to the Steering Board of the Peace Implementation Council on the activities of the Governing Board of the Indirect Taxation Authority of Bosnia and Herzegovina, in which the Office of the High Representative is the only representative of the international community, and the Fiscal Council of Bosnia and Herzegovina. The trends in both institutions continue to raise concerns over the ability of governments at all levels, in particular the State level, to ensure the unimpeded functioning of institutions and the discharge of their constitutional and legal obligations.

40. The Fiscal Council did not meet during the first quarter of 2020, and only in early April did it consider the letter of intent seeking assistance under the International Monetary Fund (IMF) Rapid Financing Instrument in the amount of roughly €330 million to address urgent needs arising from the COVID-19 pandemic in Bosnia and Herzegovina. Disputes between the Federation and the Republika Srpska, and within the Federation, over the distribution of the IMF assistance delayed the consideration of the country's request by the IMF Executive Board, which in turn delayed the disbursement.

41. Although the IMF Executive Board approved the request of Bosnia and Herzegovina on 20 April and disbursed the funds on 22 April, distribution within Bosnia and Herzegovina was stalled until 2 June with regard to accounts within the Central Bank of Bosnia and Herzegovina, owing to continued disputes arising from different interpretations of an 11 April agreement between the leaders of SNSD, SDA and HDZ Bosnia and Herzegovina, and the State and entity prime ministers and finance ministers, mainly related to distribution to the Federation cantons. This created undue pressure on the Central Bank, as the country's fiscal agent, to proceed with the transfer of funds despite the absence of a decision on their distribution, which the Bank successfully resisted. The disputes were resolved only on 2 June, when the Bosnia and Herzegovina Council of Ministers finally adopted an outstanding decision on the distribution of funds under the IMF Rapid Financing Instrument, compliant with the 11 April letter of intent and the 20 April memorandum of understanding, authorizing the Ministry of Finance and Treasury to distribute the funds as follows: 61.5 per cent to the Federation with its 10 cantons, 37.5 per cent to the Republika Srpska and 1 per cent to Brčko District. The Office of the High Representative played an instrumental role in providing analyses and guidance to the international community towards resolving the problem in line with the relevant legislation and the commitments made by the authorities.

42. Following the developments related to the IMF Rapid Financing Instrument, the Fiscal Council did not meet again until 18 September, when it adopted – well past the May deadline for doing so – the Global Framework of Fiscal Balance and Policies for 2021–2023, a document that serves as the basis for the preparation of State and entity budgets in the stated time frame. According to the document, the overall budget of the State institutions in 2021 is determined to be KM 1.027 billion, which represents a 3.1 per cent increase over the 2020 budget. The revenues of indirect taxes, as a key component for financing the Bosnia and Herzegovina institutions in 2021, are projected to be 2020 levels (KM 780 million), while the remaining planned funds would be secured from other revenues.

43. The Office of the High Representative continued to closely follow, report and advise on developments related to the single indirect tax system, in particular in view of developments observed during the previous reporting period, including attempts to undermine the single indirect tax system and its State-level institutional structure, and announcements of the potential withdrawal of the Republika Srpska from the inter-entity agreement transferring the responsibility for indirect taxation to the State. The Office of the High Representative attends the sessions of the Governing Board of the Indirect Taxation Authority, allowing the Office and, by extension, its international community partners, to be fully informed and able to react promptly as needed.

44. The Governing Board of the Indirect Taxation Authority finally reached a long-awaited agreement on inter-entity debt settlement and indirect tax revenue coefficient adjustments in late May. The Board unanimously adopted decisions settling the outstanding inter-entity debts arising from the indirect tax revenue allocations for the period from 2012 to 2019. Based on the total debt settlement, the Federation owes the Republika Srpska the amount of KM 22.5 million, and the debt, as subsequently agreed, would be settled by the Indirect Taxation Authority from the Federation's share of indirect tax revenues in six instalments starting in July. It remains unclear whether the debt settlement would result in the withdrawal of the related entity lawsuits pending before the State Court of Bosnia and Herzegovina. The Governing Board also adopted the indirect tax revenue allocation coefficients for the second quarter of 2020. This was the first time since 29 May 2017 that the Board had adjusted the revenue allocation coefficients, which – pursuant to the Board's regulations – must be adjusted quarterly. The Board followed up on 29 June, adopting the coefficients for the third quarter of 2020, and then again on 31 August, settling the inter-entity debt for the first half of 2020. The debt settlement, according to which the Federation owes the Republika Srpska KM 32.3 million, will be implemented by the Indirect Taxation Authority from the Federation's share of indirect tax revenues in four equal instalments by the end of 2020.

45. The Governing Board of the Indirect Taxation Authority also considered several other issues within its competence, notifying the relevant authorities of, among other things, the expiration of the mandate of current Director of the Indirect Taxation Authority, Miro Džakula, on 6 June in order to initiate the procedure for his replacement. Given the strategic importance of the Indirect Taxation Authority, the vacancy has triggered inter-party disputes, with SDA, HDZ Bosnia and Herzegovina and SNSD each claiming the position. The situation is likely to compound the challenges to the indirect tax system, which should not be neglected, despite the positive developments in recent months. The Office of the High Representative will engage with its international partners to address those challenges.

46. The Office of the High Representative also continued to closely follow other developments related to fiscal sustainability, including the adoption status and details of the 2020 budgets at all levels of government.

## 5. Issues related to the rule of law

47. As I stated in paragraph 17 above, I firmly believe that no real progress will be made and no long-term stability will be achieved in Bosnia and Herzegovina without strengthening the rule of law. The rule of law is a fundamental value on which most democratic countries are founded. It is also a basic principle contained in the Constitution of Bosnia and Herzegovina, which establishes that Bosnia and Herzegovina “shall be a democratic state, which shall operate under the rule of law”. However, the lack of the rule of law remains a fundamental problem in Bosnia and Herzegovina that needs to be addressed urgently, in particular through strengthening judicial independence and fighting organized crime and corruption, which is widespread, systemic and an obstacle to the faster development of Bosnia and Herzegovina into a true European country.

48. The High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which is the key institution in developing the concept of judicial impartiality and the rule of law by raising standards of professionalism, transparency and efficiency in the legal profession, must be addressed as a priority. In this regard, I will continue to support the efforts of the European Union and the wider international community to seek amendments to the Law on the High Judicial and Prosecutorial Council that strengthen the integrity of judges and prosecutors and the Council itself. I would like to thank the European Union for its efforts in this regard.

49. In the aftermath of the incident in 2019 involving the President of the High Judicial and Prosecutorial Council’s inappropriate contact with a citizen who complained of his legal case, and the dismissal of the subsequent disciplinary case against the President with the explanation that the President cannot be subject to disciplinary responsibility and is therefore above the law, the credibility and public perception of the Council, mandated to appoint and discipline judges and prosecutors, further declined. There is an urgent need to improve the standards of the Council, primarily through changes to the Law on the High Judicial and Prosecutorial Council. The international community strongly advocates technical changes to yield a properly functioning Council, while preserving it as a State-level body with jurisdiction throughout Bosnia and Herzegovina. Amendments have been drafted, and consultations are ongoing.

50. In August, the Office of the Disciplinary Counsel of the High Judicial and Prosecutorial Council confirmed that it had opened an ex officio case against Chief Prosecutor Gordana Tadić, stemming from media allegations that she sought compensation for accommodation expenses for an apartment in which she did not reside. In such cases of potential breaches of duties by judges or prosecutors, the Office of the Disciplinary Counsel acts as prosecutor in proceedings, which are held before the disciplinary panels of the High Judicial and Prosecutorial Council. Ms. Tadić has denied any wrongdoing.

51. The mandate of the current Director General of the Intelligence-Security Agency of Bosnia and Herzegovina has expired and a new appointment must be made. The appointment has apparently been postponed, as the current Director General faces scrutiny for allegedly obtaining and using false documents as evidence of the education required for the position by law.

52. The persistent calls of the Republika Srpska authorities to reject the applicability of Bosnia and Herzegovina-level judicial decisions in that entity represents a continued deterioration of the entrenchment of the rule of law.

53. In the Federation, the Federation President, who, under the Federation Constitution, is mandated to nominate, in concurrence with the two Vice-Presidents, judges to fill the vacancies of the Federation Constitutional Court, did not meet his

obligation for two years. This failure continues to have direct implications on the ability of the Federation Constitutional Court – and its vital national interest panel – to exercise its constitutional responsibilities, as it operates with only five sitting judges, out of nine required by the Federation Constitution.

54. The Federation legislation establishing a special prosecutor and court department for fighting corruption and organized crime, adopted in 2014, remains unimplemented, which is irresponsible and unacceptable.

55. In general, all processes in Bosnia and Herzegovina should be accelerated, but acceleration should occur most of all with regard to rule of law reforms. Increasingly, people are leaving Bosnia and Herzegovina not only for economic reasons but also because of the lack of rule of law. Accordingly, of all priorities, reforms in the rule of law field should be the highest. There should no longer be any tolerance for delays, as with the long overdue establishment of a special prosecutor and court department for fighting corruption and organized crime in the Federation. It is also beyond reason that a person blacklisted by a member State of the Steering Board of the Peace Implementation Council over suspicion of corruption be given the task of overseeing the fight against corruption. This is precisely what the Parliamentary Assembly of Bosnia and Herzegovina did when it appointed Bosnia and Herzegovina House of Peoples delegate Nikola Špirić (SNSD) to the parliamentary committee for the selection and monitoring of the work of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption of Bosnia and Herzegovina. Mr. Špirić was sanctioned by the Government of the United States of America in September 2018 because it had credible information on his involvement in and receipt of benefits from public corruption.

## **6. War crimes cases**

56. On 24 September, the Bosnia and Herzegovina Council of Ministers adopted the Revised National War Crimes Processing Strategy. The process of the adoption of the revisions took more than two years, primarily owing to opposition from victims' associations and SDA over concerns that so-called "category A" cases – cases for which the International Tribunal for the Former Yugoslavia assessed there were sufficient grounds for prosecution – would not be processed, and that cases handled at the entity level would not be justly administered.

57. The previous National War Crimes Processing Strategy, adopted in 2008, envisioned the processing of the most complex cases by 2015, but this deadline was not met. It is hoped that a new supervisory board for the Revised Strategy, which will in the future add to its membership representatives of the Office of the Prosecutor of Bosnia and Herzegovina and the State Court of Bosnia and Herzegovina, will serve to increase the speed of prosecutorial work and the prioritization of the most serious cases, enable the efficient transfer of cases within Bosnia and Herzegovina to allow more cases to be processed in less time and improve regional cooperation – in particular where category A cases are concerned. If the new deadline of 2023, as established in the Revised Strategy, can be met for the completion or closure of these cases, this will be a very positive achievement. I commend all efforts, while remaining hopeful of the results.

## **D. Challenges to the General Framework Agreement for Peace**

### **1. Challenges to the sovereignty and territorial integrity, competences and institutions of Bosnia and Herzegovina**

58. During the reporting period, Republika Srpska politicians, in particular the leader of SNSD, Milorad Dodik, continued to challenge the sovereignty and territorial

integrity of Bosnia and Herzegovina, disregarding State-level competences and undermining key State-level institutions. Mr. Dodik persistently attempted to link the status of the Republika Srpska with the status of Kosovo, suggesting that if the independence of Kosovo was recognized, the independence of the Republika Srpska should be as well.<sup>2</sup> Regrettably, on at least one occasion he was joined by the Serbian Minister for Defence, Aleksandar Vulin, in making such a linkage.<sup>3</sup>

59. Mr. Dodik has also periodically revived the notion of a Republika Srpska referendum on secession,<sup>4</sup> and frequently called for the unification of the Republika Srpska with Serbia. He has also spoken repeatedly of the existence of “two Serb States”.<sup>5</sup>

60. Similarly, some Croat politicians still allude to a “third entity” through the territorial reorganization of Bosnia and Herzegovina, as most recently mentioned by Božo Ljubić, President of the Main Council of HNS.<sup>6</sup>

61. The Steering Board of the Peace Implementation Council has repeatedly called on parties to refrain from divisive action and rhetoric and reiterated its commitment to the territorial integrity and fundamental structure of Bosnia and Herzegovina as a single, sovereign State comprising two entities. The entities have no right to secede from Bosnia and Herzegovina and only exist legally by virtue of the Constitution of Bosnia and Herzegovina.

## 2. Rhetoric on war crimes, glorification of war criminals

62. Nationalist leaders continue to deny war crimes, glorifying convicted war criminals and leading divided commemorations that perpetuate the notion of group victimhood while ignoring or downplaying empathy and compassion for the suffering and loss of others.

63. Following the death from COVID-19 in September of SDS cofounder, former Speaker of the National Assembly of the Republika Srpska and former member of the Presidency of Bosnia and Herzegovina Momčilo Krajišnik, whom the International Tribunal for the Former Yugoslavia convicted in 2006 for crimes against humanity, Mr. Dodik praised Mr. Krajišnik<sup>7</sup> and reportedly suggested naming a street in Banja Luka after him. In addition, at the session of the Presidency of Bosnia and Herzegovina in mid-September, Mr. Dodik requested a minute of silence as a mark of

<sup>2</sup> “If Kosovo is internationally recognized, the [Republika Srpska] should have such treatment, because it is an almost identical situation in terms of national and other circumstances.” Statement by Mr. Dodik, *NI*, 23 July 2020.

<sup>3</sup> “If those in [Bosnia and Herzegovina] are for an independent Kosovo, then I am for an independent [Republika Srpska].” Statement by Serbian Minister for Defense Aleksandar Vulin, *RTS*, 17 September 2020.

<sup>4</sup> It is time to affirm [former President of the United States Bill] Clinton’s idea and give Serbs the right to choose where and in what State they want to live. This is not their State, nor do Serbs perceive it that way. Their State is the [Republika Srpska].” Statement by Mr. Dodik, *Oslobodjenje*, 27 July 2020.

<sup>5</sup> “Today we have two States, Serbia and the [Republika Srpska], and the aspiration is to be one State, building security and the future of the entire region, which no one can take away from us. We want it in a peaceful and civilized way.” Statement by Mr. Dodik, *Srpska Republika News Agency*, 15 September 2020.

<sup>6</sup> “Blocking or preventing changes to the Election Law on the basis of the Constitution and decisions of the Constitutional Court actually legitimizes the direct search for other concepts of achieving national equality. One of those concepts is certainly on the concept of territorial autonomy.” Statement by Mr. Ljubić, *Dnevni Avaz*, 7 September 2020.

<sup>7</sup> “Momčilo Krajišnik will remain inscribed in special letters in the history of our Republic and our people in Republika Srpska, who lost their sincere and true patriotism with his departure.” Statement by Mr. Dodik, *Kurir*, 15 September 2020.

respect for Mr. Krajišnik, a convicted war criminal. This is against all European standards and standards of humanity.

64. A quarter of a century after the cessation of hostilities, senior political figures and certain segments of society are increasingly challenging the rulings of the International Tribunal for the Former Yugoslavia, the International Court of Justice and the International Residual Mechanism for Criminal Tribunals. Such attitudes greatly hinder the prospects of lasting reconciliation in the country.

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

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

65. The Presidency of Bosnia and Herzegovina maintained its regular and protocol activities throughout the reporting period, receiving dignitaries, ambassadors and delegations. The Presidency held 7 regular sessions and 30 extraordinary sessions, focusing on the COVID-19 pandemic, the migrant crisis, European Union integration and regional cooperation. However, Presidency members continue to act unilaterally on numerous issues that lack political consensus in Bosnia and Herzegovina.

66. Much of the Presidency's work focused on efforts to mitigate the pandemic, assuming a coordinating role between institutions, while also tasking the Bosnia and Herzegovina Council of Ministers to work with the Brčko District and entity governments on future measures. In its capacity as commander-in-chief, the Presidency instructed the armed forces of Bosnia and Herzegovina to assist civilian bodies in preventing the spread of COVID-19.

67. In late April, the Presidency formally adopted a conclusion that launched the implementation of 14 key priorities identified in the European Commission's opinion on the application of Bosnia and Herzegovina for membership in the European Union, and reaffirmed the country's commitment to European Union membership as a strategic foreign policy goal and priority. The Presidency established an ad hoc political working group comprising the members of the Presidency and all members of the collegiums of the Council of Ministers, the Bosnia and Herzegovina House of Representatives and the Bosnia and Herzegovina House of Peoples. The Presidency also tasked the Chair of the Council of Ministers to develop an action plan for the implementation of the 14 priorities and to report monthly on its implementation.

68. The Presidency has several times requested the Council of Ministers to produce a comprehensive plan for resolving the migrant crisis in Bosnia and Herzegovina, underlining the primary goals of preventing illegal entry into Bosnia and Herzegovina and reducing the number of migrants residing in the country. The Presidency urged the Council of Ministers to enhance the capabilities of the Bosnia and Herzegovina border police and accelerate the conclusion of readmission agreements with migrants' countries of origin. In late August, the Presidency requested the Council of Ministers and relevant institutions to relocate migrants from urban centres to designated facilities, and requested the Council to allocate KM 5 million to enhance capacities in managing the crisis.

69. On 26 June, the Presidency adopted the proposed 2020 Law on the Budget of Bosnia and Herzegovina Institutions and International Obligations, submitting it to the Parliamentary Assembly of Bosnia and Herzegovina under urgent procedure, which the Parliamentary Assembly did not support, instead considering it under regular procedure.

70. The Presidency discussed the "mini-Schengen" initiative launched by Albania, North Macedonia and Serbia in October 2019 to improve regional economic

cooperation and the flow of goods, and enable border crossings with identity cards. The Presidency tasked the Council of Ministers to prepare an analysis of the initiative as a reference document for a potential decision by the Presidency on whether Bosnia and Herzegovina would join the initiative.

71. Member of the Presidency Mr. Dodik invoked vital entity interest over several decisions adopted by the other two members, including: the approval of the signing of a memorandum of understanding between the Ministry of Security of Bosnia and Herzegovina and the United States Department of Homeland Security on cooperation in the exchange of travel information; a statement approving the signing of an agreement on Bosnia and Herzegovina participation in the Program for International Student Assessment testing; and a statement approving the signing of an agreement on the participation of Bosnia and Herzegovina in the 2021 Progress in International Reading Literacy Study. Most recently, Mr. Dodik invoked vital entity interest over a decision supporting the conclusion of a memorandum of cooperation between the Central Election Commission of Bosnia and Herzegovina and the International Foundation for Electoral Systems on electoral monitoring. In each case, the National Assembly of the Republika Srpska supported the vital entity interest motions, and the affected decisions did not enter into force.

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

72. The Bosnia and Herzegovina Council of Ministers met regularly during the reporting period, holding 13 regular and 19 urgent or extraordinary sessions, albeit with limited legislative output.

73. The Council of Ministers adopted only two new laws and one amendment to existing legislation. Of the “new” laws, one was the 2020 Law on the Budget of Bosnia and Herzegovina Institutions and International Obligations, which was adopted on 18 June after considerable delay. In an attempt to explain the poor legislative output to the public, the Chair of the Council of Ministers, Zoran Tegeltija (SNSD), stated that in the absence of political consensus on many issues, there was no point in proposing legislation destined to fail.

74. The Council of Ministers devoted much of its work to measures related to COVID-19 that were within its competency, such as defining instructions for procedures during a pandemic, approving loan agreements with international financial institutions and deciding on the opening and closing of airports and other border crossing points. In September, after banning the entry of non-citizens, apart from exceptional cases, since the start of the pandemic, the Council opened the Bosnia and Herzegovina borders to foreign citizens who could provide a negative COVID-19 test no more than 48 hours old. The Council subsequently approved an agreement on the acquisition of an eventual COVID-19 vaccine with the Gavi Alliance (formerly the Global Alliance for Vaccines and Immunizations).

75. Although the Council of Ministers formally kept track of the migrant crisis in the country through the adoption of monthly statistical reports, the overall response has been inadequate, with the public perception that the jurisdictions where migrants are accommodated – mainly Una-Sana Canton in the Federation – have been left to fend for themselves.

76. On 30 June, the Council of Ministers adopted a decision on temporary financing for the period from July to September 2020, which ended when the Parliamentary Assembly of Bosnia and Herzegovina completed the adoption of the 2020 State budget on 29 July.

77. Although several appointments to key Bosnia and Herzegovina institutions, including the directors of the Bosnia and Herzegovina Intelligence-Security Agency and the Indirect Taxation Authority, remained deadlocked as a result of political calculations, the Council of Ministers did make other important appointments. In July, the Council confirmed the appointments of new directors of the State Investigation and Protection Agency (SIPA), the Communications Regulatory Agency (CRA), the Agency for Education and Professional Training and the Official Gazette of Bosnia and Herzegovina, as well as members of various other bodies and managerial boards.

78. In June, the Minister for Security of Bosnia and Herzegovina, Fahrudin Radončić (Union for a Better Future of Bosnia and Herzegovina (SBB)), tendered his irrevocable resignation from his position, citing irreconcilable differences with SDA over the issue of illegal migration, among other things. In April, Mr. Radončić became embroiled in a scandal after he proposed the forcible repatriation of migrants in Bosnia and Herzegovina to their home countries and criticized the Embassy of Pakistan in Bosnia and Herzegovina for not cooperating in such efforts to return its citizens, ultimately suggesting that the Ambassador of Pakistan be declared *persona non grata* in Bosnia and Herzegovina. Mr. Radončić's replacement as Minister for Security, Selmo Cikotić (SDA), was confirmed in July.

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

79. The Parliamentary Assembly of Bosnia and Herzegovina continued to meet while respecting social distancing and other pandemic-related measures, and executed its protocol duties, with delegates participating in international forums online and the leadership of both houses meeting with domestic and international dignitaries. However, the Bosnia and Herzegovina House of Representatives did not meet from 11 March to 28 April, and the Bosnia and Herzegovina House of Peoples did not meet from 14 February to 28 May. The House of Representatives amended its rules of procedure to allow for sessions to be conducted online, but never put the amendments into practice, while the House of Peoples, as a much smaller body, took no similar steps.

80. In all, the House of Representatives held six regular and five urgent sessions, while the House of Peoples held six regular and three urgent sessions. Only two new laws were adopted, as well as five amendments to existing laws, with both houses rejecting a cumulative 30 legislative proposals.

81. Among the most notable proposals rejected was the controversial law on the selection of judges to the Constitutional Court of Bosnia and Herzegovina previously elected by the President of the European Court of Human Rights, proposed by SNSD and HDZ Bosnia and Herzegovina with the aim of eliminating the presence of international (European) judges on the Constitutional Court. The Constitutional Legal Committee of the House of Representatives had issued a second negative opinion on the law, which the House of Representatives adopted on 7 July, thereby rejecting the proposal.

82. Following a lengthy delay in the submission of the 2020 State budget to the Parliamentary Assembly, and after five sessions of the House of Representatives and four sessions of the House of Peoples, and a harmonization process between the two houses, the budget was finally adopted on 29 July. This was the latest date for adoption to enable the Central Election Commission to carry out preparatory activities in time for the local elections in November. Earlier, through consecutive sessions of the House of Representatives and the House of Peoples on 7 and 8 July, respectively, the Parliamentary Assembly adopted the long-awaited amendments to the Bosnia and

Herzegovina Election Law to enable the holding of elections in the city of Mostar for the first time since 2008.

83. On 15 May, the House of Representatives approved the appointment of contested candidates for the Bosnia and Herzegovina Minister for Human Rights and Refugees (Democratic People's Alliance) and the Bosnia and Herzegovina Deputy Minister for Security (Socialist Party of Republika Srpska), finally filling the remaining vacancies in the Council of Ministers, which had been outstanding since December of 2019. On 20 May, the House of Representatives adopted the decision on the appointment of Željko Bakalar as a Croat member of the Central Election Commission, to replace member Stjepan Mikić, whose mandate had expired. Mr. Bakalar was proposed by DF and strongly opposed by HDZ Bosnia and Herzegovina, whose representatives called his appointment illegal. On 23 July, following the resignation of Mr. Radončić (SBB), the Bosnia and Herzegovina Minister for Security, in June, the House of Representatives confirmed the appointment of his replacement, Selmo Cikotić (SDA), despite opposition from HDZ Bosnia and Herzegovina, whose representatives claimed a court proceeding was pending against Mr. Cikotić for alleged war crimes against Croats.

84. In May, after considerable delay, the House of Representatives ad hoc investigative commission for determining the state of affairs in the Bosnia and Herzegovina judicial institutions was established, and began its work. The commission met regularly, holding public hearings with representatives of the judiciary, as well as with experts in the judicial field and journalists.

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

85. With the results of the 2018 general elections still pending full implementation, as a new Federation Government has not yet been appointed, the Government from the mandate for the period 2014–2018, comprising ministers from SDA, HDZ Bosnia and Herzegovina and SBB, continued to work in a technical capacity. The current number of ministers is 14, reduced from 16, owing to the departure of the former Minister for Education (SDA) in early 2020 for an ambassadorship and the death in July of the former Minister for Veterans Affairs (SDA) from COVID-19. The Government held 22 regular and 17 extraordinary sessions during the reporting period.

86. In late May, acting on the order of the Office of the Prosecutor of Bosnia and Herzegovina, SIPA arrested the Federation Prime Minister, Fadil Novalić (SDA), the Head of the Federation Civil Protection Administration, Fahrudin Solak (SDA), and Srebrena Malina (Silver Raspberry) company director Fikret Hodžić for suspicion of involvement in the criminal acts of document forgery, money-laundering and accepting bribes with regard to the Federation's KM 10.5 million procurement of respirators from China. The purchase of the respirators had become a scandal, as the company that procured them had no experience in medical procurement, and medical experts with the Federation Crisis Headquarters had deemed the respirators unusable for COVID-19 cases. Several months later, the Institute of Metrology of Bosnia and Herzegovina assessed the respirators as being of high quality and suitable for COVID-19 treatment.

87. After initial questioning, the Office of the Prosecutor of Bosnia and Herzegovina requested the State Court of Bosnia and Herzegovina to order 30 days of detention for all three suspects to prevent tampering with evidence and influencing witnesses, which the State Court rejected, ordering the suspects' release with restrictive measures. SDA condemned the arrests as an attempted coup d'état. Subsequently, in the Federation House of Representatives, five parties – opposition

parties, including the Social Democratic Party, Naša Stranka, SDA and the Independent Bloc, along with ruling coalition partner SBB – unsuccessfully initiated a proposal calling for Mr. Novalić’s resignation.

88. In mid-April, in response to the COVID-19 pandemic, the Federation Government adopted a measure to rebalance the 2020 Federation budget to allow for the redirection of resources to implement the Law on Mitigating Negative Economic Consequences it had adopted during the previous reporting period. The Federation Parliament subsequently adopted the measure to rebalance the budget and endorsed the Law. In a session in late September, the Government adopted a decision that provided an additional KM 100 million to businesses affected by the pandemic, with the largest portion going to the tourism sector. On 29 May, the Government lifted the state of disaster it had declared at the start of the pandemic.

89. Both houses of the Federation Parliament met infrequently, with the Federation House of Representatives holding only four regular and two extraordinary sessions and the Federation House of Peoples holding just two regular and two extraordinary sessions. Legislative output remained poor, with six new laws and seven amendments to existing laws adopted.

90. In July, the Federation House of Representatives rejected a vote of no confidence in the Federation Government that had been initiated in May by opposition parties, whose representatives claimed there was no control over numerous procedures and no trust in the current composition of the Government, as shown by the numerous lawsuits against individuals in the Government and its poor management of the COVID-19 pandemic.

91. The collegiums of both houses of the Federation Parliament remained incomplete. Since its inaugural session following the 2018 general elections, the Federation House of Peoples has not appointed the Deputy Speaker from the Serb peoples, largely due to the political divide within the Serb caucus, which only managed to finally appoint its leadership in June of 2020. The Serb caucus should propose the Deputy Speaker candidate, which it still has not done. The lack of a Deputy Speaker from the Serb peoples hinders the Serb caucus from accessing the full range of protection mechanisms. In the Federation House of Representatives, a reshuffling in the parliamentary majority in July of 2019 necessitated the reappointment of the House of Representatives collegium. There as well, the Deputy Speaker from the Serb peoples has not been proposed.

#### **A. Vital national interest panel of the Federation Constitutional Court remains non-functional**

92. As previously reported, the Federation Constitutional Court currently operates with only five of the nine required judges, requiring all five judges to be present to create a quorum and decisions to be reached by consensus. The Court’s vital national interest panel is left with only four sitting judges and is unable to convene. In accordance with the Federation Constitution, the panel is composed of seven members, two from each constituent people and one from the group of others. With three members missing – one from each constituent people – there is no quorum. The inability of the panel to function and take decisions directly affects decision-making in cantonal assemblies and in the Federation House of Peoples. There are currently several cases pending before the panel.

93. In 2019, the High Judicial and Prosecutorial Council adopted the final list of candidates to replace three of the four retired judges on the Federation Constitutional Court. The Council submitted the list to the Federation President and two Vice-

Presidents, who should have finalized the appointments, but have failed to do so, primarily owing to the inaction of the Federation President, Marinko Čavara (HDZ Bosnia and Herzegovina), despite appeals from the President of the Federation Constitutional Court and the international community. In September, SDA President Bakir Izetbegović accused HDZ Bosnia and Herzegovina of blocking the appointment of judges and called for the appointments to be completed prior to the local elections in November.

## **B. Failure to adopt law on forestry**

94. During the reporting period, the Federation Parliament failed to adopt a Federation law on forestry, which the Federation has been lacking since 2009, despite the Federation Government's proposal of the law in July 2019. Adoption of the law is not only crucial to the development of the forestry sector but is also a legal obligation pursuant to a ruling of the Federation Constitutional Court, which in 2009 determined that the existing Law violated the right of municipalities to local self-government and tasked the Federation Parliament with harmonizing the Law with relevant local self-government legislation within six months. In late 2009, absent any action by the Federation Parliament, the Federation Government attempted to address the issue through a decree, but in March 2010 the Federation Constitutional Court determined that the Government had neither the constitutional nor the legal basis to regulate the field of forestry by decree, and instructed the legislative bodies to regulate forestry through legislation within six months, which still has not yet been done. The failure of the Federation to meet its obligations arising from the decisions of the Federation Constitutional Court is clearly problematic from the rule of law perspective. Moreover, given that forests cover as much as 58 per cent of Federation territory, and that in an attempt to cope with the legal vacuum, all cantons except Herzegovina-Neretva Canton proceeded with their own regulation of the sector, it is clear that the absence of forestry legislation and supervision at the Federation level has wider implications, further highlighting the urgency of addressing this obligation.

## **C. Failure to appoint members of the Securities Commission**

95. In the context of the pandemic and its negative economic impact, a significant source of potential revenues has also been blocked owing to the non-functioning of the Federation Securities Commission, which is responsible for regulating capital markets in the Federation. The Commission has functioned with only three of its five members since 2018, owing to the failure of both the Federation President to appoint and the Federation Parliament to confirm the appointments of two members whose terms of office has expired. Since November of 2019, owing to the retirement of one of the three remaining members, the Commission has had no quorum for decision-making, thereby preventing investments and increases in capital of joint stock companies in the Federation. In August, the Federation Government proposed amendments to the Law on the Securities Commission, which would enable the Federation President, with the consent of the Federation Vice-Presidents, to appoint members of the Commission. The proposed amendments remain pending before the Federation Parliament. Absent a prompt resolution of the issue, the capital market in the Federation, and by extension the overall economy, may face serious problems.

## **D. Agreement on elections in Mostar**

96. On 17 June in Mostar, following facilitation efforts of the international community and lengthy negotiations, the leaders of SDA and HDZ Bosnia and

Herzegovina signed two political agreements, the first on holding elections in Mostar and reforming the city's statute, and the second on principles for amending the Election Law of Bosnia and Herzegovina.

97. The agreement on elections in Mostar and the reform of the statute of the city defines the electoral rules for the direct election of the 35 Mostar City Councillors, and the subsequent election by the City Council of the Mayor, the Chief Adviser and the City Council President and Deputy Presidents. The agreement includes two annexes, one with the relevant amendments to the Election Law of Bosnia and Herzegovina, which was submitted to the Parliamentary Assembly of Bosnia and Herzegovina, and the other with the text of the future statute of the city of Mostar, to be adopted at the first session of the Mostar City Council following the elections. The second agreement on principles for amendments to the Election Law specifies that SDA and HDZ Bosnia and Herzegovina shall agree on necessary changes within six months and secure their adoption in the Parliamentary Assembly by the end of 2021.

98. The Parliamentary Assembly of Bosnia and Herzegovina adopted the amendments to the Election Law concerning the electoral rules for Mostar in early July. On 23 July, the Central Election Commission of Bosnia and Herzegovina scheduled elections for the city of Mostar on 20 December, rather than concurrently with the local elections on 15 November, owing to the Election Law requirement that the announcement of the 2020 local elections must be made 150 days prior to the holding of an election. Most of the parties gathered under HNS publicly rejected the date and requested that the Mostar elections be held concurrently with the 2020 local elections in Bosnia and Herzegovina, on 15 November. HDZ Bosnia and Herzegovina leader Mr. Čović addressed a letter to the international community in Bosnia and Herzegovina expressing his disapproval of the date. International community representatives uniformly replied that the decisions of the Central Election Commission were to be respected.

99. By August, SDA and HDZ Bosnia and Herzegovina announced that they would gather coalitions of “pro-Bosnian” and “all-Croat” parties, respectively, seeking to frame the Mostar elections as a contest of ethnic interests. The President of SNSD, Mr. Dodik, and the President of SDS, Mirko Šarović, signed an agreement on the joint participation of their parties in the Mostar elections under the slogan “Stay Here – Together for Our Mostar”. In September, Mr. Dodik met with Serb representatives in Mostar and urged them to support the joint list of candidates, stating that if Serbs had legitimate representatives in the Mostar City Council, they could be a decisive factor in the post-election distribution of power.

## **E. Constitutional equality of Serbs in the Federation cantons**

100. The decision of the High Representative in 2002 enacting amendments to the Federation Constitution within the wider implementation of the decision of the Constitutional Court of Bosnia and Herzegovina on the equality of constituent peoples determined that all three constituent peoples were equal in the Federation, that the official languages of the Federation were Bosnian, Croatian and Serbian and that the official scripts were Latin and Cyrillic. The cantons remain obliged to harmonize their constitutions with the Federation Constitution. In 2018, the Federation Constitutional Court determined that several provisions of the constitutions of Posavina, Herzegovina-Neretva and West Herzegovina cantons did not conform with the Federation Constitution in that regard and ordered their assemblies to amend them accordingly, which West Herzegovina has partially done but Posavina and Herzegovina-Neretva have not at all.

101. I have continued to urge those cantons to harmonize their constitutions with the Federation Constitution and provide for the constitutional equality of all three constituent peoples.

## V. Republika Srpska

102. SNSD continued to lead the Republika Srpska ruling coalition with its coalition partners from the previous mandate. The Republika Srpska Government has met regularly throughout the pandemic, under the Prime Minister, Radovan Višković (SNSD), holding 26 sessions in total during the reporting period. The National Assembly of the Republika Srpska held three regular and four special sessions, adopting 14 new laws and 15 sets of amendments to existing laws.

103. The SNSD-led Republika Srpska authorities have persistently called for rollbacks in previous reforms and a restoration of the so-called “original Dayton”, while intensifying its rhetoric against the North Atlantic Treaty Organization and the European Union and threatening to block reforms and other accession-related activities necessary for Bosnia and Herzegovina to move forward on its Euro-Atlantic path.

104. While initial actions of the Republika Srpska authorities, in particular the local authorities in Banja Luka, in response to the COVID-19 pandemic were generally viewed as prompt and efficient, subsequent media reports alleged various procurement-related scandals.

105. On 17 April, the President of the Republika Srpska, Željka Cvijanović (SNSD), repealed the Decree on Prohibition of Causing Panic and Disorder During the State of Emergency, which she had introduced earlier in April, prohibiting the spreading of “fake news” or allegations that caused panic or undermined public peace and order or interfered with the execution of orders and measures. The decree raised concerns when several prominent opposition figures were fined or summoned before the police immediately after its promulgation. With the repeal, the Republika Srpska Ministry of Interior announced that it would withdraw all charges filed against individuals and legal entities pertaining to the decree and return any fines paid. Ms. Cvijanović had issued the decree along with several others during the state of emergency declared by the National Assembly of the Republika Srpska on 28 March in response to the COVID-19 pandemic, under which legislative authority was temporarily transferred from the Parliament of the Republika Srpska to the President. The National Assembly lifted the state of emergency on 21 May.

106. Addressing the National Assembly of the Republika Srpska on 20 May, President of SNSD and member of the Presidency of Bosnia and Herzegovina Milorad Dodik claimed that the Republika Srpska Ministry of Interior had been wiretapping Republika Srpska opposition representatives and informing him of their discussions,<sup>8</sup> even citing detailed summaries of such discussions. Republika Srpska Minister for Interior Dragan Lukač (SNSD) subsequently claimed that Mr. Dodik’s comments were a political joke. Nonetheless, on 21 May Transparency International Bosnia and Herzegovina announced that it had filed a criminal complaint against Mr. Dodik with the Office of the Prosecutor of Bosnia and Herzegovina for unauthorized eavesdropping.

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<sup>8</sup> “There is no government that doesn’t spy on the opposition. I have listened to the recordings. I am entitled to listen. Do you want me to bring you some recordings so you can hear what they are saying about you?” Statement by Mr. Dodik at a session of the National Assembly of the Republika Srpska, 20 May 2020.

107. In July, the National Assembly of the Republika Srpska adopted new rules of procedure, reducing the time given to representatives to debate an agenda item, while the length of speaking time for the Republika Srpska President, the Republika Srpska Prime Minister and the Republika Srpska member of the Presidency of Bosnia and Herzegovina remained unlimited. The changes also abolished the requirement to maintain a quorum during debate, allowing representatives to attend sessions only to vote. While the ruling majority justified the changes as improving the efficiency of the National Assembly, opposition representatives condemned the changes as an attack on democratic principles and freedom of speech. In practice, the new rules have limited debate within the legislative body.

108. The Republika Srpska authorities continued to restrict civil freedoms, in particular the freedom of assembly, seemingly arbitrarily banning gatherings in the main square of Banja Luka. This was viewed as an attempt to decrease the visibility of “Justice for David” activists in their continued protests over the mysterious death in March 2018 of college student David Dragičević, claiming a police conspiracy. Late in 2019, some of the activists formed a political party, Movement for Justice, which has been certified for the 2020 local elections and was fielding candidates for the Banja Luka City Assembly.

#### **A. Prime Minister of Republika Srpska subject of a war crimes investigation**

109. In September, in response to media inquiries, the Office of the Prosecutor of Bosnia and Herzegovina confirmed the existence of an ongoing investigation of war crimes involving several individuals, including the Prime Minister of the Republika Srpska, Mr. Višković, adding that it had no additional information to provide on the issue. The confirmation followed the publication by a Sarajevo-based news portal of portions of testimony before the State Court of Bosnia and Herzegovina from 2017 by a protected witness who claimed that, in July 1995, Mr. Višković, in his capacity at the time as Assistant Commander of the General Staff for Traffic of the Republika Srpska police, participated in the transport of captured Bosniaks and later relocated their bodies from mass graves in the Srebrenica area. Subsequently, the Srebrenica-Potočari Memorial Centre submitted a criminal report against Mr. Višković, accusing him of taking part in the Srebrenica genocide and attempting to conceal evidence.

110. On the same day the Office of the Prosecutor confirmed the existence of an investigation, the Director of the Republika Srpska Centre for Research of War, War Crimes and Search for Missing Persons, Milorad Kojić, announced that the Centre would publish the names of all witnesses who gave false statements. Subsequently, Republika Srpska public broadcaster Radio Television of the Republika Srpska (RTRS) and other media outlets published the name of the protected witness, prompting the State Court of Bosnia and Herzegovina and the Office of the Prosecutor of Bosnia and Herzegovina to announce moves to protect the witness and to initiate criminal proceedings against those who disclosed the identity of the witness.

#### **B. Srebrenica**

111. On 11 July, the twenty-fifth anniversary of the Srebrenica genocide was commemorated at the Srebrenica-Potočari Memorial Centre. Owing to the COVID-19 pandemic, the anniversary was observed in a different format than in previous years, with significantly reduced attendance. World leaders, diplomats and other figures who had originally planned to attend in person instead sent video messages that were broadcast during the commemoration, condemning the Srebrenica genocide and

expressing sympathies for the victims and their families. I did the same in my video statement broadcast during the commemoration.

112. Unfortunately, genocide denial has become a common occurrence in statements by Republika Srpska political representatives, despite the facts of the genocide having been established by two international tribunals as well as by domestic courts. Bosniak political representatives have opposed such denials and attempts at historical revisionism and relativism. In May, the Srebrenica-Potočari Memorial Centre published a report on genocide denial and joined victims' associations and political representatives in calling for the adoption of a State-level law that would criminalize genocide denial and, failing that, called on me to impose such a law.

113. The need to address the issue, whether through legislation or other means, is pertinent, bearing in mind the repeal in August 2018 of the Republika Srpska Government's report on Srebrenica of 2004, in which the Republika Srpska had officially acknowledged the involvement of its military and police forces in the July 1995 events in Srebrenica, and the pending publication of a new Republika Srpska Government report on Srebrenica, which is anticipated to be a further attempt to revise history and relativize the suffering of people.

114. On 21 September, the International Day of Peace, the Mayor of Srebrenica, Mladen Grujičić, unveiled a peace monument in a ceremony boycotted by Bosniak representatives, who initially supported the project but stepped back from it, citing the Mayor's refusal to acknowledge the genocide in Srebrenica.

### **C. Non-cooperation with the High Representative**

115. The Republika Srpska Government continues to deny my office access to official information and documents as required under article IX of the General Framework Agreement for Peace and annex 10 to the Agreement, which obliges all authorities in Bosnia and Herzegovina to fully cooperate with the High Representative. Repeated calls by the Steering Board of the Peace Implementation Council, reminding the authorities of the Republika Srpska of their obligations in this regard, have so far had no impact.

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

116. The practice of improper political interference in operational policing has not diminished during the reporting period.

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

118. The Herzegovina-Neretva Canton authorities have not yet appointed a new independent board, police commissioner, public complaints bureau or police board. The canton has not had a duly appointed police commissioner since October 2018, nor a functioning independent board since March 2017.

119. The mandate of the Independent Board of Bosnia and Herzegovina expired in March 2018, and the Parliamentary Assembly of Bosnia and Herzegovina has not yet appointed a new board.

120. In July, the Tuzla Canton judicial authorities confirmed an indictment against Tuzla Canton Minister for Interior, Sulejman Brkić, for abuse of office and authority, and in October, the Tuzla Cantonal Assembly removed the Minister from his position.

121. Problematic appointments and dismissals of police managers continued to be leading indicators of improper political interference in operational policing.

122. In May, Tuzla Canton authorities appointed Safet Ibrahimović as its police director, despite widely available reports showing eligibility problems related to mandatory retirement rules. In June, Bosnian-Podrinje Canton authorities dismissed the police commissioner despite the concerns of my office and the Embassy of the United States over adherence to the principles of transparency and accountability. In July, the Bosnia and Herzegovina Council of Ministers appointed Darko Čulum as the Director of SIPA. During the previous reporting period, the Independent Board of Bosnia and Herzegovina sent to the Council of Ministers official documentation showing problems with the eligibility of Mr. Čulum for the post related to mandatory retirement rules. The Federation Government has not yet appointed a director of the Federation police, even though the Federation Independent Board completed the selection process for this position in April 2019.

123. In September, the directors of SIPA, the border police and the Directorate for Police Coordination jointly submitted to the Ministry of Security of Bosnia and Herzegovina an agreed draft law on police officials of Bosnia and Herzegovina, representing the culmination of more than two years of facilitation by my office, and marking a new milestone in police independence and coordination for the State-level police.

124. In another positive development, in June, the Sarajevo Cantonal Assembly unanimously adopted the Sarajevo Initiative, which calls for the far-reaching reform of the public security arrangement in Sarajevo Canton by eliminating the Sarajevo Canton Ministry of Interior and leaving in place the Sarajevo Canton Police Administration.

125. In September, the Sarajevo Cantonal Assembly adopted amendments to police legislation, after substantial improper political interference, unlocking provisions for, inter alia, the urgent recruitment of new cadets.

126. The Council of Ministers has not yet appointed the next Director General of the Intelligence-Security Agency of Bosnia and Herzegovina. The mandate of the current Director General expired in November 2019.

## **VII. Economy**

### **A. Economic trends**

127. The COVID-19 pandemic has disrupted the Bosnia and Herzegovina economy, with serious and potentially long-lasting consequences. International organizations, including international financial institutions, and bilateral donors have provided support to Bosnia and Herzegovina in mitigating the health and economic consequences of the pandemic, complementing measures undertaken by the Bosnia and Herzegovina authorities. Regrettably, party disputes and political calculations as well as a lack of focus on reforms that could strengthen the country's economic, social, financial and fiscal stability have often countered the effectiveness of stabilization efforts.

128. In its report in September 2020 on macroeconomic indicators for the period from January to May 2020, the Council of Ministers Directorate for Economic Planning

warned of a significant decline in the gross domestic product of Bosnia and Herzegovina, potentially steeper than that of the 2009 global financial crisis. International financial institutions have also revised their initial 2020 economic growth projections for Bosnia and Herzegovina downward: IMF projects a 5 per cent decline, while the World Bank estimates the decline at 1.9 per cent, and possibly to 3.2 per cent if the pandemic persists.

129. The revised growth projections are based on the observed slowdown in economic activity and the expected continuation of negative trends. In the first five months of 2020, industrial production decreased by 8.8 per cent. Foreign direct investments in the first quarter of 2020 amounted to KM 243.2 million, a 3.4 per cent decrease from the same period last year. Foreign trade exchange in the first seven months of 2020 declined by 16.3 per cent overall, with declining rates for exports and imports estimated at 14.8 and 17.3 per cent, respectively.

130. After years of modest but steady improvements, unemployment and employment reverted to negative levels. At the end of July, the number of persons registered as unemployed was 426,252, which is an increase of 19,143, or 4.7 per cent, from the same period in 2019, while the number of those employed decreased by 17,096, or 2 per cent, to 804,028. The administrative unemployment rate has risen to 34.4 per cent. In parallel, the number of pensioners continued to increase, to a total of 692,700.

131. Data from May shows that the average net salary of KM 940 and the average pension of KM 409 remain significantly below the average price of the basket of goods of KM 1,996 for a family of four, suggesting that even those with steady incomes struggle to make ends meet. This is particularly the case for those pensioners who receive the lowest pension payments.

132. The economic situation and its discouraging outlook are likely to accelerate the already worrisome population outflow. The latest Eurostat data shows that the number of work permits issued to citizens of Bosnia and Herzegovina in the past two years totalled 125,137.

133. Under the circumstances, the affirmation in August of the credit rating of Bosnia and Herzegovina by both S&P Global Ratings (B with a stable outlook) and Moody's (B3 with a stable outlook) is a positive.

134. Although the commercial banking sector recorded a 38.7 per cent decline in profits in the first half of 2020 compared with the same period in 2019, it is assessed as generally stable and liquid. Continued stability is strongly underpinned by the Central Bank of Bosnia and Herzegovina, which nonetheless faces sustained challenges to its independence, responsibilities and unimpeded functioning. Those included renewed calls, mainly by member of the Presidency of Bosnia and Herzegovina Milorad Dodik and SNSD officials, for the release of the Central Bank's mandatory and foreign currency reserves – which, if pursued, would pose a serious risk to the financial and overall macroeconomic stability of Bosnia and Herzegovina – and for the reshuffling of the Governing Council of the Central Bank by the Presidency of Bosnia and Herzegovina on 30 April in a manner that poses a risk to decision-making by this body and thus to the unimpeded functioning of the Bank itself.

135. The Governing Council of the Central Bank currently functions at its full capacity. It had not done so for a lengthy period, owing to the decision of the Presidency of Bosnia and Herzegovina in June 2019, in response to Mr. Dodik's proposal, to remove two Council members, and the lack of requisite support within the Presidency for the appointment of their proposed successors. However, the ongoing legal challenges initiated by the members of the Council who were removed

may potentially affect the quorum for work of this body. Moreover, a politically motivated reshuffling is at odds with the endeavour to preserve the political independence of the Central Bank. A six-year term for Council members, as provided by law, represents the clear intention of the Bosnia and Herzegovina legislative bodies to avoid overlap with the mandate of the Presidency of Bosnia and Herzegovina and appointments along party lines, thereby providing additional assurances of the Bank's independence from the Federation, the Republika Srpska, any public agency and any other authority.

## **B. Fiscal issues**

136. For the first time since the 2009 global financial crisis, the Indirect Taxation Authority of Bosnia and Herzegovina recorded a decrease in indirect tax revenues, which comprise the majority of budget revenues for all levels of government and are essential to maintaining fiscal stability. Collected revenues in the first eight months of 2020 dropped by 10 per cent from the corresponding period in 2019, with the most drastic decline of 31 per cent recorded in May. The shortage was somewhat offset by domestic borrowing and the €330 million provided under the IMF Rapid Financing Instrument, which ensured uninterrupted debt servicing and monthly payments. Fiscal stability should be further reinforced by the European Union macro-financial assistance of €250 million, which the European Union designated for Bosnia and Herzegovina to help alleviate the economic consequences of the pandemic. Regrettably, Bosnia and Herzegovina has not yet drawn on the much-needed assistance, as negotiations on the memorandum of understanding between the European Union and Bosnia and Herzegovina appear to be burdened by the internal politics of Bosnia and Herzegovina and are still ongoing. A new arrangement with IMF is also anticipated, with initial negotiations planned for October. The arrangements should assist Bosnia and Herzegovina in easing fiscal pressures and refocusing on reforms to address identified weaknesses and strengthen its resilience.

137. Particular attention must be paid to strengthening the Bosnia and Herzegovina indirect taxation system as the backbone of fiscal stability, as well as to ensure the unimpeded functioning of State-level institutions and the discharge of their constitutional and legal obligations through improved reliability and adequacy of financing. The developments related to the adoption of the State-level budget for 2020 highlight the need for action to this end.

138. As in previous years, the 2020 State budget was held hostage to party politics. The dissatisfaction of SNSD, and more so of HDZ Bosnia and Herzegovina, with appointments to the Central Election Commission of Bosnia and Herzegovina, and subsequent attempts to obstruct the Commission's efforts to proceed with preparations for the 2020 local elections pending the outcome of the legal challenges against the appointments before the State Court of Bosnia and Herzegovina, were among the reasons for delaying the budget adoption. The delay affected the Commission's ability, and that of other State institutions, to function smoothly and fully meet their constitutional and legal obligations, while also putting at risk the holding of the elections, which are crucial in order for citizens in Bosnia and Herzegovina to exercise their guaranteed rights under the Constitution of Bosnia and Herzegovina.

139. Temporary financing was in force throughout the first half of the year, as the draft budget was submitted to the Bosnia and Herzegovina Council of Ministers only on 24 March, three months after the budget adoption deadline and three weeks after the outbreak of the COVID-19 pandemic in Bosnia and Herzegovina, only to be returned by the Presidency of Bosnia and Herzegovina on 6 April with a request for adjustments reflective of the pandemic. The 31 May deadline set by the Presidency

was not met, as the Bosnia and Herzegovina Minister for Finance and Treasury stalled the budget for what he claimed were technical reasons until 18 June, when the Council of Ministers adopted it and forwarded it to the Presidency. The budget adopted by the Presidency on 26 June was considered by the Parliamentary Assembly of Bosnia and Herzegovina in July and, after further political manoeuvres orchestrated primarily by HDZ Bosnia and Herzegovina with the aim of delaying the adoption, was finally approved on 29 July.

140. The adopted budget totals KM 1.8 billion, 1 per cent higher than the total of the 2019 budget. Of this amount, the financing of State institutions is set at KM 996 million (a 3 per cent increase), while the remainder (KM 807.5 million) is intended to service foreign debt (a 2 per cent decrease). Despite the modest increase, the adopted budget is insufficient to meet the needs of the State institutions. Only 16 of 75 State budget users will benefit from the increase, in the total amount of KM 18.2 million, while the others will stay at approximately the same level as in the past eight years, or even face a decrease, despite increased obligations and new realities, including the pandemic and the steady flow of migrants into the country.

141. While the restricted budgeting of the State institutions is formally justified by the need to generate savings to mitigate the economic consequences of the pandemic in the total amount of KM 41.9 million, which paradoxically exceeds the amount of the budget increase, it must be noted that the State budget is the only budget that generated such savings. All other levels of government benefitted from domestic and international borrowing, lessening their need for such restrictions. Moreover, several State institutions directly involved in providing assistance during the pandemic – such as the Bosnia and Herzegovina armed forces – have seen their budgets cut. Such developments only serve to weaken the State and do not improve its functionality. Hence, ensuring the reliability and adequacy of the financing of the State institutions remains an outstanding objective.

142. The Federation maintained budget stability during the reporting period. Its consolidated budget execution report for the period from January to June noted a positive cumulative financial result of KM 254.3 million for all levels of government in the Federation, down to the municipal level.

143. In April, the Federation Parliament adopted a rebalanced budget for 2020 in the amount of KM 5.5 billion, an increase of 11 per cent over the original adopted budget for 2020. The rebalancing of the budget was carried out in order to implement the Law on Mitigating Negative Economic Consequences (of the COVID-19 pandemic), adopted by the Federation Government during the previous reporting period. New transfers foreseen therein include KM 500 million for an economic stabilization fund, KM 20 million for a guarantee fund to be set up within the Federation Development Bank, KM 200 million (as a grant) from the IMF Rapid Financing Instrument to the cantons, and KM 21 million to the lower levels of government to cover the costs of quarantines and protective equipment.

144. In May, the National Assembly of the Republika Srpska adopted a measure to rebalance the 2020 Republika Srpska budget at KM 3.613 billion, a 5.5 per cent increase over the original budget. Public revenues will decrease by 8 per cent (KM 240 million), while Republika Srpska borrowing in 2020 more than doubled, increasing from KM 315 million to KM 678 million. Instead of a budget surplus of KM 20 million, the rebalanced budget foresees a deficit of KM 412 million. From January to June, the Republika Srpska deficit amounted to KM 297 million, which was covered entirely by new borrowing, primarily the IMF Rapid Financing Instrument.

145. As for expenditures, the rebalanced budget envisages a KM 151 million grant to the Compensation Fund of the Republika Srpska, supporting the economy in

mitigating the negative impact of the pandemic. Republika Srpska health-care sector spending will be increased by 29 per cent, from KM 213.5 million to KM 274 million. The cost savings on non-essential spending is planned at KM 41 million.

146. In July, the Republika Srpska Government adopted a budget framework document for the period 2021–2023 that outlined the midterm strategy on budget planning, projecting a budget deficit in 2021 and 2022 of KM 265 million and KM 125 million, respectively, while anticipating a budget surplus of KM 7 million only in 2023.

147. The Republika Srpska banking sector is stable, solvent and liquid. In June, the Republika Srpska Banking Agency extended interim measures under which commercial banks could introduce a moratorium on loan repayments, allowing two additional months from the end of the state of emergency in the Republika Srpska.

148. Due to the pandemic, the Republika Srpska Government revised its economic growth projection from a decline of 3 per cent to a decline of 5 per cent in 2020. From January to June, industrial production declined by 9 per cent compared with the same period in 2019, and foreign trade declined by 10.5 per cent.

### **C. International obligations and other sectoral developments**

149. In November, the Ministerial Council of the Energy Community will consider reintroducing measures against Bosnia and Herzegovina for its serious and persistent breach of obligations under the Energy Community Treaty, primarily stemming from entity disputes over the scope of regulation of the gas sector at the State level, and corresponding State-level legislation. The absence of State-level gas sector regulation also contributes to inter-entity disputes that may pose a risk to the uninterrupted gas supply in Bosnia and Herzegovina.

150. The unilateral decision of the Republika Srpska to withhold its contribution to the Public Railways Corporation of Bosnia and Herzegovina in 2016 and 2017 has triggered similar measures by the Federation. Specifically, the Federation, after performing an audit of the Corporation's financial operations, requested from the Corporation compensation in an amount equal to one Federation annual contribution based on the difference in the amounts contributed thus far by the entities. Consequently, the Federation has also refused to include any funds to finance the Corporation in its 2020 budget. The Public Railways Corporation is the only State-level corporation established under annex 9 to the General Framework Agreement for Peace; one of the purposes of its establishment is to coordinate investments in Bosnia and Herzegovina railway infrastructure. The 12 March conclusion of the Republika Srpska Government calling on the Ministry of Transport and Communications of Bosnia and Herzegovina and the Federation Ministry of Transport to reconsider the Agreement on the Establishment of a Joint Public Railway Corporation as Part of the Transportation Corporation, together with its inadequate financing, endangers the existence of the Corporation, although it is the only mechanism for a harmonized approach to the reconstruction of railways routes which would benefit the railway companies of both entities, all citizens of Bosnia and Herzegovina and the economy.

151. In June, the Shareholders Assembly of the Bosnia and Herzegovina Electricity Transmission Company – composed of the prime ministers of the Federation and the Republika Srpska – unanimously approved investments in 23 facilities, each worth more than €1 million. The investments are part of the company's investment plan for 2020 worth KM 174 million, and their approval represents a significant step towards unblocking investments halted for more than two years. At the same time, disputes within the Federation and between the Federation and the Republika Srpska with regard to the appointment of the company's management bodies affect its functioning.

The mandates of the management and the management board expired more than two years ago, and there seems to be no support for the appointment of their successors. This affects decision-making procedures and poses a risk to electricity transmission and consequently the electricity supply in Bosnia and Herzegovina, providing a pretext for challenges to the company, which was established by the Law Establishing the Electricity Transmission Company adopted by the Parliamentary Assembly of Bosnia and Herzegovina in 2004, following the agreement of 2 June 2003 of the entities on the establishment of a transmission company and independent system operator, concluded on the basis of article III (5) (b) of the Constitution of Bosnia and Herzegovina.

## **VIII. Return of refugees and displaced persons**

152. The realization of the right of refugees and displaced persons to return to their homes of origin remains central to the fulfilment of annex 7 to the General Framework Agreement for Peace. It requires authorities at all levels to create in their territories the political, economic and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.

153. At the start of September, Bosniak returnee parents in the village of Liplje, in the Republika Srpska municipality of Zvornik, prevented their children from attending school, as the school authorities continued to deny the name of their language as “Bosnian” and instead referred to the “language of the Bosniak people”. In May 2016, the Constitutional Court of Bosnia and Herzegovina concluded “that all the constituent peoples as well as Others not declaring themselves so have the constitutional right to name the language they speak as they wish and that only such interpretation and application in practice is in conformity with the Constitution of Bosnia and Herzegovina”. The parents insisted that the Republika Srpska authorities respect the Court’s decision, while the Republika Srpska authorities cited the Constitution of the Republika Srpska as avoiding the names of official languages. However, the policy – which is in force throughout the Republika Srpska – is inconsistent, as the languages of Serb and Croat pupils are referred to as “Serbian” and “Croatian”, respectively. This is not only another case of the Republika Srpska authorities refusing to respect decisions of the Constitutional Court, it is a policy that clearly discriminates against Bosniaks and is counter to the requirements in annex 7 to the General Framework Agreement for Peace that authorities at all levels establish conditions conducive to sustainable return.

154. In mid-October, the parents reached an agreement with the Republika Srpska Ministry of Education by which the parents would return the children to classes and the Ministry would provide documentation of their reasoning in deciding not to designate the children’s language as “Bosnian”, which the parents intend to use to pursue legal action against the Ministry. This is only a temporary solution.

## **IX. Media developments**

155. The media landscape in Bosnia and Herzegovina is burdened by political influence, biased reporting, poor implementation of media legislation and non-transparent ownership and financing.

156. During the reporting period, the free media helpline of the Bosnia and Herzegovina Union of Journalists registered 30 cases of violations of the rights of journalists, including three death threats. A majority of cases were characterized as political pressure and verbal threats.

157. On 24 April, the Council of the Communications Regulatory Agency of Bosnia and Herzegovina appointed Draško Milinović, previously the General Director of the Republika Srpska public broadcaster RTRS, as the new General Director of the Agency, which was confirmed by the Bosnia and Herzegovina Council of Ministers on 23 July. The appointment was viewed as an agreed arrangement among the coalition partners at the State level in deciding which party controls which institution. In protest over the appointment, on 27 April the Chair of the Council of the Agency, Plamenko Čustović, submitted his resignation, stating that his fellow Council members had been influenced and did not vote according to their consciences. According to Mr. Čustović, Mr. Milinović could not lead the Communications Regulatory Agency owing to the numerous breaches of Agency rules and regulations committed by RTRS under his leadership. Specifically, the Agency had imposed 19 fines against RTRS totalling KM 246,000, and it had fined Mr. Milinović himself a total of KM 15,000 for various violations of Agency regulations and decisions.

158. In addition, the process to establish a digital platform to offer broadcast television providers the possibility of digital broadcasts has been halted as a result of the COVID-19 pandemic. The Communications Regulatory Agency authorized the commercial operator Multiplex Service BH to postpone its launch date until 30 November.

159. On 26 April, the Communications Regulatory Agency issued a new five-year licence to the Public Broadcasting System, which includes Bosnian-Herzegovinian Radio Television (BHRT), Radio Television of Bosnia and Herzegovina (RTFBiH), and RTRS. The licence acknowledges the possibility of the interim usage of digital frequencies for Public Broadcasting System members in cases in which their analog output interferes with the digital output of other licensed television broadcasters. The three public broadcasters in Bosnia and Herzegovina, although part of the System pursuant to relevant legislation, remain heavily divided and no longer make any joint decisions.

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

160. The European Union military mission in Bosnia and Herzegovina (EUFOR), with its continued executive mandate, has a vital role in supporting the efforts of Bosnia and Herzegovina to maintain a safe and secure environment. This assists the Office of the High Representative and other international organizations in fulfilling their respective mandates. The presence of EUFOR on the ground, including its liaison and observation teams, remains an important contributor to stability and security. I welcome the reaffirmation of the Council of the European Union on 12 October of the readiness of the European Union to continue the executive mandate of EUFOR under renewed Security Council authorization.

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

161. Owing to the COVID-19 pandemic, on 2 and 3 June the political directors of the Steering Board of the Peace Implementation Council met for the first time not in person, but by video link, in order to review the progress in implementing the General Framework Agreement for Peace, and again underlined their unequivocal commitment to the territorial integrity and sovereignty of Bosnia and Herzegovina and their full support to the High Representative in ensuring respect for the Agreement and carrying out the mandate under annex 10 thereto and relevant Security Council resolutions. The political directors emphasized the need for local authorities and institutions to complete the five objectives and two conditions that must be

fulfilled prior to the closure of the Office of the High Representative (“5 plus 2” agenda). The next meeting of the Steering Board is planned for 1 and 2 December 2020.

162. Fundamentally, policy considerations regarding Bosnia and Herzegovina must be the basis for assessing the resource requirements of the Office of the High Representative. As the present report demonstrates, there is still considerable work to be done to move the country forward. My office has worked diligently to streamline operations. At its peak in 2002, the budget of the Office of the High Representative was €25 million, with a staff of about 700, compared with the current €5.3 million budget and only 89 staff.

163. During my tenure as mandate holder alone, the budget has decreased by 53 per cent and the staff by over 58 per cent. However, while the organization has faced substantial reductions to staff and funding, tasks have largely remained the same. As the budget decreases over time, it becomes exponentially more difficult to further reduce costs without cutting essential expertise and capacity. Given all the challenges, the Office of the High Representative must retain the effective capacity to mitigate risks to stability and encourage irreversible progress. Staff reductions pose a greater risk for the organization, which relies on its human capital, institutional memory, expertise and long-standing contact networks. The diminishing of financial resources only exacerbates the issue.

164. A robust and effective Office of the High Representative is required, coupled with the necessary political and financial support. Without the appropriate level of resources, the capacity to fulfil mandated responsibilities is restricted. This would be counterproductive to the end goal established by the Steering Board of the Peace Implementation Council, as well as a key condition for the path of Bosnia and Herzegovina towards European Union integration cited in the opinion of the European Commission on the application of Bosnia and Herzegovina for membership in the European Union, issued in 2019.

## **XII. Reporting schedule**

165. The present report is submitted in keeping with the practice of submitting regular reports for onward transmission to the Security Council, as required by Council resolution [1031 \(1995\)](#). I would be pleased to provide additional information at any time, should the Secretary-General or any member of the Council require it. The next regular report to the Secretary-General is scheduled for April 2021.

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