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Bosnia and Herzegovina:

Compliance with obligations and commitments and implementation of the post-accession co-operation programme

Document presented by the Secretary General

Tenth Report (February – April 2005)

Executive Summary

The radical change in attitude of the RS authorities with respect to co-operation with The Hague Tribunal, with several transfers since January 2005, has allowed a breakthrough in **BiH relations with the EU and NATO**.

The process of strengthening of State institutions and further integration into Euro-Atlantic structures is linked to **constitutional developments** in the country and the balance of powers between the State and Entities. At present major reforms, including the police reform, local self-government reform and reform of the higher education, are delayed because of reluctance of one or the other or both Entities (or the cantons) to transfer power to the State level. In this context, the recent Venice Commission's Opinion "on the constitutional situation in BiH and the powers of the High Representative" further fed the long-standing debate in BiH on the constitutional arrangements and the need to reform ownership and move towards a progressive phasing out of the powers of the High Representative and the role played by the international community in general.

After **three years** of membership of the CoE, **BiH has honoured most of its accession commitments**. In addition to the notable progress with respect to co-operation with the ICTY, recent positive developments in the fields of **human rights** and **the rule of law** include: the approval by the Council of Ministers of draft legislation on the restructuring of the Ombudsman institutions and on the BiH Public Broadcasting System; the extension of the mandate of the Human Rights Commission within the Constitutional Court; the implementation of property laws and the adoption of Entity legislation on IDPs and refugees; the inauguration of the War Crimes Chamber of the State Court, and the ratification of five CoE conventions in the criminal law field.

Implementation in practice of adopted legislation, however, remains weak. Moreover, **further progress** is required with respect to: the revision of the electoral law; implementation of the European Charter of Local Self-Government; police reform; elimination of the practice of "two schools under one roof" and the adoption a State Framework Law on Higher Education.

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I. INTRODUCTION

1. Bosnia and Herzegovina (BiH) joined the Council of Europe (CoE) on 24 April 2002. Accession to the CoE followed the adoption of Opinion No. 234(2002) of the Parliamentary Assembly (PACE) which lists a series of commitments to be met by BiH following its accession to the Organisation, in accordance with an agreed time-table. Issues of specific interest for the Committee of Ministers, in particular the full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY or The Hague Tribunal) and the transfer of all war criminal indictees, were the subject of an exchange of letters between the BiH authorities and the Chair of the Committee of Ministers.

2. In joining the CoE, BiH accepted to be submitted to a specific monitoring procedure under the authority of the Committee of Ministers and benefited from a targeted post-accession co-operation programme in order to fulfil its obligations and commitments. This monitoring procedure consists of a regular quarterly report prepared by the Secretariat for examination by the Committee of Ministers Rapporteur Group on Democratic Stability (GR-EDS). Immediately after discussion by the GR-EDS the Secretariat reports are made public.

3. The present report is the tenth report; it will be the last one before BiH celebrates its third year of membership, a period which corresponds with the deadline for fulfilling a series of specific commitments listed in PACE Opinion 232. This report is completed by a synoptic table of all recommendations included in this and in the previous 9 reports and their follow-up (see Addendum).

4. This report is based *inter alia* on information gathered by a Secretariat Delegation which visited BiH from 21 to 24 March 2005 (see programme of the visit reproduced in Appendix I), as well as contributions by the Special Representative of the Secretary General (SRSG) in BiH and the staff of the CoE's Sarajevo Office.

II. POLITICAL CONTEXT

5. Three main events, which are not totally disconnected, have dominated the political arena in BiH during the period covered by the present report and fed the long-standing and still inconclusive debate on the efficiency of the present constitutional arrangements and on the issue of BiH ownership of its own political future:

- the aftermath of the measures taken in Republika Srpska (RS) by the High Representative Lord Paddy Ashdown in December 2004, including the dismissal of a number of Bosnian Serb officials;
- the recent indictment for acts of corruption and abuse of office in the context of the *Lijanovici* case of the Croat member of the BiH Presidency, Mr Covic, and of the President of the Constitutional Court, Mr Tadic, by the international prosecutor of the Prosecutor's Office of BiH; the indictment was upheld by the State Court mid-March;
- the publication on 11 March of the CoE Venice Commission's Opinion on 'the Constitutional situation in Bosnia and Herzegovina and the powers of the High Representative' (doc. CDL-AD(2005)004).

6. The removal of officials, which was emphatically criticised during the meetings with the RS President and governmental officials in Banja Luka, and the subsequent resignation of the former RS Prime Minister Mikerevic, were followed by a two-month-long government crisis in RS. The crisis ended on 15 February when the RS National Assembly confirmed Pero Bukejlovic as the new Prime Minister. Also, in early March, the High Representative announced the launch of a procedure that will enable the rehabilitation of a number of BiH officials removed by his previous Decisions.

7. A few days after the Secretariat visit, on 29 March 2005, the High Representative removed Mr Covic from his position. As regards the indictment of Mr Tadic, this issue was discussed by the Constitutional Court itself, sitting in plenary session - in the absence of its President upon his request - on 18 March 2005. After long and exhaustive discussion, the Constitutional Court decided that "there were not justifiable reasons for removing President Tadic". On 30 March 2005, MM Covic and Tadic pleaded not guilty with respect to all charges against them.

III. DEMOCRATIC INSTITUTIONS

A. Strengthening and functioning of democratic institutions (at State and Entity level)

1. Reinforcing BiH Statehood, reform ownership and integration into Europe

8. With respect to international relations, two issues dominate the political debate in BiH: the accession to the Partnership for Peace (PfP) with NATO and the launch of negotiations on a Stabilisation and Association Agreement (SAA) with the European Union (EU).

9. As regards the PfP, most interlocutors of the Secretariat Delegation, both national and international, expressed relative optimism on the possibility to fulfil the required conditions within the set deadline, i.e. by the end of 2005: one army and one central command, including for intelligence services. In its

Communiqué of 7 April 2005 the Steering Board of the Peace Implementation Council (PIC) welcomed the recent appointments of BiH defence staff and expressed full support for the work of the Defence Reform Commission (DRC), including its draft proposals on the transfer of functions of the Entity Defence Ministries to the BiH level and on professionalisation of the armed forces. After concerns had been raised about the 18 March conclusions of the RS National Assembly, which put into question the RS government's commitment on defence reform, President Cavic clarified that the RS authorities support NATO membership for BiH and will fully participate in the work of the DRC. NATO will review the question of BiH's accession to PfP late April.

10. The situation regarding the SAA process is more contrasted. Police reform remains one of the key reforms required by EU for BiH to begin negotiations on a SAA. A political agreement on policing in line with the EC principles should be reached by BiH political parties in the coming weeks in time for the May Consultative Task Force meeting with the EC. Subject to a positive assessment by the EC in the summer, the Council could mandate the Commission to launch negotiations before the end of the year. For the rest,

relations with the EU very much depend on continuing co-operation with the ICTY, the strengthening of State institutions, addressing BiH's fiscal sustainability, building a European standard public broadcasting and fulfilment of other commitments and obligations undertaken by BiH when joining the CoE.

11. To develop the State's institutional capacity a State Government Strengthening Plan is being implemented. Progress has been registered with regard to civil service legislation, regularity of meetings and staffing of the Council of Ministers, whereas the number of qualified staff should be further increased. A Fiscal Sustainability Working Group, set up by the three Finance Ministers last February, should identify costly duplications and make proposals on improving quality of services while reducing the overall cost of governance. Moreover, the Indirect Taxation Authority is now allocating almost 1 million KM per day to the budget of BiH institutions.

12. However, despite considerable progress towards the strengthening of State institutions and rapprochement towards Euro-Atlantic structures, major reforms continue to be obstructed by the internal struggle between central State authorities and the Entities. This is clearly illustrated by the on-going debate on two major projects which are promoted by the international community: the reform of the police and the draft law on higher education. Any attempt to create new State structures or to transfer competences to the central level is perceived, in particular in RS, as an attempt to undermine the authority of the Entities and their sustainability, and is resisted by the authorities in Banja Luka. At the same time, reforms are often delayed or blocked in the Federation of Bosnia and Herzegovina (FBiH) because of reluctance of the cantons to transfer power either to the Entity or to the State level.

13. This mistrust towards any transfer of competences from the Entity or canton to the central authorities is a major obstacle to any serious move towards a comprehensive and sustainable reform of the institutions and the constitutional order. It is also playing directly against the development of ownership by the national authorities and the progressive removal of the High Representative's "Bonn powers" and of the role played by the international community in general.

14. In this context, the Venice Commission Opinion on 'the Constitutional situation in Bosnia and Herzegovina and the powers of the High Representative', published in early March, touched upon the very heart of the constitutional debate in BiH. No doubt this report will contribute to the internal reflection and debate on the future constitutional order in BiH, in particular as all interlocutors (national and international) were fully aware of the existence of the Opinion and of its importance.

2. Election Legislation

15. On 4 April 2005, the High Representative issued a Decision withdrawing the international members (three out of seven) from the BiH Electoral Commission, effective from the end of June 2005. The Electoral Commission will thus be fully nationalised. This decision marks a further important step in the systemic transfer of ownership to the domestic authorities.

16. In February 2005, a joint CoE/Venice Commission and OSCE/ODIHR delegation held talks in Sarajevo with the Election Commission on the revision of the BiH electoral law. The latter is a long-standing accession BiH commitment, which should have been honoured by 24 April 2003. A Working Group has been formed to draft amendments, both technical and political in nature, taking into account recommendations made by both ODIHR and the Venice Commission. Their adoption should take place at least one year before the October 2006 elections.

17. Linked to the revision of the electoral law are of course the constitutional amendments recommended by the Venice Commission in its recent Opinion on the constitutional situation in BiH with respect to the current rules on the composition and election of the House of Peoples and of the Presidency. According to this Opinion, these rules seem incompatible with Article 14 ECHR (read in conjunction with Article 3 of the First Additional Protocol to the ECHR), as regards the House of Peoples, and with Protocol No. 12 ECHR – which entered into force on 1 April 2005 – as regards the Presidency.

18. With respect to other relevant legislation, the implementation of the Law on Political Party Financing has faced difficulties mainly because of a lack of staff in the Audit Department of the Electoral Commission. The implementation of the State-level Law on Conflict of Interests in Institutions of Government of BiH has been successful but Entity legislation provides for different enforcement bodies potentially jeopardising the uniform handling of conflict of interest cases achieved throughout the country under the State-level law.

B. Development and functioning of local democracy (powers and finances)

1. State level

19. BiH participated in the CoE-Stability Pact Ministerial Conference on effective democratic governance at local and regional level held in Zagreb in October 2004 and its two Entity Ministers have committed

themselves to finalising and implementing the Work Programmes for Better Local Government which would clearly set priorities in order to further develop local self government in their respective Entities. Draft Work Programmes of FBiH and RS were submitted with a view to the European Conference of Ministers responsible for local and regional government held on 25-26 February 2005 in Budapest. The Governments of FBiH and of RS are now expected to formally approve the Work Programmes as soon as possible so as to establish a solid legal basis for the local government reform process.

20. A joint CoE/OSCE Best Practice Programme, in place since January 2005, is being implemented in co-operation with the Associations of Cities and Municipalities of FBiH and RS. It aims at promoting exchange of know-how between municipalities in the whole of BiH with a view to improving the quality and adequacy of services provided to citizens.

21. A conference gathering all the Mayors of BiH and the two associations of towns and municipalities was held in Brcko on 17-19 April to discuss the major on-going reforms with the strong backing of the Prime Minister of BiH.

22. The European Outline Convention on Transfrontier Co-operation and its Amending Protocols have been signed, but not yet ratified.

2. Entity level

23. Given the very complex set-up of the FBiH and the important powers devolved to the cantons, the reform of local-self government is still hostage to two different approaches: (1) Enabling the Federation to establish the rules governing the system of local self-government (core local government responsibilities, basic financial arrangements, principles of administrative supervision etc.), while maintaining the cantons' rights to regulate 'substantive' local government responsibilities. This would make local government a shared competence with the Cantons and would require constitutional amendments. (2) Maintaining the current arrangement of 10 cantonal systems of local self-government with no supervision or general rules provided by the Federation. The CoE clearly supports the first approach.

24. Recently a new FBiH draft Law on the Principles of Local –Self Government was put into procedure in the FBiH Parliament. The previous drafts were appraised by the CoE in March and September 2004. The new draft law is still far from meeting the standards of the Charter of Local Self-Government on a number of critical points, including the definition of local self-government. The CoE experts therefore suggested a revision of the draft law and the adoption of amendments to the Constitution establishing a proper legal framework for the law.

25. In RS, the new Law on Local Self Government was adopted with the assistance of CoE experts and broadly complies with the standards of the Charter. The law entered into force on 1 January 2005. However, implementation is still only in its fledgling phase. The new government has set up a Working Group to look in particular at the financing of local authorities and will be asking the assistance of the CoE. In parallel, the government has undertaken a thorough study of the legal, financial, economic and social parameters of local government in order to complete the legislative framework with additional laws on finance, on inspection, etc. A welcome development in this context is the active involvement of the NGOs both at the level of the Working Group responsible for legislative proposals and at the local authority level. A request for assistance with the training programmes for local self-government representatives was forwarded to the CoE.

26. The RS Work Programme for Better Local Government provides for a number of priority measures to be taken in order to ensure the effective implementation of the new law on local self-government (these include, in particular, the drafting of new legislation and policy papers on the status of senior local elected representatives, property, finance, and the future administrative and territorial organisation of RS). The RS Ministry of Administration and Local Self-Government has requested assistance from the CoE for the implementation of the Work Programme.

C. Civil society

27. Civil society development seems to be somewhat linked to the complex set-up of the country and to the still very strong international presence. Many NGOs – owing also to the war situation- have been created and developed in donor-driver fashion, with very weak links to the real societal demands. Furthermore, the prevailing nationalist agenda of many parties have atomised civil society and provoked an "ethnisation" of NGOs.

28. Whilst there is a legal basis at state level allowing for NGOs to operate "state-wide", few NGOs have a country-wide area of action. NGOs remain free to register at State, Entity or canton level (in the FBiH) and by-laws for the functioning of NGOs are still rather complicated. Furthermore, the difficulty of financing NGOs domestically creates a rather limited space for their action.

IV. HUMAN RIGHTS

A. CoE Conventions in the field of human rights

1. ECHR: 'Compatibility Exercise' and Government Agent

29. Particularly worrying is the lack of progress with respect to two issues which are of key importance for the CoE, without being politically difficult for the BiH authorities: the successful completion of the 'compatibility exercise' of BiH legislation with the ECHR and the appointment of a Government Agent before the ECtHR.

30. The examination of the compatibility of national law and practice with the ECHR, one of the post-accession commitments undertaken by BiH, can serve as a basis for a programme of further legislative and other reforms. A good quality compatibility report is thus of importance mostly for BiH itself. However, continuing difficulties have been encountered by the CoE in carrying out this exercise with BiH: the Working Group of National Experts was set up last year after considerable delays and since then only two out of its eight members have attended all four meetings organised with CoE experts. The national Working Group has taken no subsequent action and shown no commitment. The exercise should be completed at the latest by May-June 2005. The CoE Secretariat has repeatedly stressed the importance and urgency of the matter both in its regular monitoring reports as well as in letters addressed to the competent State authorities on several occasions. In his most recent letter to the Minister of Human Rights and Refugees, dated 16 March 2005, the CoE Director General of Human Rights emphasised that the CoE Secretariat was reluctant to continue to devote extensive financial and organisational resources towards an activity for which the necessary co-operation and contribution by the State was not forthcoming (see Appendix II).

31. The State authorities acknowledged the problem and promised to take the necessary action without further delay. A concrete step in addressing the situation would be the replacement of those of the current experts who have been most inactive with new ones. It is also essential that the Council of Ministers give its proper institutional support to the exercise. A meeting will take place mid-April to decide on concrete follow-up.

32. As regards the Government Agent before the ECtHR, the appointment, under the authority of the Ministry for Human Rights and Refugees, is still expected as a priority matter.

2. European Social Charter

33. The revised European Social Charter, signed in May 2004, has not yet been ratified.

34. Access to social protection continues to raise major concerns. Differences among social security rights enjoyed by BiH citizens not only across the two Entities but also across the cantons in the FBiH persist and this causes serious practical problems. Also, the organisation of the social security system in practice often deviates from enacted legislation.

3. Protection of national minorities (the 'Others')

35. The Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities was adopted in May 2004 but remains confidential.

36. The report of the European Commission against Racism and Intolerance (ECRI) on BiH, adopted in June 2004, was made public in February 2005 (CRI(2005)2). It stresses the negative impact of the 'constituent peoples' status on the protection of minorities as well as their exclusion caused by the use of the term 'others' (i.e. people other than the three constituent peoples: Bosniacs, Croats and Serbs) in the Preamble of the Constitution to designate national minorities. The excessive emphasis on constituent peoples is considered as an obstacle to the enjoyment of individual human rights and the evolution of BiH towards a state based on citizenship rather than on ethnic representation (see also the Venice Commission Opinion on the constitutional situation, doc. CDL-AD(2005)004). It appears, in particular, from the ECRI report that the non-constituent peoples are subject to discrimination in political participation, as well as in education, housing, health, employment and access to public services. For their part, the authorities of BiH repeatedly note that the composition of the constituency of three peoples and 'others' is a requirement for the existence of BiH and reject the argument that the constitutional framework is an obstacle for paying full attention to the protection of individual human rights or minority rights.

37. In addition, discrimination in a number of fields has been reported against persons belonging to one of the constituent peoples who *de facto* live in a minority situation at the Entity or canton level.

38. The Law on the Protection of Rights of Persons Belonging to National Minorities, adopted in 2003, was a

good step in the right direction, but implementation is lagging. Political representation of minorities and access to political posts is still too rigid and there is a need to find ways to ensure the inclusion of persons belonging to national minorities in public authorities and civil service at Entity and State level. There is also a need for improvement of criminal law provisions against racism and racial discrimination as well as on the setting up of a specialized body to combat racism.

39. The situation of the Roma is considered precarious in the ECRI report: lack of a proper coherent policy, prejudice and open discrimination in the fields of housing, health care, employment and education, extreme poverty and social marginalisation, difficulty and discrimination in exercising property rights and legal precarity (lack of personal identity documents), etc.

40. Protocol No12 to the ECHR, which provides for the enjoyment of any right set forth by law to be secured without discrimination, was ratified by BiH on 29 July 2003 and entered into force on 1 April 2005. The BiH authorities are encouraged to secure its adequate implementation.

41. The European Charter for Regional or Minority Languages – to be signed and ratified by the end of the second year of BiH membership to the CoE (i.e. by 24 April 2004) – has not yet been signed.

B. Human Rights institutions

1. Restructuring of the Ombudsman institutions in BiH

42. A new draft Law on amendments to the Law on the Ombudsman in BiH, prepared by the Ministry for Human Rights and Refugees, has recently been approved by the Council of Ministers and should soon be discussed in Parliament. The draft seems to correspond to the conclusions agreed upon on 19 April 2004 (see doc. CDL-AD(2004)28 rev.), as well as to the Venice Commission's Opinion on the previous draft (see doc. CDL-AD(2004)31). More specifically, in accordance with these texts, the draft provides for the following:

- Establishment of a single Ombudsman institution, composed of an Ombudsman (OM) and two Deputy Ombudsmen (DOM), each appointed at the same time for six years and rotating on the position of OM every two years;
- Appointment by (an *ad hoc* commission of) the House of Representatives through an open, public competition, whose procedure appears to be transparent and allowing for real choice;
- Possibility for persons not belonging to one of the constituent peoples but to the categories of "others" to be appointed as OM or DOM, although, "in principle", the OM and the two DOM shall be nominated from the three constituent peoples. It is to be welcomed that the draft no longer prevents persons who belong to the category of "others" from being appointed OM or DOM. However, a broader formulation of Article 8 § 5, referring to "citizens", as recommended by the Venice Commission (see para. 14 of the Opinion), would be preferable. The draft does propose that Article 11 § 1 be amended so as to provide that "any citizen of Bosnia and Herzegovina... may be appointed" as an OM or DOM;
- Equation of salaries to those of judges of the Constitutional Court;
- Possibility for OM and DOM to investigate together;
- Specification of different roles for OM and DOM;
- Obligation of OM to report also to Entities' parliaments.

43. The current draft maintains, in Article 12a § 3, the obligation for DOM to submit opinions to the OM within eight days from the relevant request, whereas the Venice Commission recommended in this respect the adoption of a more flexible formulation (see para. 20 of the Opinion). As regards the time-limit for the merger, the draft refers to 31 December 2006, thus making the transitional period longer than initially planned.

44. The adoption of the present draft by the Council of Ministers, one year after the principles were agreed, is an important step forward with a view to honouring one of the CoE post-accession commitments and an EC Feasibility Study requirement. It can only be hoped that the draft will pass through parliamentary proceedings without further delay. Entities will have to enact legislation to comply with the BiH law once the latter is adopted. The CoE remains ready to assist the authorities of BiH throughout the process of creation of a single Ombudsman institution, including its technical and practical aspects to be dealt with in the framework of an Action Plan.

45. As regards the current functioning of the Ombudsman institution, in their meetings with the Secretariat Delegation, the State as well as the Entity Ombudsmen complained about staff reductions and other material difficulties, especially as regards the field offices (2 for State Ombudsman Office, 6 for FBiH and 4 for the RS). They also regretted that they had not been consulted in the preparation of the latest version of the draft law on the restructuring of the institution. All Ombudsmen said that there was good co-operation among them and cases were transferred from each other. Most of the complaints received concerned access to justice and social rights. Cases regarding restitution of property, which in the past constituted their main workload, were now less numerous.

2. The Human Rights Commission and the Constitutional Court

46. The Human Rights Commission within the Constitutional Court, which is the legal successor of the former Human Rights Chamber as regards cases received by the end of December 2003, continues to operate - composed exclusively of domestic judges as of the beginning of 2005 - following an agreement extending its mandate until 31 December 2005. However, it is already clear that the Commission will not be able to resolve by that date the remaining cases which, in December 2004, amounted to some 5,500 - out of a total of 8,800 cases inherited. This is all the more so, since the Commission's staff has been reduced due to financial difficulties.

47. At present, the financing of the Human Rights Commission is secured until the end of October 2005. Continued functioning of the Commission for the remaining months of 2005 and a possible extension for 2006, is dependent on an additional EC grant which should hopefully be agreed by mid-April 2005.

48. As regards the Constitutional Court's own caseload, the Court has managed to resolve in 2004 all cases pending since the previous years. Out of 1,120 cases received in 2004, by the end of the year the Court had resolved 1,103 and the remaining ones should be resolved at its March session.

49. At the end of March 2005, the BiH Presidency Chair, Mr Paravac, filed an application with the Constitutional Court asking the Court to take appropriate action to implement its July 2000 Decision on constituent peoples throughout the country. The application is based on the fact that two years after the last elections, the constituency of peoples has not been established in the FBiH. In other words, there are no representatives of the Serb people in the FBiH House of Peoples and the situation is similar in certain cantonal assemblies and even in the Sarajevo City Council. This problem was also raised by some interlocutors of the Secretariat delegation in the BiH Parliamentary Assembly.

50. A Working Group, chaired by the State Minister of Justice and composed *inter alia* of Constitutional Court judges, as well as the CoE SRSG and the OHR legal adviser, is currently discussing the organisation and jurisdiction of the Constitutional Court with a view to proposing amendments (constitutional and legislative), as appropriate. Issues under discussion, besides jurisdiction, include the financial independence, the status of the court staff, the status of the Human Rights Commission and the presence of international judges within the Constitutional Court. During their meeting with the Secretariat delegation, the Constitutional Court judges confirmed that there had so far been a fruitful co-operation and exchange of experience between domestic and international judges. A transitional period could be envisaged - e.g. by the end of 2008 or 2009 - after which the ownership of the Constitutional Court would be fully in BiH hands. The CoE Venice Commission could be requested to offer expert advice.

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

51. Ten years after the Dayton Peace Agreement and following harsh individual and systemic measures announced by the High Representative mid-December 2004, the RS has since the beginning of 2005 started handing over war crime indictees to the Tribunal in The Hague. Following the first voluntary surrender in January 2005, six further voluntary surrenders and transfers to The Hague took place, with the co-operation of the RS authorities - either on their own or working together with the authorities in Belgrade - in March and April 2005.

52. In welcoming these transfers to The Hague by the RS authorities, the High Representative underlined the "notable contrast" to the previous nine years of inactivity and obstruction by the RS authorities in relation to the ICTY. In his speech to the UN Security Council on 23 March 2005, Lord Ashdown commended the RS authorities for the progress of the last few weeks and expressed his belief that there was at present "a change in the attitude of the RS authorities, and an acceptance that the way to Brussels to EU and to NATO, lies through The Hague". However, further progress is still expected to achieve full co-operation with the Tribunal. For the High Representative the process will not end until Kardzic and Mladic and every other indictee is in custody.

53. The RS Interior Minister, for his part, has repeatedly stated that not a single indicted war crime suspect was currently on the territory of RS. The RS police were reportedly in regular contact with members of Karadzic's and Mladic's families and passed messages on the possibility of voluntary surrender. According to legislation, the RS is to pay 50,000KM (i.e. approx. 25,000 Euros) to the family of every indictee who decides to turn himself over voluntarily.

54. The President of RS confirmed to the Secretariat delegation the irreversibility of the co-operation with ICTY to which the highest RS authorities were committed. The President also confirmed that the RS had begun a large-scale campaign with posters and bill boards designed to convince the public about the importance of transferring indictees to the Hague. The RS President seemed particularly keen on changing the "obstructionist" image of his Entity for a more open and co-operative one.

55. A Ministry of Defense report on investigations into weaknesses in command and control over military

forces, as well as the alleged presence of war crimes indictee Ratko Mladic in Han-Pijesak and his remaining on the RS payroll until end 2001 was adopted by the RS government at the end of February 2005. The High Representative welcomed the report but requested evidence confirming that no individuals who served in the 410th Military Intelligence Centre (involved in illegal surveillance) or in Mladic's personal security, are still serving in the RS Army or Defence Ministry as of 15 March 2005.

56. As concerns the issue of missing persons and the Srebrenica events, on 31 March 2005, the RS government adopted the report of its Task Force, set up in January this year to implement conclusions from the final report of the Srebrenica Commission. The Task Force identified 892 persons who remain employed in municipal, Entity and State institutions although there were connected to the Srebrenica events between 10 and 19 July 1995. The report of the Task Force was forwarded to the Office of the High Representative and the BiH Prosecutor's Office and will remain confidential until adequate measures are taken by the latter. The RS government expressed hope that the work and results of the Task Force will contribute to the creation of an atmosphere of trust and enhanced legality in BiH and the region.

57. The question of the possible setting up of a 'Truth and Reconciliation' Commission to look into the recent past of the country with a view to easing tension and preventing further conflict has surfaced again. A draft law proposing the creation of such a commission is pending before Parliament, however its chances of being adopted seem limited due to the opposition of representatives of the missing persons' associations. Other donor countries and international institutions, including quite naturally the CoE, are ready and willing to assist in this process, which must however be locally driven and originate in the country.

D. Sustainable return of refugees and displaced persons

1. Property Law Implementation (PLI)/restitution of property and handover

58. The implementation rate of the property repossession process in BiH, considered as a major achievement in the country, was estimated by UNCHR at 93% by the end of December 2004 (see "Update on Conditions for Return in Bosnia and Herzegovina", UNHCR, January 2005). According to BiH authorities, the implementation rate was much higher by mid-March 2005 and had reached 99.5%. The remaining percentage concerned mainly claims still being processed in the municipality of Banja Luka. In the meantime, Banja Luka has also completed implementation of property law having issued and enforced decisions upon all claims filed before 17 March 2005.

59. At the end of March 2005, the FBiH Parliament adopted the Law on Return, Allocation and Sale of Apartments. The law foresees the return of apartments for which repossession claims have not been submitted by owners from 1991. If the owner is a currently privatised company, apartments will be returned to municipalities. Some 6,000 apartments are covered by this law, of which 3,000 are in the Sarajevo area. Unclaimed apartments have been mostly used as alternative accommodation for refugees and displaced persons. At the end of last year, the representatives of the international community had stressed the need that the new law should protect the continued use of unclaimed apartments by legal beneficiaries of alternative accommodation and take into account the housing needs of the most vulnerable categories of society (see SG/Inf(2005)2 final, para. 20 and Recommendation B vii). The OSCE Mission to BiH has now expressed its concern that the Law, as adopted, fails to address these issues. The Mission emphasised that a social housing policy is needed to ensure that (i) the re-allocation of unclaimed apartments does not adversely affect the rights of alternative and emergency accommodation beneficiaries, and (ii) responsible local authorities provide durable solutions to the housing situation of other vulnerable social cases currently neglected under the applicable law.

2. Returns

60. At the end of 2004, over one million refugees and IDPs had returned to their pre-war homes and municipalities in BiH, out of an estimated 2,2 million persons forcibly displaced during the war. This is considered by both domestic politicians and the international community as real and tangible progress. However, the process of return has not yet been completed. BiH representatives estimate as approximately half a million the total number of persons who still wish to return. According to UNHCR, among the persons who remain displaced and still need a durable solution are (as at the end of 2004): 309,240 persons displaced in BiH, some 100,000 refugees from BiH in neighbouring Serbia and Montenegro and in Croatia, and an estimated 50,000 refugees from BiH who have benefited from "temporary protection" in EU countries. Despite significant progress, UNHCR considers that individual refugees or IDPs may still not be in a position to return to their pre-war municipalities. In addition to the wide range of conditions required to make return sustainable – including access to reconstruction assistance, employment, health care, pensions, utilities and an unbiased education system – continuing concerns of the safety of individual returnees remain. At the same time, concerns have been expressed over cases of persons who have moved out of their homes over the last 5 years.

61. A positive step towards the solution of the return issue was taken at the end of January 2005, when the competent Ministers from the three countries concerned –BiH, Croatia and Serbia and Montenegro– signed in

Sarajevo a Declaration on regional resolving of the refugee-displaced persons issues. The Declaration allows the three countries to come to a mutual agreement on how to resolve outstanding issues on refugee return and includes a political commitment to close the refugee file by 2006. UNHCR, EC and OSCE Heads of Missions from all the three countries, who participated to this Regional Ministerial Conference, underlined the importance of proceeding with the implementation of the Declaration. The international community is called to help the governments of the three countries in the processes of return and local integration and to engage financial and other means to support and assist resolving of the said issues.

62. For its part, the CoE continues to participate in the reconstruction effort through its Development Bank (CEB): in addition to the projects approved in 2004 (€ 8 million loan and an exceptional donation of USD 300,000, see doc. SG/Inf(2005)2 final, para. 53), in March 2005, the CEB's Administrative Council approved a further donation of USD 500,000 for a project aimed at providing permanent housing to a selected group of about 30 households (81 persons), currently living in collective centres in BiH, with a view to facilitating their voluntary return and reintegration into their places of origin. The project will be implemented by UNHCR. The Representative of the UNHCR in BiH welcomed this new project and underlined that the co-operation with the CoE's Development Bank has been a major success.

63. On 5 April 2005, the BiH Fund for Return announced that the FBiH Government had not fulfilled its obligations by virtue of the Agreement on joining funds from 2004 for the projects of return and reconstruction and for this reason a similar agreement for 2005 had not yet been signed. This failure had reportedly brought into question several return projects, including the credit of the CEB. The FBiH Minister of Refugees and IDPs stated that FBiH's share – 1,350,000 KM- would be paid to the Fund by mid-April 2005.

64. As regards Entity legislation on IDPs, returnees and refugees, it is to be welcomed that both Entities have now adopted the relevant laws, harmonised with the State legislation on this issue.

E. Freedom of expression and information

1. Laws on the BiH Public Broadcasting System and Service (PBS laws)

65. The draft Law on the BiH Public Broadcasting System was approved by the Council of Ministers of BiH at the beginning of February 2005 and submitted to Parliament. It is expected to be adopted under urgent procedure by the end of April. The Assistant Minister of Communications and Transport told the Secretariat Delegation that the draft, as approved by the Council of Ministers, incorporated all CoE expert recommendations. The draft Law on the BiH Public Broadcasting Service was also before the House of Peoples.

66. The essential point of the proposed legislation is to bring together the three present public broadcasters – RTV for RS, RTV for the FBiH and the nation-wide RTV BiH – into a single legal entity through a single steering board. Up to now, the three entities have been completely separate. The Assistant Minister informed the Delegation that the proposed legislation provided that all three public broadcasters should take into account the interests of all three constituent peoples (3 languages and 2 scripts). He could not, however, foresee what would come out of the parliamentary proceedings, including the possibility to use the vital interest veto in the House of Peoples. For his part, the Speaker of the House of Peoples, Mr Jukić, told the Secretariat Delegation that the new law should preserve cultural diversity and that amendments should be introduced in this respect. The issue is closely followed by the EC since adoption of the PBS laws is one of the 16 requirements of the Feasibility Study. In its Communiqué of 7 April 2005, the Peace Implementation Council Steering Board reiterated that "Dayton makes it clear that BiH cannot have mono-linguistic PBS channels which would only cement ethnic division and subject the public TV service to damaging political influence".

67. Once the State law is adopted, work on the Entity-level legislation and structures should begin. The legislation goes also hand in hand with the restructuring plan, which the PBS Board of Governors adopted last year.

2. The Communications Regulatory Agency (CRA) and electronic media

68. Both the staff and resources situation of the CRA have been substantially improved, according to the Head of the Public Affairs Department. However, the Agency still faces difficulties in working with the Civil Service Agency. CRA's greatest success in 2004 has been the completion of the process of issuing long-term broadcast licenses. Namely, all private radio and TV stations in BiH now have licenses to operate for a period of approximately 10 years, while public stations received licenses for just two years. The reason is an intention to privatise the majority of public radio and television stations in the coming period, with the exception of the national public service which will draw broadcast license legitimacy directly from the PBS law.

69. The Public Television BHT, the nation-wide service, continues to broadcast all-day programmes, using its own transmitters and frequencies. The biggest donors for building the network are the EC, the BiH Government, as well as the entity televisions which ceded two transmitters. Satellite programming was launched on August 30.

70. On 1 May 2005, the European Convention on Transfrontier Television, ratified on 5 January 2005, will enter into force in BiH.

F. Alternative (civil) service/Conscientious objection

71. A Law on Conscientious Objection in line with CoE norms should be adopted before 24 April 2005, as laid down in BiH's post-accession commitments to the CoE. For the moment, a draft law has been drafted by a NGO ('Campaign for conscientious objection'), through a wide consultative process and with input from the OSCE and the CoE, and should be submitted to the Minister of Human Rights and Refugees by mid-April 2005. The new law should *inter alia* guarantee allocation of adequate resources to enable a proper consideration of each request for conscientious objector status.

72. It is clear that the law will not be adopted within the set deadline. At the same time, some interlocutors linked its adoption to the issue of having a single, professional army for the whole country and eliminate conscription. However, there seems to be no consensus at present on the latter. In this respect, it is indicative that at the end of March 2005, the Bosniac Caucus in the RS Council of Peoples decided to launch the procedure for vital national interest protection with respect to the conclusions reached at the special session of the RS National Assembly on defence reform. For the Bosniac Caucus, termination of the conscript system is unacceptable at present. Since the conscript system is not likely to end in a foreseeable future, preparations for the elaboration and adoption of a law on conscientious objection should be accelerated with a view to honouring the relevant commitment.

V. RULE OF LAW

A. CoE Conventions in the criminal law field

73. During its recent mission, the Secretariat Delegation raised with the highest State authorities – notably the Presidency, Minister of Foreign Affairs, Minister of Justice and the Parliamentary Assembly – the need to ratify five CoE conventions in the criminal law field, which should have been ratified by 24 April 2004: the European Conventions on extradition; on mutual assistance in criminal matters; on the transfer of proceedings in criminal matters; on the transfer of sentenced persons, and on the compensation of victims of violent crimes. In the course of the mission, the Delegation was informed that the Council of Ministers had decided to transmit to the Parliament for ratification all these five conventions.

74. The Convention on the transfer of sentenced persons (STE No 112) was ratified on 15 April 2005. The other four conventions were ratified on 25 April 2005.

75. On 9 February 2005, BiH signed the Convention on Cybercrime – which should according to the post-accession commitments be ratified by 24 April 2005 – and its Additional Protocol, as well as the Additional Protocol to the European Convention on Combating Terrorism.

B. Reform of the Judiciary

76. The inauguration of the War Crimes Chamber of the State Court of BiH and the Special Department for

War Crimes to the BiH Prosecutor's Office on 9 March is the most important event as regards the reform of the judiciary in BiH over the last months. All the necessary institutional and legal preconditions for prosecuting war crimes in BiH in line with the highest international standards have now been met. BiH is thus the first country in the region to be a full partner with the ICTY in trying Hague indictees under entirely domestic auspices. For the High Representative, this progress has been achieved "in a miraculously short time".

77. International presence in the Chamber – strong for the first two years – will gradually decline during the third to fifth years and thereafter this specialised Chamber and the corresponding Department in the BiH Prosecutors Office will be fully BiH staffed institutions. Two cases have already been received from The Hague and the first trials are to start in May-June 2005. The need for additional funding for the new Chamber – currently understaffed – persists and CoE member States are once more invited to consider assistance by way of human or material resources.

78. Whereas only highly sensitive war crimes and organised crime cases will be tried by the BiH State Court, the majority of war crimes cases will continue to be dealt with by domestic courts under the jurisdiction of the Entities and the Basic Court of Brcko District. On 23 March 2005, the OSCE Mission to BiH released the first report on war crimes trials before domestic courts of BiH. Among the key findings, the report notes that BiH domestic courts have proven their respective capacities to handle war crimes cases, despite the complex legal situation, over stretched resources, insufficiently trained staff, backlog of cases, reluctant witnesses and often political indifference of biased or uncommitted authorities. The report highlights how some courts and prosecutors have made conscientious efforts to bring those responsible for war crimes to justice while, at the same time, notes shortcomings and the continuous need to enhance capacity.

79. As regards prosecution of organised crime and corruption cases by the specialised Department in the BiH Prosecutor's Office and relevant trials by the State Court, concerns were raised by some interlocutors of the Secretariat delegation with respect to observance of ECHR provisions which prevail over domestic law. Reference was made in particular to Articles 5 and 6 ECHR as regards the length and judicial control of pre-trial detention and fair trial guarantees. Prosecution of such cases is mainly handled by international prosecutors in the Prosecutor's Office and international judges constitute the majority in State Court trials of such cases. It should thus be ensured that not only local but also international judges and prosecutors are properly trained on the ECHR and the Strasbourg Court's case-law.

80. The process of re-appointments of judges and prosecutors by the High Judicial and Prosecutorial Council (HJPC) was almost completed one year ago, with 80 judges still to be appointed. Judicial posts have been reduced by 30% and 20% of the remaining posts have been filled by new judges. Many disciplinary proceedings are on-going mostly for unethical behaviour. The Disciplinary Prosecutor – a semi-autonomous body under the authority of the HJPC – is currently an international prosecutor but should soon be replaced by a domestic one.

81. The courts and the prosecutor's offices remain understaffed and under-resourced. Following the freezing of judicial salaries in December 2004 by Decision of the High Representative, a Working Group, composed of representatives of the State and Entity Ministries of Justice and of the judiciary, agreed on a 10% decrease of the judicial salaries so as to reduce the personnel costs and allow financing for other running expenses of the courts and prosecutor's offices. As of 2007, the judicial system in BiH will be entirely financed by the State.

82. There has been no progress as regards the backlog of cases and enforcement of court decisions, mentioned in previous reports. The EC is at present investing several million Euros on introducing information technology in court administration. HJPC is proposing the creation of a single BiH Judicial and Prosecutorial Training Centre, financed by the State budget, as of 1 January 2006. The CoE, in co-operation with the EC, has played an important role in supporting the two existing training centres, mainly through assistance with the continuous training activities (for judges and prosecutors), and in establishing an initial training system (for future judges and prosecutors).

C. Fight against corruption and organised crime

83. According to the Global Report on Corruption, published on 16 March by Transparency International (TI), BiH has marked a fall from 70th to 82nd place on the list of Global Index of Perception of Corruption, which discourages foreign investments in BiH, since foreign investors refuse to pay bribes. BiH remains thus a country with a 40% unemployment rate and grey economy which exceeds half of the gross domestic product (GDP). Despite enormous efforts, including by the international community, BiH, along with Kosovo, remain the key transit area for organised crime and illegal trafficking.

84. In the absence of a specialised body in BiH to deal exclusively with the fight against corruption, the Ministry of Security and the State Investigation and Protection Agency (SIPA) co-ordinate anti-corruption efforts at State level. A special Department for Organised Crime and Corruption, composed also of international prosecutors, is established within the Prosecutor's Office of BiH by virtue of a Decision of the

High Representative (see also above). Increasing efficiency in the fight against organised crime is one of the aims of the planned police reform.

85. The CoE Group of States against Corruption (GRECO) is expected to assess BiH's compliance with recommendations issued in 2003 before the summer of 2005.

D. Police reform

86. Whereas there seems to be a general acceptance from all sides in BiH that police restructuring is required, discussions are increasingly focused on the elements of the reform.

87. The EC has repeatedly made it clear that if BiH wants to begin negotiations on a Stabilisation and Association Agreement, police restructuring must ensure that: all legislative and budgetary competencies are vested at the state level; police services are based on geographical regions drawn up to ensure maximum efficiency, and political interference in policing in BiH is eliminated.

88. Following the adoption of the report by the Police Reform Commission (PRC) in January 2005 (see doc. SG/Inf(2005)2 final, para. 75), the High Representative recommended the territorial organisation of BiH police on the basis of ten areas which, based on operational efficiency, cross the inter-entity border lines where it is operationally expedient. Completed with the proposed map, the PRC report was published in February.

89. For the RS authorities, the major obstacle to the adoption of the police reform is precisely the proposed map. Both the RS Prime Minister and the Speaker of the RS National Assembly told the Secretariat Delegation that they could not understand why crossing the inter-entity border lines would increase efficiency of the police. They also contested full transfer of police powers to the State level and argued in favour of preserving the Entity Ministry of Interior. For the Speaker, the PRC report was a good starting point for parliamentary discussions, but he considered the proposed model of reform problematic as it required changes not only to the Entity Constitutions, but unlike previous reforms, also to the BiH Constitution. Some opposition political parties in the RS National Assembly, such as the Party for BiH and the Social Democratic Party, support, for their part, the proposed model of reform.

E. Prison system

90. Amendments to the pre-trial detention chapter of the Criminal Procedure Code guaranteeing the principle of presumption of innocence and a new State Law on the Execution of Criminal Sentences, elaborated with CoE expert assistance, were adopted. Changes in the Entity legislations on prisons should now also be elaborated.

91. As concerns detention facilities, the process of prison reform – for which CoE is the lead organisation – is on-going. However, there is still lack of a coherent BiH strategy towards prisons issues. Such a strategy needs to address issues linked to the creation of a single prison administration for BiH, the consideration of alternative measures to imprisonment and the elaboration of a national Action Plan to combat drug abuse.

92. The provisional 21 bed pre-trial high security detention facility for BiH became operational in February 2005 to cover the needs of the newly set up War Crimes Chamber. It will also be used for organise crime detainees, upon availability. Only few detainees are currently held in this new facility. The CoE continues to work closely with the Registry of the Chamber in developing the necessary regulations and training of personnel. At the same time, international donors funds are still being sought for a project proposal to build a high security State level prison and remand facilities for some 400 persons. The CoE is also supporting this initiative.

VI. EDUCATION

93. The educational system is key to the development of a sense of common and shared citizenship and to the building of a coherent state concept. In spite of the adoption of state level legislation on primary and secondary education, clearly the persisting teaching separation at all education levels remains a serious obstacle in the path of BiH towards further European integration. The higher education system is in need of substantial reform in order to be on par with other European systems and to offer students and teachers a quality and modern education which will allow for mobility and exchanges both inside and outside the country.

94. Positive steps have recently been taken towards establishing sustainable, locally-owned institutions in the education sector in BiH: in December 2004 the Conference of Education Ministers was established with

the CoE's lead. The aim of the Inter-Ministerial Conference is to promote local ownership and policy sharing across the country. This initiative should be welcomed as a forum to increase dialogue among the Ministers.

95. Another institution in the education field recently established with the support of the CoE and EU is the BiH Rector's Conference. This new body will not only promote higher education reforms within Universities, but should ultimately also help to bring BiH Universities into the European higher education arena as full-fledged partners.

A. Primary and Secondary Education

96. All lower and primary and secondary education laws - in conformity with the State Framework Law on Primary and Secondary Education - have been adopted (albeit three cantonal laws had to be imposed by the High Representative), and by-laws are currently being adopted. However, the full implementation of these laws is not yet satisfactory.

97. Some progress has been made: Guidelines for History and Geography Textbooks, developed with CoE expertise, OSCE support and BiH experts, will be published in the Official Gazette of BiH; all future textbooks will therefore have to conform with the Guidelines. New foreign language curricula have been developed with CoE expertise based upon the Common European Framework, in concert with the OSCE. In the hope that they will play a role in continued and sustainable reform, the establishment of agencies such as the Curriculum Agency and a revised Standards and Assessment Agency for primary and secondary education should be priorities in the coming months.

98. However, the practice of "two schools under one roof" has not ceased, but rather increased (54 schools in the Federation of BiH) in spite of repeated efforts by the international community to encourage removing all obstacles to the unification of the schools (see a joint OSCE-CoE statement on this issue in Appendix III).

99. Furthermore, although a firm commitment was taken by all Ministers of Education to respect the set of criteria agreed upon in the use of symbols and names in the schools - as well as the removal of war monuments - the OSCE is concerned about compliance with such criteria.

100. The elements above highlight the difficulty in finding a balance between, on the one hand, the need to implement the current reform aimed at moving from three distinct curricula to a common core curriculum with equal opportunities for all children and, on the other hand, the wish for the preservation of "national identities" with their distinct cultural and religious features and the need to avoid assimilation.

B. Higher education

101. The adoption of a state-level law on higher education is in a total *impasse* leaving the country in a legal vacuum and with the co-existence of different and contradictory higher education systems. In the current context the Ministry of Civil Affairs, in charge of co-ordinating education at the state level, recognises the irreconcilable positions taken by two of the constituent peoples. The international community representatives, in particular the CoE, OSCE, OHR and World Bank, are trying to mediate between the two; however, the prospects of having an agreement on a new draft law on higher education are rather dim. In the meantime a number of Ministers of Education at the cantonal level in FBiH and Entity level in the RS are eager and ready to issue their own legislation on higher education.

102. This trend should be resisted in order to pursue the search for some common ground enabling at least the adoption of some kind of framework legislation at the state level which would provide norms in higher education at a country-wide level, unify universities into one single legal entity, comply with the Bologna criteria and Lisbon Recognition Convention and introduce the European Credit Transfer system. Short of a fully-fledged state higher education legislation (with state-level funding), such a framework law would be a first step to guarantee minimum standards compatible with European ones.

VII. CoE CO-OPERATION PROGRAMMES WITH BiH

103. In 2005, BiH remains one of the most important beneficiaries of CoE assistance and continues to be one of the CoE priorities.

104. One of the main events of the past three months was the publication of commentaries on the Criminal Codes and the Criminal Procedure Codes. The 20-month drafting process of the commentaries provided an opportunity to review contentious issues in the codes and to identify *lacunae*. In the area of Rule of Law, CoE offered expert advice on management and training of staff working in temporary detention facilities for war crimes suspects (detained by the War Crimes Chamber of the State Court of BiH), and assisted in devising the Book of Rules. An expert report on staff policy in prisons has been drawn up. Further advice on the draft Law on Minor Offences was also given.

105. Three training sessions on ECHR standards for lawyers and one for civil servants took place between February and early April 2005 and were attended by a total of 120 participants. Most of them demonstrated a high level of involvement and expressed interest in receiving more detailed trainings on all provisions of the ECHR.

106. CoE activities in BiH have also been focused on local and regional democracy. An appraisal of the Guidelines on the drafting of municipal status in the RS has been prepared. Preparatory meetings for the implementation of the 2005 Programme on the National Work Project for better local government in both the RS and the FBiH have already taken place. Other meetings on Local Government Best Practices Programme in BiH and the first Committee of Experts on Transfrontier Co-operation have also taken place with the support of the CoE (see also above).

107. Education is another priority area in which there is an intensive activity. Following the last Secretariat report, 15 activities have been completed or are underway, including: the study visit for secretariat members of the BiH Conference of Education Ministers; the follow-up teacher-training seminar on Children's Rights – Training for primary school teachers in the RS on the new module on Children's Rights developed by CoE experts; the third drafting meeting to develop a Prototype Statute for BiH Universities; the workshop for the Law Faculties Deans and Administrative Staff (see also above).

108. The CoE and the Canadian Government (acting through the "Canadian International Developing Agency" - CIDA) signed, on 31 March 2005, two extensive arrangements for funded projects on the prison system reform in BiH and the Judicial and Prosecutorial Council capacity improvement. These projects will be carried out over a period of two years.

VIII. CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

109. After nearly three years of CoE membership, BiH has honoured a large number of accession commitments, at least as regards adoption of relevant legislation and signature and/or ratification of CoE Conventions, and this in most cases within the set deadlines. However, implementation remains a principal matter of concern. At the same time, a number of commitments have not been fulfilled within the set deadlines, such as: the revision of electoral law; adoption or implementation of laws in the field of education; ratification of a number of CoE conventions, such as the Convention on Cybercrime, the European Outline Convention on Transfrontier Co-operation and its Protocols, the revised European Social Charter, and the signature and ratification of the European Charter for Regional or Minority Languages.

110. As concerns commitments which had not been given any specific deadline, the picture seems to be the following:

- With respect to some of them, such as implementation of the Dayton Agreement, co-operation with ICTY, reform of the judiciary, sustainable return of refugees and IDPs and implementation of property laws, considerable progress has now been achieved. Reforms in these and other fields, not directly linked with CoE membership – such as economy, taxation, defence and security structures etc. – have strengthened State institutions and allowed BiH to come closer to the gates of integration into Euro-Atlantic structures.
- With respect to other CoE accession commitments, notably in the fields of restructuring of the Ombudsman institutions and media reform, relevant draft laws are currently before the BiH Parliamentary Assembly hopefully for adoption without further delay in line with CoE recommendations.

- Finally, with respect to a further category of CoE accession commitments, insufficient progress has continuously been reported. This is notably the case, on the one hand, of the 'compatibility exercise' between domestic legislation and ECHR and the appointment a Government Agent to the European Court of Human Rights and, on the other, of respect for the commitment to eliminate all aspects of discrimination based upon ethnic origins in the field of education.

111. In the light of the above concluding remarks, the following specific recommendations are addressed to the BiH authorities, most of which reiterate recommendations already made in previous Secretariat reports (see also the Addendum to the present report):

A. Democratic institutions

i. The institutional and action capacity of State institutions – including the Council of Ministers and the Ministry of Foreign Affairs – should be further strengthened, *inter alia* through the recruitment of qualified staff.

ii. The process of transfer of competences and responsibilities from the Entities (or Cantons in the FBiH) to the State must be accelerated, if the country wants to achieve full ownership over its own institutions and future, a progressive phasing out of the High Representative's Bonn powers and the role played by the international community in general, and full integration into Europe and Euro-Atlantic structures. The

momentum created by the recent Opinion of the Venice Commission as regards the constitutional debate in the country must not be lost but followed-up by a comprehensive constitutional reform, subject to the consensus of the three constituent people and with the continuing assistance, if need be, of the CoE and its Venice Commission.

iii. The revision of the electoral legislation, at all levels, taking into account recommendations made by both the OSCE/ODIHR and the CoE/Venice Commission should be accelerated for completion in autumn 2005, i.e. one year before the general elections of October 2006. The need to amend the constitutional rules on the composition and election of the House of Peoples and of the Presidency – which seem to be incompatible with the ECHR and its Protocol 12 respectively – should be addressed as part of the first stage of constitutional reform in accordance with recommendations made by the Venice Commission.

iv. The European Outline Convention on Transfrontier Co-operation and its Amending Protocols must be ratified. Progress in the implementation of the European Charter of Local Self-Government must be ensured through (a) the adoption of relevant legislation and constitutional amendments – in consultation with CoE experts – in the FBiH, and (b) the implementation of relevant legislation in the RS, with CoE assistance.

v. By-laws regarding the functioning of NGOs must be simplified and streamlined to allow for an enhanced presence of civil society and a more active participation of NGOs in the legislative and in general reform process.

B. Human rights

i. Serious consideration must be given by the competent State authorities of the need to complete the delayed 'compatibility exercise'; the replacement of certain experts in the national working group must be envisaged. A Government Agent should be appointed to the European Court of Human Rights without further delay.

ii. Problems linked to access to social protection should be addressed and the ratification of the revised European Social Charter seriously considered.

iii. Appropriate follow-up should be given to recommendations made by ECRI in its recent report, as regards discrimination against the non-constituent peoples (the 'others'), as well as discrimination against persons belonging to one of the constituent peoples who *de facto* live in a minority situation at the Entity or cantonal level. Implementation of the Law on the Protection of Rights of Persons Belonging to National Minorities must be accelerated and the European Charter for Regional or Minority Languages signed and ratified.

iv. The new draft Law on Amendments to the Law on the Ombudsman in BiH, which corresponds to the principles previously agreed with the Venice Commission on the restructuring of the institution, should be adopted by the BiH Parliamentary Assembly without further delay.

v. Appropriate resources should be allocated to the Human Rights Commission within the Constitutional Court to enable it to resolve the remaining cases inherited from the Human Rights Chamber. CoE member states are once more invited to consider assistance to the Commission for this purpose. The mandate of the Commission should be further extended for 2006 and its funding secured.

vi. The recent radical change in the attitude of the RS authorities as regards co-operation with the ICTY and the transfer of seven indictees since the beginning of 2005 must be followed by the transfer of all indictees, including the most wanted ones. After consideration by the BiH's Prosecutor's Office, the report of the RS government Task Force on the follow-up to the work of the Srebrenica Commission should be published. New impetus should be given to the setting up of a 'Truth and Reconciliation Commission'.

vii. The process of refugees and IDPs' return must be consolidated and completed, inter alia through direct negotiations among the three countries mainly concerned, i.e. BiH, Croatia and Serbia and Montenegro.

viii. Draft legislation on the BiH Public Broadcasting System and Service should be adopted without further delay taking into account the CoE/EC expertise of June 2004 and respecting the multi-cultural, professional and politically independent character of the public broadcasting system.

ix. Preparations for the elaboration of a State Law on Conscientious Objection, in line with CoE norms, should be accelerated, with a view to honouring the relevant accession commitment.

C. Rule of Law

i. Additional resources must be provided to the newly set-up War Crimes Chamber of the State Court of BiH which will soon start trying highly sensitive war crimes and organised crime cases. CoE member states are

invited to consider such assistance. It must be ensured that not only local but also international judges and prosecutors dealing with organised crime and corruption cases in the BiH Court and the BiH Prosecutor's Office are properly trained on the ECHR and the Strasbourg Court's case-law. International presence in the State Court when trying such cases should progressively decline. A single BiH Judicial and Prosecutorial Training Centre should be created in accordance with HJPC proposals.

ii. Adequate responses must be given to the increased rate of corruption and organised crime in BiH to encourage inter alia foreign investment and allow liberalisation of the visa regime for BiH citizens. Increased efficiency in the fight against organised crime and illegal trafficking is also one of the main objectives of police reform which must be successfully completed, in accordance with EC principles, if BiH is to initiate negotiations for a SAA with the EU.

iii. A coherent BiH strategy towards prison reform, with CoE assistance, is needed, including the creation of a single prison administration, consideration of alternative measures to imprisonment and the elaboration of a national Action Plan to combat drug abuse.

iv. The Cybercrime convention, signed on 9 February 2005, should now be ratified.

D. Education

i. The practice of "two schools under one roof" in the FBiH must come to an end, in accordance with repeated calls by the CoE and the OSCE. Also implementation of laws and by-laws on primary and secondary education must be accelerated.

ii. A new impetus should be given to the elaboration of the State Framework Law for Higher Education – currently in impasse – with a view to ensuring compliance with the Bologna criteria and the Lisbon Recognition Convention. Pending the adoption of such a law, trends at cantonal level in the FBiH and Entity level in the RS towards adoption of their own legislation on higher education should be resisted.

Appendix I

Programme of the Secretariat's visit to Sarajevo and Banja Luka (21-24 March 2005)

Monday 21 March 2005 (Sarajevo)

09h00-10h00 Meeting at the Centre for Civil Society Promotion
- Mr. Fadil Šero, Director

11h15-12h30 Meeting with the BiH Ombudsmen
- Mr. Safet Pasic
- Mr. Mariofil Ljubic

13h00-14h00 Meeting with the President of the State Court
- Mr. Meddzida Kreso

14h30-15h30 Meeting at the Communication Regulatory Agency
- Ms. Amela Odobasić, Head of the Public Affairs Department

17h15-17h45 Meeting with the members of the BiH Presidency
- Mr. Borisav Paravac, Chairman
- Mr. Sulejman Tihić
- Ms. Darija Krstičević, Adviser

20h00 Dinner with representatives of the International Community in BiH
- HE Mr. Werner Wnendt, Deputy High Representative, OHR
- Mr. Udo Janz, Representative, UNHCR
- Mr. Michael Humphreys, Head, EC Delegation
- Mr. Douglas Davidson, Head, OSCE Mission to BiH
- HE Mr. Robert Bosscher, Ambassador of the Netherlands
- Ms. Silvia Cuger, Embassy of Poland

Tuesday 22 March 2005

08h00-09h00 Working breakfast with representatives of the BiH Ministry of Foreign Affairs

- Mr. Mladen Ivanić, Minister
- Mr. Nedžad Hadžimusić, Assistant Minister

09h00-10h30 Meeting with representatives of the Collegiums of the House of Representatives and the House of Peoples of the BiH Parliamentary Assembly

- Mr. Šefik Džaferović, Speaker of the House of Representatives
- Mr. Velimir Jukić, Speaker of the House of Peoples
- Mr. Sead Avdić
- Mr. Tihomir Gligorić
- Mr. Ivo Lozančić
- Mr. Martin Raguž
- Mr. Nikola Špirić
- Mr. Goran Milojević
- Mr. Mustafa Pamuk
- Mr. Ilija Filipović

10h30-12h00 Meeting with representatives of the BiH Council of Ministers

- Mr. Slobodan Kovač, Minister of Justice
- Mr. Niko Grubišić, Deputy Minister of Justice
- Mr. Sanisa Zdravko, Assistant Minister of Communications and Transport
- Mr. Drago Kovač, Secretary to the Ministry of Human Rights and Refugees

12h00-13h00 Meeting with representatives of the BiH Constitutional Court

- Mr. Miodrag Simović, Vice-President
- Mr. Duško Kalembur, Secretary General
- Mr. Faris Vehabović, Registrar

13h00-14h45 Lunch hosted by the BiH PACE Delegation

15h15-16h00 Meeting with the President of the FBIH

- Mr. Niko Lozančić

16h00-17h30 Meetings with representatives of the FBIH Government

- Mrs. Borjana Krišto, Minister of Justice
- Mr. Zijad Pašić, Minister of Education
- Mr. Mevludin Halilović, Minister of Internal Affairs

17h30 Meeting with:

- Mr. Safet Halilović, Minister of Civil Affairs of BiH
- Mr. Zijad Pašić, Minister of Education of FBIH

18h15 Departure for Banja Luka

Wednesday 23 March 2005 (Banja Luka and Sarajevo)

09h00-10h00 Meeting with the President of Republika Srpska (RS)

- Mr. Dragan Čavić
- (Part of the delegation)

09h00-10h00 Meeting with the RS Ombudsman

- Ms Nada Grahovac
- (Part of the delegation)

10h00-11h45 Meeting with representatives of the RS Government

- Mr. Pero Bukejlević, Prime Minister
- Mr. Darko Matijašević, Minister of Interior
- Mr. Džerard Selman, Minister of Justice
- Ms. Zdenka Abazagić, Minister of Local Self-Government

12h00-13h30 Meeting with representatives of the RS National Assembly

- Mr. Dušan Stojčić, Speaker
- Mr. Šefket Hafizović, Deputy Speaker

14h00 Return to Sarajevo

18h30-20h00 Meeting with the Helsinki Committee for Human Rights

- Mr. Srđan Dizdarević, President

Thursday 24 March 2005 (Sarajevo)

08h00-09h30 Working breakfast with representatives of the OSCE Mission to BiH

- Ms. Shanti Crawford, Deputy Director of the Education Department
- Ms. Azra Junuzović, Standards and Institutional Capacity Advisor, Education Department

10h30-11h30 Meeting with representatives of the BiH High Judicial and Prosecutorial Council

- Mr. Sven Marius Urke, Member and Advisor to the Secretariat

12h00-13h00 Meeting with representatives of the UN OHCHR

- Ms. Madeleine Rees, Head of Office
(Part of the Delegation)

12h00-13h00 Meeting with the FBIH Ombudsmen

- Mr. Esad Muhibic
- Ms. Vera Jovanoic
- Ms. Branka Raguz
(Part of the Delegation)

Composition of the Secretariat Delegation:

Mr. Jean-Louis Laurens, Director of Private Office of the Secretary General, in charge of the Directorate of Strategic Planning (DSP)

Ms. Claudia Luciani, Head of Division III, Directorate of Political Counsel and Co-operation, Directorate General of Political Affairs (DGPA)

Ms. Despina Chatzivassiliou, Acting Head of Monitoring Department, Directorate of Strategic Planning (DSP)

Ms. Diana Radu, Programme Adviser, Directorate of Strategic Planning (DSP)

Mr. Hugh Chetwynd, Special Representative of the Secretary General (SRSG) in BiH

Mr. Esad Mavrić, Executive Secretary, CoE Sarajevo Office

Appendix II



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Secretariat general

Directorate General of Human Rights – DG II
The Director General

Please quote: HD/SKS/dg

Strasbourg, 16 March 2005

Dear Minister,

One of the commitments undertaken by Bosnia and Herzegovina upon joining the Council of Europe in 2002 is the examination of the compatibility of national law and practice with the European Convention on Human Rights (ECHR) (cf: point 15 iii c. of Opinion No. 234 (2002) by the Parliamentary Assembly of the Council of Europe). The purpose of the compatibility exercise is to provide an a priori examination of the conformity of legislation and practice with the requirements of the ECHR which can then serve as a basis for a programme of legislative and other reforms to ensure compliance with the requirements of the Convention. It is also intended as a means of ensuring that a member State may have access to a group of competent lawyers when advice on the ECHR is needed.

Given the importance of producing a good quality compatibility report, I regret to bring to your attention the continuing difficulties encountered by the Council of Europe Secretariat in carrying out this exercise. As you will recall, considerable effort was required to establish the national Working Group. Since its establishment in April 2004, this Working Group has met four times together with the Council of Europe experts. Unfortunately, only two of the eight members of the Working Group have attended all four meetings. Others

have attended only sporadically. Moreover, the necessary coordination within the Working Group, a precondition in all compatibility exercises, has not taken place.

Despite extensive Council of Europe expert assistance, the provision of human rights materials in the Bosnian language and financial support by the Council of Europe in the framework of the Joint Programme between the Council of Europe and the European Commission to assist Bosnia and Herzegovina in fulfilling its post-accession commitments and in developing and maintaining democratic institutions, there has been no real progress since the first meeting held in June 2004. The meetings organised have included detailed discussions on the methodology of the compatibility study, as well as an analysis of each selected Article of the ECHR. Although all members of the Working Group and the Council of Europe experts have agreed on all points discussed, no subsequent action has been taken by the national Working Group. Indeed, virtually no notice has been taken of the Council of Europe experts' input. New draft reports have either not been prepared or they have included few changes.

.../2

Mr Mirsad KEBO
Minister for Human Rights and Refugees
of Bosnia and Herzegovina
Trg Bosne i Hercegovine 1
71000 SARAJEVO
Bosnia and Herzegovina

You may recall that the Council of Europe Secretariat has contacted the competent State authorities on several occasions with requests for assistance in motivating the members of the Working Group to prepare their contributions towards the compatibility report in a professional manner and taking into account the input of Council of Europe experts. I refer to the letters sent by Mr Hugh Chetwynd, Special Representative of the Secretary General of the Council of Europe in Bosnia and Herzegovina on 4 October 2004 to Mr Mladen Ivanić, Minister of Foreign Affairs, and on 18 February 2005 to you, as well as the letter sent by myself on 23 November 2004 to Mr Ivanić.

As mentioned above, the Government of Bosnia and Herzegovina has taken on a commitment to examine continuously the compatibility of all legislation with the ECHR. For their part, the Ministers' Deputies have repeatedly expressed the importance they attach to the proper conduct and completion of the compatibility exercise in the context of their examination of progress in the fulfilment by Bosnia and Herzegovina of its commitments.

At this point, however, it seems unlikely that the current group of experts will produce a report which meets the minimum standards required to fulfil the State's commitment in the field of compatibility. Furthermore, the Council of Europe Secretariat is reluctant to continue to devote extensive financial and organisational resources towards an activity for which the necessary co-operation and contribution by the State is not forthcoming. In these circumstances, the Secretariat will be obliged to report to the Ministers' Deputies about the lack of progress in this important matter.

In concluding this letter, and further to the contacts between Mr Ivica Marinović, Deputy Minister of Human Rights and Refugees and the Council of Europe Secretariat on 9 March 2005 on the occasion of the Fourth compatibility meeting, I would ask again for your full co-operation in this priority area. The Special Representative of the Secretary General of the Council of Europe in Bosnia and Herzegovina and the Directorate General of Human Rights are at your disposal to discuss possible ways of moving forward, including changes to the current composition of the Working Group, in order for Bosnia and Herzegovina to fulfil this commitment within the timeframe foreseen by the Joint Programme between the European Commission and the Council of Europe, i.e. May - June 2005.

No doubt this issue will be raised in the context of the forthcoming Secretariat monitoring mission due to take place in Bosnia and Herzegovina from 21-23 March 2005 and will be referred to in the Secretariat's report on the mission.

Yours sincerely,

Pierre-Henri IMBERT

Copy: Permanent Representation of Bosnia and Herzegovina to the Council of Europe

Appendix III



5 April 2005

Concrete steps towards full integration in schools in Bosnia and Herzegovina must accelerate

The Council of Europe and the OSCE would like to remind the BiH authorities of the commitments undertaken when BiH joined the Council of Europe in April 2002: 'to eliminate all aspects of segregation and discrimination based upon ethnic origins'. Three years after BiH's accession to the CoE, the continued existence of 54 'two schools under one roof' is a blatant violation of this commitment.

In Ambassador Davidson's recent statement *Why Two Schools Under One Roof Must Go*, he urged all parties to comply with the laws of Bosnia and Herzegovina and to unify these schools both legally and administratively. In order to introduce the new measures by the beginning of the school year 2005/2006, such procedures *must* be completed by the end of May. The CoE and OSCE would like to emphasise that the unification of these schools only serves to remove administrative and legal obstacles to ending "segregation and discrimination based upon ethnic origins". Further, the communities concerned – students, teachers and parents – bear a continuing and further responsibility to ensure full respect for the commitment into which Bosnia and Herzegovina has freely entered upon its accession to the Council of Europe. More work is required on the part of communities, educators and authorities throughout BiH to ensure responsiveness in schools to the needs of the children of all communities represented in BiH.

Unification of ethnically divided schools does not mean, however, assimilation. Indeed respect for cultural diversity is one of the fundamental principles of the CoE and the OSCE. When addressing this issue in a recent report, the CoE emphasised that the unification process should take place in a manner which fully respects the rights of the three constituent peoples to have an equal right to use their languages, without discrimination. At the same time, the report stresses the central importance of facilitating contacts among students and teachers of different communities.

The CoE and OSCE therefore urge the BiH authorities to take immediate steps to remove administrative and legal obstacles to implement full integration of the 54 'two schools under one roof'.

