REPUBLIC OF SRPSKA
GOVERNMENT
CABINET OF THE PRIME MINISTER
Trg Republike Srpske 1, Banja Luka, tel: 051/339-103, fax: 051/331-366, E-mail: kabinet@vladars.net

No-04/1-952/10
19 May 2010

His Excellency Ban Ki-Moon
Secretary General
The United Nations
1 United Nations Plaza
New York, New York, USA 10017-3515

Your Excellency:

To assist the Security Council with its upcoming deliberations on Bosnia and Herzegovina ("BiH") scheduled for 24 May 2010, the Government of Republika Srpska ("Government") has prepared the attached Third Report to the Security Council on the Situation in BiH. The Government, as a treaty party to the agreements comprising the Dayton Accords and as one of the two Entities that comprise BiH, respectfully requests that the Council take its views into consideration during this debate.

Regrettably, since the Government's Second Report and the Council's last deliberations on BiH in November 2009, the High Representative has continued to unlawfully exercise the so-called "Bonn Powers" and to take other actions that seriously interfere in BiH's internal affairs and violate the rule of law. The Government has responded responsibly to these actions in accordance with its legal rights and obligations. These continued violations of law by the High Representative further demonstrate the urgent need for its closure.

The Government remains committed to Euro-Atlantic integration, but it is disappointed in the attempt to delay visa liberalization for political reasons, despite the technical requirements having been fulfilled. The Government supports amending the BiH Constitution in order to adhere to the European Convention on Human Rights. This amendment should already have been achieved; however, the leading Bosniak parties and certain supporters in the international community prevented this by refusing to support the necessary narrow amendment without sweeping and highly controversial constitutional changes that would alter the Dayton Accords. Any constitutional changes must: arise from a consensus in BiH instead of being imposed from abroad; preserve the fundamental protections of the Dayton Accords; and not be linked to OHR closure.

Finally, there is no legal or factual basis for the continuation of Chapter VII measures; thus, such measures should end. As EUFOR's recent report to the Security Council clearly indicates, the situation in BiH no longer constitutes a threat to international peace and security.

These and other important issues are discussed more fully in the attached Report. The Government, which speaks for many citizens of BiH directly affected by the Council's decisions, trusts that the Council will give its views careful consideration.

Please accept, Excellency, the assurances of my highest consideration.

Milorad Dodik

PRIME MINISTER OF REPUBLIKA SRPSKA

THIRD REPORT OF REPUBLIKA SRPSKA TO THE SECURITY COUNCIL ON THE SITUATION IN BOSNIA AND HERZEGOVINA

May 2010

THIRD REPORT OF REPUBLIKA SRPSKA TO THE SECURITY COUNCIL ON THE SITUATION IN BOSNIA AND HERZEGOVINA

I. Introduction

1. The Government of Republika Srpska ("Government") respectfully submits its Third Report to the United Nations Security Council in anticipation of the Council's upcoming deliberations on Bosnia and Herzegovina ("BiH"), scheduled for May 24, 2010. The Government submits this Report to assist the Security Council in assessing the current situation in BiH and determining how the international community can best support BiH in its continued progress, while fully respecting its sovereignty, the human and political rights of its citizens, and other fundamental principles of international law and democracy. As a treaty party to the agreements comprising the Dayton Peace Accords and as one of the two Entities comprising BiH under its Constitution, these issues are of special importance to the Government, as the Government continues in its commitment to adhere to its duties under these instruments and to protect the rights of its citizens set forth therein.

2. Since the Second Report was submitted to the Security Council and the Council's last deliberations held in November 2009, the High Representative has continued to take unlawful actions that seriously interfere with BiH's internal affairs and undermine the rule of law – despite the Government's urging for an end to such practices. The Government has responded responsibly to such actions in accordance with its legal rights and obligations. This includes announcing a referendum to be held to seek the views of its citizens with respect to such longstanding and continued practices of the High Representative. These issues are discussed in Section II of the Report below. The Government has also provided three Appendices to this Report relevant to these issues. Appendix 1 is Annex 10 of the Dayton Accords, which defines the High Representative's authority. Appendix 2 is a position paper of the Government regarding the High Representative's decrees of December 14, 2009. And Appendix 3 is a position paper of the Government regarding its plans for a referendum.

3. These issues underscore the importance of the prompt closure of the Office of the High Representative ("OHR"), the support for which has been expressed among Peace Implementation Council ("PIC") members, EU officials and other international experts. Unfortunately, the PIC's 5-plus-2 agenda for its support of closure is now defunct because the leading Bosniak parties have no interest in seeing the OHR closed and thus are unwilling to work to achieve the remaining conditions. This should not be permitted to hold hostage OHR's closure. These issues are also addressed in Section II.

4. The Government's continued commitment to Euro-Atlantic integration is discussed in Section III. Also discussed in this section is the Government's objection to the attempt to delay visa liberalization for political reasons despite the technical requirements having been met.

5. In Section IV, constitutional reform is addressed. The Government reiterates is support for urgent election eligibility reform to ensure that the BiH Constitution complies with the European Charter on Human Rights. The Government also explains how the major Bosniak

parties, with the support of some within the international community, have attempted to exploit the need for these amendments to impose sweeping changes to the Constitution. This effort has prevented the straightforward election eligibility amendments from being implemented. In addition, the Government describes its general position on constitutional reform, namely, how any constitutional reform must: arise from a consensus within BiH rather than being imposed from abroad; preserve the fundamental protections of the Dayton Accords; and not be linked to OHR closure.

6. Finally, in Section V, the Government repeats its call for Chapter VII measures to end. There is no legal or factual basis for their continuation, as the Government describes in this section.

II. Human Rights, Democracy, and State Sovereignty

A. The High Representative Has Continued to Issue Unlawful Decrees that Interfere with BiH's Internal Affairs and Undermine the Rule of Law

7. In its Second Report to the Security Council in November, the Government described how the current High Representative, in his short tenure, had unlawfully used the so-called "Bonn Powers" to issue decrees that were fundamentally destabilizing and disruptive to the consensus-building and reform efforts of BiH's own authorities. The High Representative, for example, issued a decree purporting to repeal a set of conclusions by the RS National Assembly calling for a discussion about competencies with other governmental bodies in BiH. Shortly thereafter, the High Representative by decree removed and banned two officials from public positions with no notice or hearing, no administrative or judicial process, and no opportunity to appeal. Also, in a two-day period in September, the High Representative (and Principal Deputy High Representative as Brčko Supervisor) issued no fewer than 9 peremptory decrees purporting to impose and change important laws in BiH.

8. Despite the Government's urging for an end to the High Representative's unlawful actions in the Second Report, the High Representative has continued to issue unlawful decrees that far exceed the terms of his mandate and violate the rights of BiH citizens. Security Council support for these actions would be inconsistent with Article 2(7) of the UN Charter, which provides that the UN is not authorized "to intervene in matters which are essentially within the domestic jurisdiction of any state . . . ."

9. On December 14, 2009, the High Representative issued decrees claiming to overrule the legitimate decision of the democratically elected BiH Parliamentary Assembly by seeking to impose foreign judges and prosecutors on BiH. The RS Government and National Assembly have rejected this decree as in violation of the Dayton Accords, the BiH Constitution, and other treaties to which BiH is a party. The responses of the Government and the Republika Srpska National Assembly ("RSNA") to the December 14 decrees are not only consistent with – but required by – law, including the Dayton Accords. Attached as Appendix 2 is a statement explaining the Government's response in greater detail.

1. The BiH Parliamentary Assembly's Sound Decision on Foreign Judges and Prosecutors

10. Under the existing BiH laws on the State Court and Prosecutor's Office, foreigners were allowed to work as judges and prosecutors in the BiH Court and Prosecutor's Office during a five-year "transitional period" ending December 15, 2009.[1] On October 1, 2009, the BiH Parliamentary Assembly took up the issue of whether to extend their mandate and, after careful deliberation, voted to reject amending the law to allow foreigners to continue to fill these BiH offices.

11. The Parliamentary Assembly acted with good reason. Appointment of foreign judges and prosecutors in the BiH State Court originated through earlier, highly controversially imposed decrees of the High Representative. The High Representative's "law" established that these foreign judges and prosecutors were free from the accountability properly imposed on BiH citizens who serve in the same positions. Foreign judges and prosecutors were granted immunity from criminal and civil liability at the same level as foreign diplomats. Unlike diplomats, foreign judges and prosecutors have tremendous authority over BiH citizens – authority to arrest, prosecute and incarcerate them. Granting foreign judges and prosecutors the immunity accorded diplomats – exempting them from accountability to which judges and prosecutors are normally subject – is thus an affront to the rule of law.

12. Not surprisingly, this arrangement has allowed the High Representative to politicize the BiH criminal justice system. The elected Parliamentary Assembly rightly determined not to extend the mandate of foreign judges and prosecutors; this decision was consistent with the need to restore judicial independence from political influence and to protect the rule of law.

2. The High Representative's Unlawful Defiance of the Parliamentary Assembly

13. The High Representative manifestly lacked the legal authority to issue the December 14, 2009 decrees overruling the Parliamentary Assembly's decision. The High Representative's legal mandate is established by Annex 10 of the Dayton Accords. Annex 10 gives the High Representative powers such as to "facilitate," "mobilize," and "coordinate." Annex 10 – even in the most creative interpretation – does not grant the sweeping powers the High Representative has asserted, including in his recent attempt to overrule the constitutionally protected decision of the BiH Parliamentary Assembly. Nor does Annex 10 give the High Representative the power to violate the Dayton Accords, other elements of international law or the Constitution of BiH. As a matter of law, where decisions of the High Representative are incompatible with applicable law, they are not valid or enforceable.

14. The Government invites all observers to read Annex 10 and ask themselves which provisions empower the High Representative by decree to enact and repeal laws, transfer competencies protected in the Constitution, or to punish individuals without a hearing or

[1] Law on Court of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina (29/00, 16/02, 24/02, 3/03, 37/03, 42/03, 4/04, 9/04, 35/04, 61/04, 32/07), Art. 65(1); Law on the Prosecutor's Office of Bosnia and Herzegovina (24/02, 3/03, 37/03, 42/03, 9/04, 35/04, 61/04), Art. 18(a)(1).

opportunity to appeal.[2] The High Representative's use of peremptory powers – the so-called "Bonn powers" – has been condemned by, *inter alia*, the Council of Europe's Parliament[3] and Venice Commission[4] as violating the European Convention on Human Rights.

15. Moreover, Annex 10 must be read in the context of the rest of the Dayton Accords. Any reading of Annex 10 that would give the High Representative powers to enact or overrule legally enacted legislation, transfer constitutionally established competencies, appoint judges and prosecutors, or remove and ban officials without due process is wholly inconsistent with Annex 4 (the BiH Constitution) and Annex 6 (Human, Civil and Political Rights Guarantees). There is no other source of authority other than Annex 10 for the High Representative's authority. Because Republika Srpska is a party to Annex 10, in which the High Representative's mandate is set forth, Republika Srpska has the right and obligation to assess the High Representative's activities and indicate when such activities exceed his authority mandated by international agreement.

3. Legal Obligations of the Government

16. The Government must conduct its affairs in accordance with the rule of law, which requires that it not accept or enforce the High Representative's December 14, 2009, decisions. This is required by applicable international law and domestic law, including the BiH and Republika Srpska constitutions (which also mandate governance by democratically elected officials). The Government's responsibility to cooperate with the High Representative in connection with peace implementation does not supersede the Government's obligations under domestic and international law. When a decision of the High Representative conflicts with the Government's duties under the constitutions of BiH and Republika Srpska or its obligations under international law, the constitutional and legal obligations of BiH and Republika Srpska law must have priority. For these reasons, the Government cannot accept as legally valid or implement decisions and orders of the High Representative – including the decisions of December 14, 2009 – which are inconsistent with BiH, Entity and international law.

4. Croats Also Condemn High Representative's Decisions

17. The Republika Srpska is not the only segment of BiH society that opposes the High Representative's December 14, 2009, decisions. The leading Croat political party, the HDZ BiH, also condemned them. The party issued a statement, which inter alia provides:

> To make ourselves clear, HDZ BiH absolutely does not support this decision and we see it as the product of an unprincipled approach by the international community to the way that should be provided for the transition of BiH into the EU. The proper way is

[2] A copy of Annex 10 is attached as Appendix 1.

[3] *See, e.g.*, Council of Europe Res. 1384 (2004).

[4] *See, e.g.*, Venice Commission, Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (1995).

> for all activities in BiH to be assumed by the citizens of BiH, including the courts in BiH.
>
> With this decision, international representatives have sent a clear message: BiH will not become a member of the EU soon, nor will become a candidate for accession to the EU, a status which all neighboring countries will obtain next year.
>
> Therefore, we recommend to all PIC members that OHR be transformed to the EU Office and that BiH be freed from the protectorate.[5]

5. Full Cooperation on War Crimes Continues

18. In a press release on December 29, 2009, the High Representative suggested that actions by the Government and the RSNA, in response to the High Representative's decision of December 14, are inconsistent with their obligations under the Dayton Accords to "cooperate in the investigation and prosecution of war crimes." This is absolutely false. Nothing in the Dayton Accords requires or suggests that foreign judges and prosecutors must be used in the domestic prosecution of war crimes suspects. The European Commission's most recent Progress Report on Bosnia and Herzegovina, dated October 14, 2009, stated that BiH "cooperation with ICTY has remained good." The Government will continue to act according to law, including by continuing to cooperate fully with the ICTY.

B. The High Representative's Unlawful Interference with BiH Elections

19. The High Representative, despite the nearly unlimited powers he claims, is not accountable to the BiH electorate or anyone else. Yet in the past several months, as BiH's October elections draw closer, the High Representative has been campaigning almost as if he were a candidate.

20. Article 1.2 of the BiH Constitution provides that BiH "shall be a democratic state, which shall operate under the rule of law and with free and democratic elections." Annex 10 of the Dayton Accords, which defines the High Representative's powers, does not empower it to tell the electorate which parties to vote for or against.

21. Belying his claim that he "would not want to interfere with the election campaign,"[6] the High Representative has in recent months pursued a vigorous campaign against certain parties in the BiH and Entity governments.

22. For example, in a February 20 speech, the High Representative said the agenda for security and prosperity in BiH "has been brought to a complete standstill by the leaders of

[5] Press Release of the Croatian Democratic Union of Bosnia and Herzegovina, available at www.hdzbih.org/hr/vijesti/clanak/priopcenje-za-javnost-hrvatske-demokratske-zajednice-hdz-bih.

[6] *Interview with HR/EUSR Valentin Inzko,* OSLOBODJENJE, Feb. 18, 2010.

Bosnia and Herzegovina."[7] He said the parties have "so far failed either by design or default. We can argue about their calculations and preoccupations – what is not in dispute is the fact that they have failed."[8] The High Representative continued, "As High Representative and EU Special Representative I am supporting the change that this country needs. . . . The question now is this: Will the people of Bosnia and Herzegovina make this change happen? Because it is in their power to do that."[9]

23. On February 25, the High Representative implored his audience:

> I hope, and I often repeat this, that you will use your Bonn powers at the election on 3 October and change the situation, elect new people, make use of the open lists, etc. in order to bring about change and I hope that you will look at the results achieved by the ruling coalition with a critical eye.[10]

24. The October elections in BiH are internal affairs of a sovereign state and Entities of a sovereign state. The High Representative's meddling in the election campaign, including his frequent speechifying and other activities against certain political parties, is an intrusion into the domestic affairs of the BiH and its Entities and a violation of international law. The Government would not expect the Security Council to support any of these actions, which would be contrary to Article 2(7) of the UN Charter.

C. Legal Redress for Individuals Summarily Punished by the High Representative

25. The Government continues to seek a peaceful and legal remedy on behalf of the citizens whose human rights have been violated by the High Representative. As discussed in the Government's Second Report, the High Representative has summarily removed nearly 200 BiH citizens from their positions, usually banning them indefinitely from holding any public employment, seized citizens' travel documents, and otherwise violated citizens' political and human rights. The High Representative has given these individuals no notice or hearing, no administrative or judicial process, and no opportunity to appeal. Last year, for example, the High Representative by decree removed and banned two police officials.[11] According to a recent report by the International Crisis Group, "Senior EC and European Union Police Mission (EUPM) officials told Crisis Group the removals of the police officials were unnecessary and based on thin evidence."

26. In a unanimous decision in 2007, the BiH Constitutional Court held that the absence of a legal remedy to challenge such decrees violates Article 13 of the European Convention on

[7] Speech by the High Representative and EU Special Representative, Valentin Inzko, Feb. 20, 2010.

[8] *Id.*

[9] *Id.*

[10] Remarks by High Representative and EU Special Representative Valentin Inzko at a Press Conference to mark the conclusion of the PIC Steering Board Meeting, Feb. 25, 2010.

[11] International Crisis Group, *Bosnia's Dual Crisis*, Nov. 12, 2009 ("ICG Report"), fn 67.

Human Rights ("ECHR").[12] In response, however, the High Representative nullified the Constitutional Court's decision[13] in defiance of the BiH Constitution's command that "[d]ecisions of the Constitutional Court shall be final and binding."[14] The High Representative further decreed that "any proceeding instituted before any court in [BiH], which challenges or takes any issue in any way whatsoever with one or more decisions of the High Representative, shall be declared inadmissible unless the High Representative expressly gives his prior consent."[15] In effect, the High Representative declared itself to be wholly above the rule of law and squelched all possibilities for legal recourse of citizens of BiH within their own courts and institutions.

27. In October, the Government wrote to Swedish Foreign Minister Carl Bildt, in Sweden's capacity as President of the EU, and Council of Europe Human Rights Commissioner Thomas Hammarberg and asked them to work to establish an independent international commission of respected legal experts to give individuals who have been removed from their positions a forum to seek redress. The Government's request was consistent with similar calls from within the Council of Europe.[16] The Government has not received a response. It is the Government's duty to continue to work to secure legal recourse for citizens injured by the High Representative's summary decrees.

D. Plans for a Referendum

28. Shortly after the High Representative used the "Bonn Powers" again, on December 14, 2009, as described above, the Government announced plans to hold a referendum soliciting voters' views about the High Representative's imposition of legislation on BiH by decree and other actions that violate the Dayton Accords, the rule of law, and human rights. The Government took this step in accordance with the conclusions of the RSNA, adopted on October

[12] Appeal of Milorad Bilbija et al, No. AP-953/05, Decision on Admissibility and Merits, published Feb. 2007.

[13] Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, March 23, 2007 ("Bilbija Nullification Order").

[14] Constitution of Bosnia and Herzegovina, Dayton Accords Annex 4 ("BiH Constitution"), art. VI(4).

[15] Bilbija Nullification Order.

[16] For example, the Venice Commission, in a 2005 Opinion, wrote of the High Representative's removal of individuals from office:

> The continuation of such power being exercised by a non-elected political authority without any possibility of appeal and any input by an independent body is not acceptable. As an urgent step the Commission recommends setting up an independent panel of legal experts which would have to give its consent to any such decision of the High Representative. Having regard to the confidential nature of many elements of the file, this might be a body composed of international experts.

Venice Commission, Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (1995), para. 98.

1, 2009, which provided that the RSNA should call for a referendum in the event that the High Representative continued to attempt to impose legislation through the use of the Bonn Powers.

29. The High Representative has asserted that the use of referenda to seek citizens' views toward the High Representative's actions would be a violation of the Dayton Accords. There is no legal basis whatever for such a position.

30. Referenda are widely used by governments across Europe and the world as a mechanism for insuring democratic rule. No provision in the Dayton Accords prohibits or restricts referenda. The Council of Europe has often praised the use of referenda, including by sub-state governments. The Council's Parliamentary Assembly declared in a 2007 resolution, "Referendums are an instrument of direct democracy which belong to the European electoral heritage."[17] And the Council's Congress of Local and Regional Authorities recognized in a 2007 resolution that "referendums, *whether at national, local or regional level*, constitute one of the main instruments of direct democracy giving citizens the possibility to take part in political decision making as well as in public matters which directly concern them . . . ."[18] It is all the more important for Republika Srpska's citizens to be heard in a country in which a single, unelected foreign official claims extraordinary peremptory powers free from any review or limits. Attached as Appendix 3 is a paper explaining the Government's position in greater detail.

E. OHR Closure

31. As the Government explained in its Second Report, it is long past time for the High Representative to end. Many in the international community, such as former High Representative Carl Bildt,[19] have called for the OHR's closure, and international calls to end the High Representative are growing. As the International Crisis Group wrote in a recent report:

> The OHR has become more a part of Bosnia's political disputes than a facilitator of solutions, and the High Representative's executive (Bonn) powers are no longer effective. The OHR is now a non-democratic dispute resolution mechanism, and that dispute resolution role should now pass to Bosnia's domestic institutions with the temporary and non-executive assistance of the EUSR.[20]

* * *

[17] Council of Europe, Parliamentary Assembly Res. 1592 (2007), Nov. 23, 2007, para. 1.

[18] Council of Europe, Congress of Local and Regional Authorities Res. 235 (2007) (emphasis added).

[19] Asked in a June 2009 interview whether it is time to close OHR, Bildt replied, "Yes. I believe that it is time to give far more responsibility to the BiH politicians." *Office of the High Representative Should be Closed*, NEZAVISNE NOVINE, 11 June 2009. See also *Diplomats Gather from East and West on Bosnia*, BALKAN INSIGHT, 6 Nov. 2009 (quoting Russian Foreign Minister Sergei Lavrov as saying that Russia would "invest its utmost efforts" to promote OHR's prompt closure).

[20] ICG Report, p. 1.

> The conflict over the future of the OHR should end now; the office should close . . . BiH cannot work in its present form, keeping the OHR open will not push its citizens toward reform and may sow enough discord to push reform out of reach.[21]

32. Continued OHR actions such as those cited above are direct violations of BiH sovereignty and of BiH rights under the UN Charter. The EU has recognized this in making it clear that BiH is unable to apply for EU membership as long as the OHR operates.[22] The OHR's presence, as explained in the Second Report to the Security Council, frustrates the normal democratic process of negotiation of differences among BiH's Constituent Peoples and political parties. Moreover, as examined elsewhere in this report, the OHR frequently violates BiH citizens' human rights and the rule of law. For all of these reasons – among others – the OHR must close.

33. Until such time as the High Representative ends, the OHR's claimed peremptory powers must be terminated. After more than 14 years of peace and stability in BiH, direct intervention in government administration and law-making by the High Representative and the PIC should end. Building internal consensus through the hard work of bargaining and compromise among leaders elected by BiH citizens is the path to long-term stability.

34. Unfortunately, under the PIC's formula of five objectives and two conditions for supporting the end of the High Representative's mission, the OHR's closure is impossible. Although a formula such as 5-plus-2 could work if all parties in BiH wanted the OHR to close, this is not the case. The major Bosniak parties ardently want the OHR to remain open because they believe that the OHR, through its coercive powers, will assist them in achieving their objectives, including sweeping reform of the BiH Constitution to replace the Dayton federal system with a centralized state.

35. A prominent member of the Party for Bosnia and Herzegovina, which is led by Haris Silajdžić, the Bosniak member of the BiH Presidency, has even sought to suppress the Government's expression of its views on the OHR to the Security Council. In November, Beriz Belkic, Deputy Chairman of the BiH House of Representatives, brought a case asking the BiH Constitutional Court to declare the Government's Second Report to the Security Council unconstitutional. On March 27, 2010, the Constitutional Court confirmed that the Government has the right under the BiH Constitution to report to the Security Council on the situation in BiH and that its past reporting to the Security Council was consistent with the Constitution.[23] The

[21] ICG Report, p. 16.

[22] On September 29, 2009, a representative of the EU Presidency testified to the US Helsinki Commission that "[a]s long as OHR remains in place, a Bosnian EU membership application cannot be considered." Address of Bjorn Lyrvall, Director General for Political Affairs, Ministry for Foreign Affairs of Sweden/Presidency of the EU to the U.S. Helsinki Commission, Sept. 29, 2009, at 8.

[23] Constitutional Court of Bosnia and Herzegovina, 60th Plenary Session, 27 March 2010, available at www.ccbh.ba/eng/press/index.php?pid=4243&sta=3&pkat=506. The full written opinion in the case is pending.

Court dismissed Mr. Belkić's request as "ill-founded."[24] The Government is gratified that the Constitutional Court rejected Mr. Belkić's attempt to silence the Government's expression of its views. But this case helps illustrate the extent to which the Bosniak parties will go to suppress arguments for OHR closure.

36. So long as the OHR continues to intervene in domestic dialogue and threatens to impose by decree one party's views on the state, the Bosniak parties will not negotiate to achieve the remaining objectives and conditions in the 5-plus-2 formula.

37. For example, on the crucial issue of state property, authorities in BiH have made no recent progress. The reason is simple: for a negotiation to have any prospect of success, all sides must want a resolution. In its Second Report to the Security Council, the Government explained how the largest Bosniak party, the SDA, last year walked away from a PIC-supported resolution of the state property issue reached at Prud in November 2008. Inexplicably, the OHR supported the SDA's abrogation of this key agreement.

38. The Government, which believes the OHR's closure is long overdue, remains eager to reach agreement on all outstanding issues preventing it, including the apportionment of state property. Unfortunately, the main Bosniak parties do not want such an agreement because they want the OHR to remain in place.

39. This problem has been recognized by third-party experts. For example, in a recent report on BiH, the International Crisis Group raised this concern, no less than three times:

> The Bosniak parties, especially the SBiH and the SDP, who consider the OHR their main negotiating leverage, will not agree to complete the objectives required for closure until there is a deal on constitutional reform.[25]
>
> Bosniak parties will not agree to a state property proposal until RS agrees to constitutional reform . . . [R]esolution of the state property issue is elusive not because the problem is inherently hard but because the PIC has linked it to Bosnia's most controversial issue, the fate of the OHR.[26]

40. The international community must not allow such actions to continue holding hostage the closure of the OHR.

III. Euro-Atlantic Integration

41. The Government continues to support BiH's campaign for membership in the European Union and NATO. The Government is committed to working cooperatively with the European Union as BiH continues on the path of EU integration.

---

[24] *Id.*

[25] ICG Report, pp. 5-6.

[26] ICG Report, p. 10. *See also* fn 17.

42. The Government is disappointed, however, that the European Union has delayed – apparently for political reasons – its decision on visa liberalization for BiH citizens despite BiH's success in meeting the remaining requirements for visa-free travel.

43. In a February 25, 2010, communiqué, the Steering Board of the PIC welcomed the "recent progress made by BiH authorities to fulfill the requirements for EU visa liberalisation."[27] Even the High Representative has acknowledged BiH authorities' quick recent progress in meeting the requirements for visa-free travel to the European Union. In an April 28, 2010, press release, the OHR wrote, "Highlighting the successful adoption of 174 requirements related to visa liberalisation in recent months, the HR/EUSR said that this proves that Bosnia and Herzegovina can actually make progress."[28]

44. In the past, the European Commission's decisions on when to offer states visa-free travel have been based on a technical assessment of those states' implementation of the necessary benchmarks established by the Commission. The Commission's decision to delay visa liberalization for BiH, in contrast, appears to be driven by political factors. Last month, Jelko Kacin, the vice-president of the European Parliament's delegation for the Balkans, said that visa-free travel to the European Union would not begin until December and added that "it is very unlikely that the current authorities in BiH will be able to say that they've abolished the visas."[29] Certain non-governmental organizations, headed by Transparency International BiH, have also joined this negative campaign aimed at preventing visa liberalization from occurring soon. This suggests not only political motives but an effort to intervene in BiH elections. The Government is pleased that authorities in BiH have fulfilled the conditions for visa-free travel and regrets that visa liberalization is being delayed for reasons unrelated to the merits.

IV. Constitutional Change

A. Republika Srpska Supports Urgent Election Eligibility Reform of Constitution

45. The Government strongly supports amending provisions of the BiH Constitution on eligibility for election to the BiH Presidency and House of Peoples to bring the Constitution into conformity with the ECHR. The Government has held this view for some time and last year made a proposal to remedy the situation. Since then, the decision of the European Court of Human Rights in the *Case of Sejdic and Finci v. BiH* has highlighted the pressing need for this reform.

46. Unfortunately, the Government's proposals to quickly resolve this issue by amending the election eligibility provisions of the BiH constitution have not been reciprocated by the main Bosniak parties. Instead of targeting the election eligibility issue, which can be resolved in short order, these parties have attempted to exploit the narrow issue to demand a sweeping, highly

[27] Communiqué of the Steering Board of the Peace Implementation Council, Feb. 25, 2010.

[28] OHR Press Release, If Progress is possible on Visa Liberalisation, then why not on Economic Reform?, April 28, 2010.

[29] *Interview with Jelko Kacin*, NEZAVISNE NOVINE, April 20, 2010.

controversial transformation of the BiH Constitution, which would cast aside the careful balance struck in the Dayton Accords and turn BiH into a centralized state.

47. Consequently, what should have been easily achievable constitutional amendments have not been enacted. The need for specific changes to the Constitution in response to the ECHR's decision should not be used as a pretext to push a far broader – and infinitely more controversial – constitutional transformation.

B. Any Constitutional Reforms Must Arise from a Consensus within BiH rather than being Imposed from Abroad

48. If BiH is to reform its Constitution, it must do so through a transparent, democratic and constitutional process that reflects the will of BiH's citizens. The Government rejects intervention by foreign actors to force BiH into transforming the Constitution it agreed to in the Dayton Accords.

49. Last October, certain members of the PIC Steering Board crafted sweeping changes to the BiH Constitution and insisted that BiH's political leaders accept them during closed-door meetings at Butmir. Nearly all of the several political leaders invited declined to endorse the demands. As discussed in the Government's Second Report, the 2009 talks at Butmir failed in part because they sought to impose constitutional changes while circumventing the transparent and legal process required under applicable law to change the Constitution.

50. Notwithstanding the failure of Butmir, foreign pressure for broad constitutional reform has continued. On January 26, 2010, for example, the Council of Europe's Parliamentary Assembly approved Resolution 1701, a text co-authored by the Parliamentary Assembly's new president, Mevlüt Çavuşoğlu of Turkey,[30] which is a well-known supporter of the Bosniak parties in BiH.[31] Written soon after the decision in *Sejdic and Finci v. BiH*, the resolution falsely insinuates that compliance with the European Convention on Human Rights ("ECHR") requires "comprehensive" changes to the BiH Constitution.

51. The reality is that proposals for "comprehensive" changes to the BiH Constitution have nothing to do with the ECHR. The *Sejdić and Finci* decision concerns only the election eligibility provisions of the Constitution. Moreover, the Venice Commission has found that election eligibility provisions are the only element of the BiH Constitution that must be reformed in order to align it with the ECHR. The Venice Commission stated in a March 2005 Opinion

[30] *See Interview with Mevlüt Çavuşoğlu*, DNEVNI AVAZ, 28 Jan. 2010. There, Mr. Çavuşoğlu stated, "It is my opinion that B-H needs a completely new constitution."

[31] *See Turkey Supports One Side in BiH*, GLAS SRPSKA, 5 May 2010, reporting on the comments of Hannes Swoboda, Vice President of the Socialist Group, the second largest party in the European Parliament: "Asked to clarify whether he sees the current role of Turkey as positive, Swoboda explained that at this point in time the role of Turkey is not constructive, because it supports only one side in BiH." *See also Some European Countries Are Concerned Over Turkish Influence in the Balkans*, VIJSTA.BA, 7 May 2010, quoting Franco Frattini, Italy's Minister of Foreign Affairs: "One should pay great attention to the activities and presence of Turkey in this [Balkans] region."

that aside from the election eligibility provisions, "[n]o other problems of compatibility of the BiH Constitution with the ECHR are apparent . . . ."[32]

52. Reform of the Constitution requires the development – through give and take – of a consensus among BiH's citizens, through the efforts of its elected leaders and political parties, just as in any democracy. The PIC Steering Board recognized this in a November 19, 2009, communiqué in which it urged constitutional reform "on the basis of the required political consensus."

53. Even Lord Ashdown, as High Representative, recognized this principle, stating to the Venice Commission:

> It has consistently been the view of Peace Implementation Council and successive High Representatives, including me, that, provided the Parties observe Dayton . . . then the Constitution of Bosnia and Herzegovina should be changed only by the prescribed procedures by the Parliamentary Assembly of Bosnia and Herzegovina and not by the International Community. In other words, that, provided Dayton is observed, the powers of the High Representative begin and end with the Dayton texts, and that any alteration to the Constitution enshrined therein is a matter for the people of Bosnia and Herzegovina and their elected representatives to consider."[33]

C. Any Constitutional Reforms Must Preserve the Fundamental Protections of the Dayton Accords

54. Any constitutional reforms must leave intact the federal structure and mechanisms that are the essential centerpiece of the Dayton Accords. These protections, which safeguard the vital interests of all the Constituent Peoples of BiH, established peace and make BiH a viable state today. Such protections provided by a federal system of government are far from unique to BiH. Federal structures in other democracies in Europe and elsewhere have been successful forms of governance for states that consist of diverse peoples.[34]

55. The Government recognizes the need for BiH state to become more efficient and functional. The Government emphatically rejects, however, the notion that these attributes require a unitary state. Many decentralized, federal states are highly efficient and functional. Constitutional reform in the name of "efficiency" and "functionality" must not be a cover for restructuring the Constitution to create a unitary state.

D. Constitutional Changes Must Not be Linked in Any Way to OHR Closure

[32] European Commission For Democracy Through Law (Venice Commission), Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative, adopted by the Venice Commission at its 62nd plenary session, para. 66 (Venice, 11-12 March 2005).

[33] *See* Session Report from the 60th Plenary Session of the Venice Commission, CDL-PV(2004)003 of 3 November 2004, p. 18.

[34] Examples include Germany, Spain, Belgium, Switzerland, and Canada, among many others.

56. Despite the PIC's repeated statements that constitutional reform is not a requirement for ending the High Representative's mission,[35] the High Representative and others continue to try to link sweeping changes to the BiH Constitution with OHR closure. In a speech last month, for example, the High Representative said, "Even though constitutional reform is not *formally* linked to the continuation of the presence of the international community, there are of course practical implications – because constitutional reform could resolve the problems that were the reason the OHR was given its executive mandate in the first place."[36] The High Representative went on to outline his vision for a new BiH Constitution that scraps the Dayton protections and concentrates power in Sarajevo.[37]

57. In addition, as explained in section II(E), above, the major Bosniak parties continue to rebuff the Government's efforts to compromise on the remaining goals in the PIC's 5-plus-2 formula because they want the High Representative to stay and impose their preferences on other parties and Constituent Peoples by decree.

58. As the Government explained in its Second Report, constitutional reform should generally follow the sequence set out by the PIC Steering Board in June 2009 and the Presidency of the EU in October 2009. According to this sequence, constitutional reform, which the EU has stated is *not* required for application for EU membership, should be taken up after OHR closure, which the EU has stated *is* required for application for EU membership.

V. No Factual Basis for Continuing Chapter VII

59. As the Government explained in its Second Report to the Security Council, the situation in BiH does not warrant the Security Council to continue to act under Chapter VII of the UN Charter. The facts fail to support a determination that the situation in BiH constitutes a threat to international peace and security.

60. BiH has been at peace for more than 14 years and has enjoyed remarkable stability since the Dayton Accords. Today, the security situation in BiH today remains peaceful and stable – as it has been since soon after the Accords were signed – and there is no realistic threat of a resumption of hostilities. The twenty-first report to the Security Council on the activities of EUFOR observes, "The overall security situation in BiH remained calm and stable throughout the reporting period. Although nationalistic rhetoric continued, it had no impact on the safe and secure environment."[38] The EUFOR report also says that the "security situation is expected to remain stable despite prospects of continuing political tension."[39] The longstanding and consistent military assessments that the security situation in BiH is calm and stable – and is

[35] *See, e.g.*, Communiqué of the Steering Board of the Peace Implementation Council, Feb. 25, 2010.

[36] Speech by High Representative and EU Special Representative Valentin Inzko At a Conference on The Constitutional Order of Bosnia and Herzegovina: Its Functionality and European Perspectives Organized by the Konrad Adenauer Stiftung, April 27, 2010 (emphasis added).

[37] *Id.*

[38] Twenty-first Three-monthly Report on Operation ALTHEA to the United Nations Security Council ("21st Report") at para. 9.

[39] 21st Report at section IV.

expected to remain that way – thoroughly refute the notion that the situation in BiH threatens international peace and security.

61. As in past years, BiH, far from threatening stability, is contributing to international peace and security. On the first day of 2010, BiH began its first ever term as a member of the UN Security Council. In addition, NATO ministers last month agreed to grant BiH a Membership Action Plan.

62. BiH's stability is also reflected in its elections. BiH and its Entities and localities have held a long and uninterrupted succession of free and fair elections, which have been praised by international observers such as the Organization for Security and Cooperation in Europe ("OSCE"). For example, in its report on the 2002 general elections, OSCE said, "The conduct of the elections was largely in line with international standards for democratic elections, when considering the country's unique legal and constitutional framework. They mark important progress toward the consolidation of democracy and rule of law under domestic control."[40] OSCE wrote of the 2004 municipal elections, "The successful conduct of the elections marked a further step forward for BiH's democratic development."[41] Regarding the most recent general elections, held in 2006, the OSCE wrote that "overall, the elections represented further progress in the consolidation of democracy and the rule of law."[42]

63. In the Government's Second Report to the Security Council, submitted in November 2009, it explained that despite the High Representative's frustration of efforts to negotiate compromises among BiH's Constituent Peoples, BiH political leaders have made progress on a broad range of fronts.

64. Since November, that progress has continued, again in spite of the High Representative's interference. For example, as explained above, BiH has continued to advance quickly toward visa-free travel to the European Union. In addition, BiH authorities have, in recent months, taken the necessary steps to receive IMF and World Bank loans to help address the effects of the global economic crisis.

65. There is plainly no factual basis for the Security Council to continue invoking Chapter VII with respect to the situation in BiH.

VI. Conclusion

66. The Government urges the Security Council to carefully consider the issues set forth in this Report. More than 14 years after the return of peace and the conclusion of the Dayton Accords, the rule of law, respect for human rights, democratic governance and the sovereignty of BiH are consistently violated by the High Representative, supported by certain elements of the

[40] Bosnia and Herzegovina General Elections, Oct. 5, 2002, Final Report of OSCE/ODIHR Election Observation Mission, Jan. 9, 2003.

[41] Bosnia and Herzegovina Municipal Elections, Oct. 2, 2004, Final Report of OSCE/ODIHR Election Observation Mission, Feb. 10, 2005.

[42] Bosnia and Herzegovina General Elections, Oct. 1, 2006, Final Report of OSCE/ODIHR Election Observation Mission, Feb. 6, 2007.

international community. The Dayton Accords require democratic governance and respect for human rights and international law within BiH. The Security Council should be unequivocal in its commitment to these principles.

Appendix 1

UNOFFICIAL COPY

Annex 10 - Agreement on Civilian Implementation

The Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the "Parties") have agreed as follows:

Article I: High Representative

The Parties agree that the implementation of the civilian aspects of the peace settlement will entail a wide range of activities including continuation of the humanitarian aid effort for as long as necessary; rehabilitation of infrastructure and economic reconstruction; the establishment of political and constitutional institutions in Bosnia and Herzegovina; promotion of respect for human rights and the return of displaced persons and refugees; and the holding of free and fair elections according to the timetable in Annex 3 to the General Framework Agreement. A considerable number of international organizations and agencies will be called upon to assist.

In view of the complexities facing them, the Parties request the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions, to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a U.N. Security Council resolution, the tasks set out below.

Article II: Mandate and Methods of Coordination and Liaison

The High Representative shall:

a. Monitor the implementation of the peace settlement;

b. Maintain close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement and a high level of cooperation between them and the organizations and agencies participating in those aspects.

c. Coordinate the activities of the civilian organizations and agencies in Bosnia and Herzegovina to ensure the efficient implementation of the civilian aspects of the peace settlement. The High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement. The civilian organizations and agencies are requested to assist the High Representative in the execution of his or her responsibilities by providing all information relevant to their operations in Bosnia-Herzegovina.

d. Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation.

e. Participate in meetings of donor organizations, particularly on issues of rehabilitation and reconstruction.

f. Report periodically on progress in implementation of the peace agreement concerning the tasks set forth in this Agreement to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties, and organizations.

g. Provide guidance to, and receive reports from, the Commissioner of the International Police Task Force established in Annex 11 to the General Framework Agreement.

In pursuit of his or her mandate, the High Representative shall convene and chair a commission (the "Joint Civilian Commission") in Bosnia and Herzegovina. It will comprise senior political representatives of the Parties, the IFOR Commander or his representative, and representatives of those civilian organizations and agencies the High Representative deems necessary.

The High Representative shall, as necessary, establish subordinate Joint Civilian Commissions at local levels in Bosnia and Herzegovina.

A Joint Consultative Committee will meet from time to time or as agreed between the High Representative and the IFOR Commander.

The High Representative or his designated representative shall remain in close contact with the IFOR Commander or his designated representatives and establish appropriate liaison arrangements with the IFOR Commander to facilitate the discharge of their respective responsibilities. The High Representative shall exchange information and maintain liaison on a regular basis with IFOR, as agreed with the IFOR Commander, and through the commissions described in this Article.

The High Representative shall attend or be represented at meetings of the Joint Military Commission and offer advice particularly on matters of a political-military nature. Representatives of the High Representative will also attend subordinate commissions of the Joint Military Commission as set out in Article VIII(8) of Annex 1A to the General Framework Agreement.

The High Representative may also establish other civilian commissions within or outside Bosnia and Herzegovina to facilitate the execution of his or her mandate. The High Representative shall have no authority over the IFOR and shall not in any way interfere in the conduct of military operations or the IFOR chain of command.

Article III: Staffing

The High Representative shall appoint staff, as he or she deems necessary, to provide assistance in carrying out the tasks herein.

The Parties shall facilitate the operations of the High Representative in Bosnia and Herzegovina, including by the provision of appropriate assistance as requested with regard to transportation,

subsistence, accommodations, communications, and other facilities at rates equivalent to those provided for the IFOR under applicable agreements.

The High Representative shall enjoy, under the laws of Bosnia and Herzegovina, such legal capacity as may be necessary for the exercise of his or her functions, including the capacity to contract and to acquire and dispose of real and personal property.

Privileges and immunities shall be accorded as follows:

a. The Parties shall accord the office of the High Representative and its premises, archives, and other property the same privileges and immunities as are enjoyed by a diplomatic mission and its premises, archives, and other property under the Vienna Convention on Diplomatic Relations.

b. The Parties shall accord the High Representative and professional members of his or her staff and their families the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.

c. The Parties shall accord other members of the High Representative staff and their families the same privileges and immunities as are enjoyed by members of the administrative and technical staff and their families under the Vienna Convention on Diplomatic Relations.

Article IV: Cooperation

The Parties shall fully cooperate with the High Representative and his or her staff, as well as with the international organizations and agencies as provided for in Article IX of the General Framework Agreement.

Article V: Final Authority to Interpret

The High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement.

Article VI: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Republic of Croatia

For the Federal Republic of Yugoslavia

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Appendix 2

POSITION OF THE REPUBLIKA SRPSKA GOVERNMENT REGARDING THE HIGH REPRESENTATIVE'S DECISION OF 14 DECEMBER 2009

Republika Srpska Cannot Accept the High Representative's Unlawful Decisions and Hence Rejects Them Entirely

1. The Republika Srpska Government has a legal obligation not to accept or implement the High Representative's decisions, hence it rejects them entirely. The Government is bound by the law and constitution to conduct its affairs according to the rule of law. This is required by the domestic law of BiH, including the BiH and Republika Srpska Constitutions, and applicable international law. For this reason, the Government cannot accept as legally valid or implement decisions and orders of the High Representative that are inconsistent with BiH and Entity law and obligations of BiH pursuant to international law.[1]

2. The Republika Srpska Government remains committed and continues to adhere to the legal pursuit and prosecution of all war crime cases.

3. The Court of Bosnia and Herzegovina and Prosecutor's Office of Bosnia and Herzegovina are foreign bodies in the judicial system of BiH, imposed by decisions of the High Representatives in contravention of the Constitution of BiH as provided in Annex 4 to the international agreement known as the Dayton Accords. The High Representative is an interpreter of only Annex 10 to the Dayton Accords and has no mandate to interpret Annex 4 – the BiH Constitution; in particular, he has no mandate to amend the BiH Constitution. Also, the BiH Constitutional Court has no mandate to amend the BiH Constitution but only to assess whether legislation issued by authorities conforms to the BiH Constitution. Because there is no mention of either the BiH Court or the BiH Prosecutor's Office in the Constitution, then any discussion about whether such imposed bodies are a constitutional category is illusory. For this reason, the decision on the constitutionality of BiH institutions was thus installed, where the Serb and Croat judges were outvoted by the three foreigners and two Bosniaks. With such a decision, the Constitutional Court joined in the High Representative's unlawful practice of imposing law. This is why the work of the BiH Court and BiH Prosecutor's Office constitutes an assault on law, which is corroborated by today's decisions of the High Representative.

4. It is in this context that the attempt to extend the mandate of foreign prosecutors and judges working in the BiH Prosecutor's Office and BiH Court, by the High Representative imposing the law, should be analyzed. The High Representative's decisions are an unlawful attempt to overrule by decree the legitimate determination reached by the democratically elected representatives of BiH's citizens through the prescribed legislative process.

---

[1] The rule of law obligation arises from the mutually consistent rule of law provisions of BiH and Republika Srpska constitutions and the Dayton Peace Accords. Governance according to the rule of law is also a general principle of law. *See* Sir Gerald Fitzmaurice, *The General Principles of International Law Considered from the Standpoint of the Rule of Law*, RECUEIL DES COURS, 1957, vol. 92 , issue II, at 38, 45-46, 92.

5. Pursuant to the imposed Law on Court of Bosnia and Herzegovina and the Law on the Prosecutor's Office of Bosnia and Herzegovina, foreigners were allowed to work as judges and prosecutors in the BiH Court and Prosecutor's Office, during a five-year "transitional period" ending in December 2009.[2] In October 2009, the BiH Parliamentary Assembly, pursuant to its constitutional authority and procedure, voted to reject amending the law to extend the transitional period of these foreign prosecutors and judges. For reasons set forth below, the elected representatives of BiH had sound policy reasons for not amending the law.

6. In addition to legal and constitutional provisions, the Government is further bound by the position of the Republika Srpska National Assembly as set forth in its Conclusions of 1 October 2009: "The RS National Assembly hereby expresses its full support to the position and conclusions expressed by the RS President and RS Prime Minister in their statements before the National Assembly at its 19th special session on the occasion of the Report on the legislation the High Representative to Bosnia and Herzegovina attempted to impose on 18 September 2009; specifically, in case the High Representative continues to seek to impose and enforce said legislation, the RS National Assembly shall consult the public. Should such circumstances occur, all RS representatives to the BiH joint institutions shall no longer take part in the work thereof as they cannot give their support to BiH being governed by unlawful OHR authority and those who support it."

Rejection of Continuing Foreign Judges and Prosecutors Is Sound Policy

7. The appointment of foreign personnel as officials in BiH's institutions is not consistent with a return to constitutional government and the rule of law. Under BiH's Constitution, except for three judges of the Constitutional Court, there are no provisions for foreigners to serve as officials in BiH's institutions.[3] However, originating through decrees of the High Representative, the laws of BiH were imposed and changed to provide for foreigners to act as judges and prosecutors in BiH's Court and Prosecutor's Office.[4] Over time, more and more foreigners were emplaced. By the end of 2009, for example, nearly half of the prosecutors in the section of the Prosecutor's Office for Organized Crime, Economic Crime and Corruption are foreigners, including the Deputy Prosecutor who heads that section.[5] Most of these officials were originally appointed by decision of the High Representative.[6]

8. These foreign judges and prosecutors have been free from the accountability properly imposed on BiH citizens who serve in the same positions. They were granted immunity

[2] Law on Court of Bosnia and Herzegovina, "Official Gazette" of Bosnia and Herzegovina, (29/00, 16/02, 24/02, 3/03, 37/03, 42/03, 4/04, 9/04, 35/04, 61/04, 32/07), Art. 65(1). Law on the Prosecutor's Office of Bosnia and Herzegovina, (24/02, 3/03, 37/03, 42/03, 9/04, 35/04, 61/04), Art. 18(a)(1).

[3] Constitution of Bosnia and Herzegovina, Art. VI.

[4] The Government reserves its position regarding the legality and enforceability of these changes to the laws.

[5] Information on prosecutors of Bosnia's Prosecutor's Office is available at www.tuzilastvobih.gov.ba.

[6] *See id*.

from criminal and civil liability[7] at the same level as diplomats under the Vienna Convention on Diplomatic Relations.[8] Granting such immunity to judges and prosecutors is contrary to fundamental principles of the rule of law and democratic governance. Unlike diplomats, judges and prosecutors exercise considerable authority and discretion over citizens of BiH, including authority to apprehend, prosecute and incarcerate. Such authority and discretion in any jurisdiction can be abused if not checked by mechanisms of accountability. But there has been no accountability for foreign judges and prosecutors in BiH, which is another argument for terminating their work upon the expiration of their five-year mandate.

9. This arrangement with foreign prosecutors and judges has resulted in political manipulation of the criminal justice system in cases conducted before those institutions, be it because of their selective approach to war crimes or pursuit of elected officials--mainly Serbs and Croats. The decision issued by the Head of the War Crimes Department within the BiH Prosecutor's Office, David Schwendiman, at the very end of his mandate, to stop the investigation of war crimes committed against Serbs at the beginning of the war – the *Tuzla column* and *Bradina* case – is definitive proof that the unconstitutional judicial institutions at the level of BiH do not serve to enforce law and justice but to determine the character of the war by prosecuting and trying Serbs and Croats. Foreign judges and prosecutors in BiH have strong incentives to obey the OHR and other foreign officials who have been involved in setting their terms of work and compensation. Such criminal justice system abuses have been the subject of official inquiries.

10. When the issue of extending the mandate of foreigners was put before the BiH Parliamentary Assembly, after assessment and deliberation, the elected officials exercised their constitutional authority and voted against extending the mandate. Terminating the work of foreign prosecutors and judges was a first step towards restoring independence to the judiciary and constitutional and legal accountability of the judiciary to BiH citizens. A renewal of their mandate would have been a giant step back for the principle of constitutional government and the rule of law in BiH. Certainly, the attempt to do so through a decree of the High Representative in defiance of the Parliamentary Assembly is an affront to these principles.

Legal Obligations of the Government

11. Article I, paragraph 2 of the BiH Constitution requires that the Government be established on the basis of free and democratic elections and that it must conduct its affairs according to

[7] The Government reserves its position regarding the legality and enforceability of the immunity in question with respect to non-citizens of Bosnia.

[8] Decision on Granting a Diplomatic Status to the International Members of the Prosecutor's Office in Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina (28/04). The Government reserves its position regarding the constitutionality of this decision. *See also,* Law on Court of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, (29/00, 16/02, 24/02, 3/03, 37/03, 42/03, 4/04, 9/04, 35/04, 61/04, 32/07), which provides criminal and civil immunity for international judges (Art. 65(8)), but no immunity for judges who are citizens of Bosnia. *See also,* Law on the Prosecutor's Office of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, (24/02, 3/03, 37/03, 42/03, 9/04, 35/04, 61/04), which provides criminal and civil immunity for international prosecutors (Art. 18(a)(3)), but no immunity for prosecutors who are citizens of Bosnia.

the rule of law. When the High Representative issues decisions and orders that violate provisions of BiH domestic and international law the Government must base its response to such decisions and orders upon the applicable law.[9]

12. In determining the applicable law, a sovereign state and its agencies and instrumentalities must first look to the constitution of the state and, in the case of Republika Srpska, the BiH Constitution and the Constitution of Republika Srpska. Next, the government must look to any applicable international obligations imposed upon BiH and/or the Entities by international law. Of first importance in this respect, are applicable treaties. Those most directly concerned with orders of the High Representative would be the Dayton Peace Accords and the human, political, and civil rights treaties specified in Annex 6 of the Dayton Peace Accords.

13. It is of considerable importance from a legal hierarchy standpoint to recognize that Article II of the BiH Constitution in paragraph 2 adopts as domestic law the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols ("European Convention"). Paragraph 2 states that these shall have priority over all other domestic law. Paragraph 3 enumerates other rights, including many of those incorporated in the European Convention. Paragraph 6 of Article II requires that all courts, agencies, governmental organs and instrumentalities operated by or within the Entities shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2.

14. Article III, paragraph 3(b) specifies that "The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities." Among such principles of particular relevance to the relations between the High Representative and the Government and BiH are: *pacta sunt servanda;* obligation of good faith in both performance and interpretation of a treaty; *ex injuria non oritur jus*; non-intervention in internal affairs,[10] the latter particularly having been violated by the High Representative through his decisions.

15. Also of considerable importance to the proper interpretation of the Government's legal responsibilities and duties are paragraphs 2 and 3 of Article I of the BiH Constitution. These articles state:

> 2. Democratic principles. Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free democratic elections.

[9] Of course the High Representative is also bound by international law. *See* Fitzmaurice at 46 ("[I]nternational law is automatically, *ipso facto*, and permanently binding on international persons—and in particular, States.").

[10] *See* Herman Mosher, *General Principles of Law, in* ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 511, 511-527 (1992).

> 3. Composition**.** Bosnia and Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities").

16. Paragraph 2 requires that the Government operate according to the rule of law and mandates governance by democratically elected officials. Paragraph 3 recognizes the primacy of the two Entities--Republika Srpska and the Federation of Bosnia and Herzegovina--as units of government. These paragraphs establish that the Government's legal obligations under the BiH Constitution cannot be subordinate to decisions and orders of a non-democratically elected foreign official, such as the High Representative, particularly when his orders do not conform to the rule of law, including international law.

17. The obligations of: democratic governance; primacy of human, civil and political rights treaties and constitutional provisions; and rule of law-based governance in the BiH Constitution have particular force among the legal obligations of the Republika Srpska Government because they are among the central principles and agreements included in the Dayton Peace Accords. The plain language of the Dayton Peace Accords and the inclusion of the above stated obligations in the BiH Constitution, which is Annex 4 of the Accords, give these obligations a foundational status among the international law obligations created by the Dayton Peace Accords. In the overall context of the Accords these obligations must be read to take precedence, in case of a conflict of obligations, over the obligation of cooperation with the party-appointed High Representative (Republika Srpska being one of the parties) provided for in Annex 10.

18. Moreover, it is a principle of treaty interpretation that the provisions of a treaty should be read in their context so as to be internally consistent insofar as possible and to be consistent with the treaty's object and purpose. The circumstances of the treaty's conclusion must also be taken into account.[11] It is inconceivable that the treaty parties would have agreed to give the High Representative the powers he seeks to exercise in the decisions at issue here. Actions of the High Representative inconsistent with the primary obligations of the Dayton Peace Accords are therefore per se in excess of the High Representative's legal authority.

19. In addition, the Government must take account of Article III, paragraph 2(c) of the BiH Constitution which assigns wide responsibilities to the Government to protect the fundamental human, civil and political rights and fundamental freedoms of BiH citizens, guaranteed by Article II of the BiH Constitution, as described above.

20. Annex 10 of the Dayton Peace Accords, is the High Representative's sole source of authority. Annex 10 does not give the High Representative anything resembling the sweeping powers that the High Representative asserts, such as the authority to enact, amend

[11] Vienna Convention on the Law of Treaties, arts. 31 and 32, 8 ILM 679 (1969); Competence of the ILO to Regulate Agricultural Labor, P.C.I.J. (1922) Series B, Nos. 2 and 3, p. 23 ("In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense."); Draft Articles on the Law of Treaties with Commentaries 1996, Yearbook of the International Law Commission, 1996, Vol. II pp 220-221; ANTHONY AUST, MODERN TREATY LAW AND PRACTICE, Second Edition, pp. 230-238 (2007).

and repeal laws, require and appoint foreign judges and prosecutors, or remove and ban officials from office. Instead, Annex 10 instructs the High Representative to, for example, "facilitate," "mobilize," and "coordinate." In case there were any doubt, Annex 10 provides that the High Representative "shall respect [the] autonomy" of civilian organizations and agencies "within their spheres of operation while as necessary giving general *guidance* to them about the impact of their activities on the implementation of the peace settlement."[12]

21. Article V of Annex 10 provides, "The High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement [Annex 10]". (emphasis added). This provision, as its plain language makes clear, does not extend the High Representative's authority to interpret "this Agreement" (Annex 10) to any other parts of the Dayton Peace Accords such as Annex 4, the BiH Constitution.[13] That responsibility falls to the treaty parties.

22. Moreover, Annex 10 must be read in the context of the rest of the Dayton Accords. Any reading of Annex 10 that would give the High Representative powers to enact or overrule legally enacted legislation, appoint judges and prosecutors, or remove and ban officials without due process is wholly inconsistent with Annex 4 (the BiH Constitution) and Annex 6 (the Human, Civil and Political Rights Guarantees).

23. A legally valid interpretation of the High Representative's mandate in Annex 10 must also be guided by the cannon that an agreement not be construed to give what is not explicitly given. In cases where a treaty delegates to an international official responsibilities touching upon domestic governance of a state, a very restrictive interpretation of the relevant treaty provision is required.[14] Any actions outside this mandate are *ultra vires* and thus without any force or effect.

24. In sum, an order of the High Representative is legally invalid if: (1) it is inconsistent with the fundamental human, political and civil rights and freedoms specified as having legal priority in the BIH Constitution; (2) if it is inconsistent with general principles of international law, applicable treaties or other provisions of general international law; or (3) it exceeds the authority granted the High Representative in Annex 10 by the parties to that agreement.

25. The Government's responsibility to cooperate with the High Representative in connection with peace implementation does not supersede the Government's obligations under domestic and international law described above. When an order of the High Representative conflicts

---

[12] Agreement on Civilian Implementation of the Peace Settlement (Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina), art. II(1)(c) (emphasis added).

[13] Confirming this plain language, in its first resolution about Bosnia after the Dayton Peace Accords, the UN Security Council approved a resolution "reaffirm[ing] that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement . . . ." S.C. Res. 1088 (1996). *See also, e.g.*, S.C. Res. 1174 (1998) ("reaffirm[ing] that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement . . .").

[14] *See* W. Michael Reisman, *Reflections on State Responsibility for Violations of Explicit Protectorate, Mandate, and Trusteeship Obligations*, 10 MICH. J. INT'L L. 231, 234 (1989).

with the Government's duties under the Constitutions of BiH and Republika Srpska or obligations under international law, the constitutional and legal obligations of BiH and Republika Srpska law must have priority.

Government Assessment of High Representative's Decisions

26. Taking into account what has been stated above, the Government assesses the decisions of the High Representative pursuant to the Government's obligation to operate in accordance with the rule of law. The government has justifiably concluded that its legal obligations preclude its acceptance or enforcement of the decisions for the reasons stated herein. The Government holds that such decisions, in addition to their violating domestic and international law, also attempt to disrespect Republika Srpska and its institutions, which enjoy constitutional and democratic legitimacy, unlike the High Representative who is an unelected foreigner.

27. Because the decisions of the High Representative may result in injury, including economic injury, to those whose rights and wellbeing the Government is charged to protect, the Government will also consider what actions must be taken to provide redress for such injury.

Referendum

28. For reasons set forth above, the authorities have a legal obligation not to accept or enforce the High Representative's decisions. In addition, the RS National Assembly will be requested to provide its position; and through a referendum, the citizens of Republika Srpska will be allowed to express their view on whether or not the Government should accept the High Representative's decisions, which exceed his mandate. This mandate derives from Annex 10, to which Republika Srpska is a signatory (as well as all other annexes of the Dayton Accords).

Appendix 3

Referenda Are Vital Instruments of Democracy

I. Introduction

A. The Government of Republika Srpska ("the Government") fully supports the Dayton Accords – including the Constitution of Bosnia and Herzegovina ("BiH") – and is committed to the rule of law and respect for human rights. These principles, and the Government's responsibility to its citizens, have compelled it to protect the Republika Srpska and its citizens from the unlawful actions of the High Representative, who has frequently violated the Dayton Accords, the rule of law, and human rights. In December, for example, the High Representative issued a decree casting aside the BiH Parliamentary Assembly's decision not to extend the mandates of foreign judges and prosecutors in BiH. He alleged no procedural irregularity, but simply enacted by decree his own legislation in complete contempt of the result duly arrived at by the elected legislature.

B. The Government intends to hold a referendum to allow the citizens of Republika Srpska to express their views on whether the Government should accept and implement actions of the High Representative that are contrary to the Dayton Accords and human rights treaties and other principles of international law binding upon the Government.

C. Some have alleged that the Government is planning a secession referendum. This is false, as the Government has stated publically and privately.

D. The High Representative has repeatedly suggested that the Government is not representing its constituents' views and that the High Representative's actions are more aligned with their interests. In addition, the High Representative has frequently called on citizens to make their voices heard in the remaining months before the 2010 election. Yet the High Representative is now opposing a new referendum law and the holding of referenda by the RS that would boost government accountability and increase opportunities for RS citizens to make their views known.

E. Referenda are widely used by governments across Europe and around the world as a mechanism for insuring democratic rule. Any attempt to prevent such a referendum would be a direct affront to democracy and the rule of law.

F. It is all the more important for RS citizens to be heard in a country in which a single, unelected official claims extraordinary peremptory powers free from any review or limits. In response to a 2006 BiH Constitutional Court decision, in which the Court held that the High Representative's use of the Bonn Powers violated the Constitution and the European Convention on Human Rights, the High Representative issued an order purporting to overrule the Constitutional

Court.[1] The High Representative went on to decree that "any proceeding instituted before any court in [BiH], which challenges or takes any issue in any way whatsoever with one or more decisions of the High Representative, shall be declared inadmissible unless the High Representative expressly gives his prior consent."[2] All of this makes the right to a referendum essential to ensure that the citizens of Republika Srpska have a mechanism though which to be heard.

II. Legal

A. Legality of referenda in general

1. No provision in the Dayton Accords prohibits or restricts referenda. Indeed, the Dayton Accords in Annex 4 (the BiH Constitution), Article I, paragraph 2 requires that BiH "be a democratic state, which shall operate under the rule of law and with free and democratic elections." The Preamble of the BiH Constitution states: "Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society."

2. Referenda are an integral part of the practice of democratic states across Europe and the world. As the Council of Europe's Committee of Ministers stated in a 2008 Declaration, "[D]emocracy is one of the foundations of the Council of Europe and . . . it is expressed not only through elections but also through referendums . . . ."[3] In a 2005 Resolution, the Council's Parliamentary Assembly proclaimed, "Referendums represent a long-standing political tradition in a number of Council of Europe member states; in others, the participation of citizens in the decision-making process through referendums is a more recent achievement, coinciding with their passage to pluralist and representative democracies."[4] Similarly, in a 2007 resolution, the Parliamentary Assembly said, "Referendums are an instrument of direct democracy which belong to the European electoral heritage."[5]

3. Referenda by sub-state entities are a well-established part of democratic government. The Council of Europe has made clear that its strong support for referenda extends to those held at political subdivisions below the state level.

---

[1] Office of the High Representative, Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05 (23 March 2007).

[2] Office of the High Representative, Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05 (23 March 2007).

[3] Declaration by the Committee of Ministers of the Council of Europe on the Code of Good Practice on Referendums, 27 Nov. 2008.

[4] Council of Europe, Parliamentary Assembly Res. 1704 (2005), 29 April 2005, para. 1.

[5] Council of Europe, Parliamentary Assembly Res. 1592 (2007), 23 Nov. 2007, para. 1.

a) As the Council of Europe's Congress of Local and Regional Authorities recognized in a 2007 resolution, "referendums, *whether at national, local or regional level*, constitute one of the main instruments of direct democracy giving citizens the possibility to take part in political decision making as well as in public matters which directly concern them . . . ."[6]

b) Moreover, the Council's Committee of Ministers, in Recommendation No. R (96) 2, recommended that member states "acknowledge that *local and regional authorities* may, within the autonomy granted to them, make provisions for referendums and/or popular initiatives at local level, by specifying, if appropriate, the matters for which these instruments are admitted or forbidden as well as the consultative or decisionmaking character of the referendums . . . ."[7]

c) In its 2001 Recommendation to member states on the participation of citizens in local public life,[8] the Committee of Ministers recommended that states consider legislation enabling:

> ii. popular initiatives, calling on elected bodies to deal with the matters raised in the initiative in order to provide citizens with a response or initiate the referendum procedure;
>
> iii. consultative or decision-making referendums on matters of local concern, called by local authorities on their own initiative or at the request of the local community . . . ."

4. The Constitution of Republika Srpska has long specifically provided for referenda, stating at Article 77 that the RSNA may decide on individual issues after a vote of the citizens in a referendum.[9] Article 70 of the RS Constitution gives the RSNA the power to organize a referendum. Moreover, the RS has had a statute providing for referenda since 1993. Over the years, Bosniak politicians have challenged many

---

[6] Council of Europe, Congress of Local and Regional Authorities Res. 235 (2007) (emphasis added).

[7] Recommendation of the Council of Europe Committee of Ministers to Member States on referendums and popular initiatives at local level, Rec(1996)2, adopted 15 Feb. 1996 (emphasis added).

[8] Recommendation of the Council of Europe Committee of Ministers to member states on the participation of citizens in local public life, Rec(2001)19, adopted 6 Dec. 2001, appendix II(c)(4).

[9] In addition, Amendment XXXII to Article 76, paragraph 1 of the RS Constitution provides that the right to propose laws, other regulations and enactments lies with the President of the Republic, Government, every representative of the Assembly, or at least 3,000 voters.

provisions of the RS Constitution and many RS laws in the BiH Constitutional Court. Some provisions and laws have been struck down as contrary to the BiH Constitution. But the RS Constitution's affirmation of the Entity's ability to hold referenda has never even been challenged. Nor has the 1993 RS referendum statute, which has just been superseded by the new referendum law.

B. Legality of the planned referendum

1. There is nothing in the nature of the referendum the Government is planning that would somehow render it unlawful. Although the Government has not determined the precise language of any referendum questions, the Government intends to seek a referendum soliciting voters' views about the High Representative's imposition of legislation on BiH by decree and other actions that violate the Dayton Accords, the rule of law, and human rights.

2. The proposed referendum is plainly suitable under the Council of Europe's standard. The Council's Parliamentary Assembly, in Resolution 1121, invited member states "to regard all subjects as suitable for being submitted to a referendum, with the exception of those which call in question universal and intangible values such as the human rights defined in the Universal Declaration of Human Rights and the European Convention of Human Rights, and the basic values of democracy in general and parliamentary democracy in particular."[10]

3. The proposed referendum does not question universal intangible values such as human rights or the basic values of democracy in general and parliamentary democracy in particular. Indeed, the proposed referendum is intended as an affirmation of representative democracy and human rights against a High Representative who shows them little regard.

III. Policy

A. Policy reasons for the enactment of a new referendum law

1. The new referendum law enacted by the RSNA on 10 February 2010 was drafted in light of the Code of Good Practice of the Council of Europe's Venice Commission (CDI AD 2007-2008) and the Recommendations of the Council of Europe's Committee of Ministers on citizens' participation in public life at the local level (Rec (2001) 19).[11] In addition, as required by RS Government rules of procedure, the RS

[10] Council of Europe, Parliamentary Assembly Res. 1121 (1997), 22 April 1997, para. 15(ii).

[11] Memorandum from Jasna Brkić, Minister of Economic Relations and Regional Cooperation, Republika Srpska, to Zoran Lipovac, Minister of Administration and Local Self-Government, Republika Srpska, 21 Jan. 2010.

Ministry for Economic Relations and Regional Cooperation analyzed the proposed new referendum law with respect to its consistency with EU regulations.[12] After examining EU law, the Ministry determined that there are no sources of *acquis communautaire* pertinent to the proposed law.[13]

The Council's Parliamentary Assembly, in a 2005 resolution, recommended "the use of referendums as a means to reinforce the democratic legitimacy of political decisions, enhance the accountability of representative institutions, increase the openness and transparency of decision making and stimulate the direct involvement of the electorate in the political process."[14] In the same resolution, the Parliamentary Assembly said it "considers referendums as one of the instruments enabling citizens to participate in the political decision-making process . . . ."[15]

2. In a 2007 resolution, the Council's Parliamentary Assembly called referenda "a positive means to enable citizens to participate in the political decision-making process and to bridge the distance between them and decision makers."[16] The Parliamentary Assembly, in a 2003 resolution, called on member states to consider "more direct elements of democratic decision-making, such as popular initiatives and referendums, in particular at local level, as a means of increasing the public's identifying with political decisions thus taken."[17]

B. Policy reasons for the planned referendum

1. It is all the more important for citizens to be heard in a country in which a single, unelected official claims and exercises such extraordinary peremptory powers. The High Representative, like most rulers who claim unbridled power, is intolerant of any suggestion – no matter the source – that his authority has limits. For example, in a 2006 decision, the BiH Constitutional Court unanimously held that the High Representative's decrees summarily removing individuals from public office violate the BiH Constitution and human rights protected under the European

[12] Memorandum from Jasna Brkić, Minister of Economic Relations and Regional Cooperation, Republika Srpska, to Zoran Lipovac, Minister of Administration and Local Self-Government, Republika Srpska, 21 Jan. 2010.

[13] Memorandum from Jasna Brkić, Minister of Economic Relations and Regional Cooperation, Republika Srpska, to Zoran Lipovac, Minister of Administration and Local Self-Government, Republika Srpska, 21 Jan. 2010.

[14] Council of Europe, Parliamentary Assembly Res. 1704 (2005), 29 April 2005, para. 5.

[15] Council of Europe, Parliamentary Assembly Res. 1704 (2005), 29 April 2005, para. 1.

[16] Council of Europe, Parliamentary Assembly Res. 1592 (2007), 23 Nov. 2007, para. 2.

[17] Council of Europe, Parliamentary Assembly Res. 1353 (2003), 25 Nov. 2003, para. 15(a)(iii).

Convention on Human Rights.[18] In response to that decision, the High Representative issued an order purporting to overrule the Constitutional Court,[19] even though the Constitution makes clear that the court's decisions are "final and binding."[20] The High Representative went on to decree that "any proceeding instituted before any court in [BiH], which challenges or takes any issue in any way whatsoever with one or more decisions of the High Representative, shall be declared inadmissible unless the High Representative expressly gives his prior consent."[21] The High Representative has also sought to halt criticism of his unlawful acts by the Government and the RSNA. All of this makes it essential that the citizens of Republika Srpska have a mechanism though which to be heard.

IV. Conclusion

Peremptory authority to set aside the decisions of democratically and constitutionally selected legislatures, as exercised by an unelected, foreign individual – the High Representative – is inimical to democratic and constitutional governance. It is the High Representative's assertion of unlimited powers that is the real affront to the Dayton Accords and the principles of democracy and rule of law that the Accords affirm.

[18] Appeal of Milorad Bilbija et al, No. AP-953/05, para. 78 (8 July 2006).

[19] Office of the High Representative, Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05 (23 March 2007).

[20] Article VI/4 of the Constitution of Bosnia and Herzegovina.

[21] Office of the High Representative, Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05 (23 March 2007).