

# Information Documents

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## Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme

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Document presented by the Secretary General

### Fifth Report (July 2003 - September 2003)

Following a Secretariat mission to Bosnia and Herzegovina (11-18 September 2003)

#### *Executive Summary*

Continued progress is made regarding the reinforcement of Bosnia and Herzegovina's (BiH) statehood and democratic institutions. However, the lack of resources and the economic crisis in BiH, as well as the fact that the reform process continues to be led by the International Community, are general problems.

As concerns:

- **Democratic institutions:** During its first year of membership, BiH has fulfilled major commitments undertaken upon accession to the CoE. Nevertheless, those to be fulfilled by the end of the second year will require an increasingly pro-active approach, both at State and Entities' level, with focus on implementation. State institutions are being strengthened but they remain fragile. The development and functioning of local democracy is another key issue, which deserves increased attention.

- **Human Rights:** The future of human rights institutions, in particular the backlog of cases of the Human Rights Chamber, remains a major issue. However, the agreement reached on 25 September 2003, on the transfer of the competences of the Human Rights Chamber to the Constitutional Court, is a significant step forward. Co-operation with the ICTY is still varied from one Entity to the other. As concerns refugees and IDPs, much progress has been achieved in the restitution of properties but, in many cases, this was not followed by sustainable returns, partly because of the difficult social situation in BiH, which is also a matter of growing concern.

- **Rule of Law:** The judicial reform is progressing well, bearing in mind the extent of reform underway. Substantial progress is being made in consolidating judicial institutions at State level. However, the lack of resources and insufficient execution of decisions of justice are still undermining the judicial system.

- **Education:** Major progress has recently been made in the field of primary, secondary and higher education. As concerns the eradication of segregation at schools, progress has also been achieved, in particular with the introduction of a common core curriculum. However, segregation remains *de facto* in a number of schools and deserves particular attention. The accession of BiH to the Bologna process is another benchmark in the education reform process.

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## I. INTRODUCTION

1. Bosnia and Herzegovina (BiH) joined the Council of Europe (CoE) on 24 April 2002. Accession of BiH to the CoE followed the adoption of Opinion No 234 (2002) of the Parliamentary Assembly of the CoE (PACE), which lists a series of commitments to be met by BiH following its accession to the Organisation (see the Addendum to the present report), as well as the specific issues which were the subject of an exchange of letters between the BiH authorities and the Chair of the CoE Committee of Ministers.

2. The present report is the fifth quarterly report prepared by the Secretariat following the Committee of Ministers decision of 29 May 2002 mandating the Secretariat to provide the Committee of Ministers Rapporteur Group for Democratic Stability (GR-EDS) with quarterly progress reports on the honouring of commitments by BiH, as well as developments in the post-accession co-operation programmes.<sup>1</sup>

3. This report is based on the information gathered during a Secretariat mission to BiH (Sarajevo and Banja Luka) which took place from 11 to 18 September 2003, as well as contacts prior to and after the visit, and information provided by international organisations. This Secretariat mission was combined with the first meeting of the Steering Committee of the European Commission (EC)/Council of Europe (CoE) Joint Programmes with BiH, held on 18 September 2003 (the report of this meeting will be reproduced in a separate document). The programme of the Secretariat delegation's visit is appended to this report.

4. The Secretariat delegation would like to express its gratitude to the Ministry of Foreign Affairs of BiH, and the Permanent Representative of BiH to the CoE, as well as to the CoE Office, for their co-operation and the arrangements for the visit. The Secretariat delegation was able to meet the highest authorities and to have open discussions, including on the most sensitive issues at State level and in both Entities (Federation and Republika Srpska).

5. In order to guide CoE work, notably the co-operation programmes, a number of priority matters have been identified in the fields of democratic institutions, human rights, rule of law and education. These priority matters appear in boxes in each relevant chapter below (as is practice since the third BiH post-accession monitoring report [SG/Inf (2003) 9]).

## II. MAIN CONCLUSIONS AND RECOMMENDATIONS

### A. Democratic institutions

- i. The development of State institutions (Ministry of Justice, Ministry of Security, State Court, State Intelligence Service etc.) and the progressive transfer of responsibilities from the Entities must be accompanied by a reinforcement of their capacities of action (buildings, equipment, staff and financial resources);
- ii. following the ratification of ECHR, preparations should start, without further delay, for the establishment of the Office of the Government Agent to the ECtHR;

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<sup>1</sup> The first four reports were presented in July 2002 [doc. SG/Inf (2002) 27], November 2002 [doc. SG/Inf (2002) 40] March 2003 [doc. SG/Inf (2003) 9 and Addendum] and June 2003 [SG/Inf (2003) 21 and Addendum].

- iii. based on recent negative experience, there is an urgent need to improve BiH capacities for reporting and providing adequate information in the context of the various conventional or other monitoring procedures put in place by the CoE;
- iv. the CoE, in particular its Venice Commission for Democracy through Law, stands ready to provide advice and assistance whenever there is an agreement on the revision of the present constitutional arrangements;
- v. at the request of the BiH Parliament, the Venice Commission has recently been invited to participate in the discussion for the reform of the electoral law;
- vi. the reform of local authorities, in conformity with the European Charter for Local Self-Government (to which BiH is a Party), is a prerequisite for the preparations of the local elections to be held in autumn 2004;
- vii. streamlining the administrative structures in FBiH and developing capacities (in particular financial means) of local authorities in both Entities are indispensable to improve efficient decision-making processes and to create economically-viable decentralised structures;
- viii. the reform of the status of Sarajevo as a State capital, and the new status for Mostar, deserve particular attention and the CoE could provide assistance in this respect.

## **B. Human rights**

- i. Proper follow-up is urgently needed to the agreement of 25 September 2003 on the question of the transfer of competence from the Human Rights Chamber to the Constitutional Court on 01 January 2004 – including the related problem of the backlog of cases and with the full participation of relevant BiH authorities in this process;
- ii. the procedure for the replacement of the (international) State Ombudsman by three national Ombudsmen on 01 January 2004, must be launched without further delay;
- iii. for the sake of continuity and to prepare for the merger with the newly-appointed three national Ombudsmen, the mandate of the Entities' Ombudsman offices could be extended for a short interim period (one year);
- iv. co-operation with ICTY varies from one Entity to the other; continued pressure should be exerted on RS authorities to make sure that expressed goodwill is translated into action, in particular for the (voluntary or forced) transfer of indictees to the ICTY;
- v. the situation of national minorities ('the Others', according to the BiH Constitution) deserve increased attention; CoE could be invited to provide legislative expertise of the present BiH legislation on national minorities;
- vi. preparations for the signature and subsequent ratification of the European Charter for Regional and Minority languages should be stepped up, with the assistance of the CoE;
- vii. following the return of properties, continued efforts are requested, in particular in the economic and social fields (job creation), to promote sustainable return of refugees and IDPs; the possible future accession of

BiH to the CoE Development Bank could contribute efficiently to this process.

### **C. Rule of law**

- i. the problem of lack of resources in the judiciary , and more specifically the lack of proper execution of decisions of justice, deserve particular attention, as the confidence in the judiciary and its independence currently is undermined;
- ii. BiH should step up its process for the signature and/or ratification of European Conventions in the criminal field, in particular the European Convention on the fight against terrorism, the anti-money laundering Convention and the Convention on the co-operation in criminal matters;
- iii. in the fight against corruption, proper follow-up should be given to the recommendations of GRECO.

### **D. Education**

- i. the adoption of the State Framework law on Education and of the Common Core Curriculum constitute a major step forward. However problems of implementation have occurred and should be settled without delay, in particular as regards the compatibility of the RS draft law on Education with the State framework Law and the unacceptable situation in a number of schools in FBiH which still apply the principle of ‘two schools under one roof’;
- ii. a campaign of explanation and clarification could be undertaken, possibly with the support of the CoE , to overcome misgivings and fears;
- iii. accession by BiH to the Lisbon convention on the recognition of diplomas and to the Bologna Process shows the progress achieved in the field of higher education.

### **E. Co-operation programmes**

- i. CoE support to BiH continues on an important scale. The post-accession programme, which was operational for one year following accession, has paved the way for new specialised assistance projects. Several of these projects are carried out together with the European Commission. A first tripartite Steering Committee meeting for these new joint programmes was held in Sarajevo on 18 September 2003.

## **III. DEMOCRATIC INSTITUTIONS**

1. The reinforcement of BiH’s statehood and democratic institutions, as well as the strengthening of relations with the EU, are at the centre of the political debate in the country. A debate has also flourished over the summer on the role of the OHR in BiH and on BiH Constitution to improve the functioning of the country’s institutions. The existence of this constitutional debate is a positive development on the road to a better functioning State.

2. State institutions are being strengthened but remain fragile, owing, notably, to a lack of means of action, staff and financial resources. Development and functioning of local democracy is another key issue, which deserve an increased attention. However, the lack of resources and the economic crisis in BiH are general problems, as is the fact that the reform process continues to be led by the International Community.

**A. Strengthening and functioning of democratic institutions (at State and Entity level), with particular reference to the legislative process and to effective participation of representatives of the constituent peoples in decision-making**

**Reinforcing BiH Statehood, 'reform ownership' and integration into Europe**

3. At present, the political debate, initiated by the International Community, is dominated by reforms aimed at reinforcing BiH Statehood. Steady progress is registered in some crucial issues such as regarding the introduction of VAT and the establishment of a single customs office, the reform of defence, including the establishment of a unified command structure at State level, as well as the setting up of a State Intelligence Service and Security Agency. Transfers of competences to the State level in the field of justice are also being pursued. Given that agreement and progressive transfer of responsibilities from the Entities are necessary to achieve these reforms, their rapid achievement would represent crucial progress in the process of State institutions' strengthening.

4. All the Secretariat delegation's interlocutors, at State and Entities level, emphasised the crucial importance for BiH of further integration into Europe. They were in particular concerned with the feasibility study under preparation for a possible Association and Stabilisation Agreement with the EU. Harmonisation of legislation with the EU *acquis* and, in general, compliance with EU requirements and the relevance of CoE norms and standards in this respect, were a leitmotiv in discussions with State and Entities' authorities. Consequently, the delegation underlined that the implementation of CoE post-accession commitments was a necessary step on the road to European integration and stressed the complementarity of approaches of CoE and EU, as it is clearly illustrated by the various agreements concluded between the European Commission and the Council of Europe to promote reforms in BiH.

5. As concerned its first year of membership, BiH fulfilled major commitments within foreseen deadlines - with the exception of the General Agreement on Privileges and Immunities, which has been neither signed nor ratified and the revision of the electoral law, which is only commencing now. Commitments fulfilled included in particular BiH's accession to key Human Rights treaties, the implementation of constitutional amendments, the successful organisation of the 5 October 2002 elections and the adoption of several laws in the field of justice and education. This is certainly a significant achievement, which deserves due follow-up.

6. As for the second and subsequent years, the Secretariat delegation emphasised the need for an increased ownership of the reform process for the benefit of the country and its people. Indeed, commitments to be fulfilled by the end of the second year of membership (April 2004) could certainly be more difficult to achieve because they include the signature and ratification of a series of conventions (such as the European Convention on the Fight against Terrorism, the Charter on Regional and Minority Languages, the European Social Charter and Conventions in the field of justice) which do not arise from the Dayton

Agreements and therefore require pro-active measures on the part of the authorities of BiH, both at State and Entity level. In addition, which is even more important, the second year should be a year of concrete implementation of conventions and laws which were adopted in the first year of membership. The Secretariat delegation was informed that the procedure for the signature and/or ratification of a set of important conventions in the field of judiciary and the fight against crime was underway.

7. The Secretariat delegation also encouraged the BiH authorities to take full advantage of the opportunities for co-operation and assistance provided by the CoE, for instance through requests for legislative expertise and more involvement in various CoE mechanisms, structures and programmes.

8. On 1 October 2003 the CoE Parliamentary Assembly could not complete the election of a judge on behalf of BiH to the European Court of Human Rights, based on the list of candidates provided by the authorities. Preparations for the establishment of a Government Agent's Office in BiH, whose role is to defend BiH before the ECtHR in cases brought against the country and to promote respect of ECHR and case-law in the domestic juridical order, should be undertaken without further delay.

9. The Secretariat delegation also urged the authorities – at State and Entity levels – to provide the information required by the reporting procedures of the various monitoring mechanisms (Framework Convention on the Protection of National Minorities, thematic monitoring of the CoE Committee of Ministers etc.) in due course. The authorities explained that the delays and absence of substantial responses were due to the lack of staff and resources. On this subject, some interlocutors the delegation met with underlined that the improvement of reporting would certainly also enhance analysis and action capacities of the country.

10. On a positive note, as regards State institutions, the Secretariat delegation was pleased to learn that CoE Secretariat quarterly reports were regularly examined and discussed by the authorities. In this context, the delegation also had a thorough exchange of views with representatives of the State Parliament on the fourth report. In addition, the delegation was informed that the Parliament had recently revised its Rules of Procedures, set up new Committees in order to improve its work and recently adopted a number of laws which are part of the commitments (the BiH Law on Citizenship and BiH Law on 'movement and residence of foreigners'). The number of staff members was also expected to increase shortly. These encouraging developments followed the recent strengthening of the Council of Ministers described in the previous quarterly report. However, it would appear that the newly established Ministries such as the State Ministries of Justice and Security are still very weak due to the lack of resources. Transfer of competences from Entity to State level is not always accompanied by the appropriate transfer of resources (financial and human).

11. The lack of resources and the economic difficulties are endemic difficulties which could hamper the proper functioning of the institutions. A worsening of the economic situation of the country could even jeopardise the reform process as a whole; the continuous support of the international community is therefore absolutely necessary.

12. On the other hand, irrespective of budgetary resources, a stronger leadership and 'reform ownership' at State and Entity levels has still to take root, since the initiative remains too often with the High Representative.

13. In this respect, think tanks, such as the European Stability Initiative (ESI) prompted a debate over the summer about the role of the High Representative in BiH and different options for a revision of BiH Constitution. The debate on the High Representative was referring in particular to the use of the "Bonn powers" allowing him to impose decisions in BiH. However, according to the High Representative, the fact that it was now feasible to discuss the withdrawal of the international community showed how much progress had been achieved and that renouncing OHR powers now could endanger the stability of the region. However, it is still unclear whether the criticisms against the interventionism of the International Community (in particular the OHR) is not a way for some politicians to hide their incapacity to assume their responsibilities and adopt decisions which might be unpopular and go against their political and personal interest.

14. On the issue of the constitutional debate, raised during the Secretariat delegation's visit, a representative of the State Parliament considered that any constitutional change should not be imposed. It should be the fruit of internal dialogue and negotiations, however difficult they might be. This is an encouraging approach in the perspective of 'ownership of reform' which would not exclude the possible support of the CoE –and in particular its Venice Commission. In the meantime, in the views of many interlocutors of the Secretariat delegation, a streamlining of the various levels of decision- making (in particular in FBiH) and the strengthening of efficient and economically viable local authorities could offset some of the major shortcomings and deficiencies inherited from the Washington/Dayton agreements.

15. As concerns relations between national authorities and the International Community present in BiH, the Secretariat delegation had the impression that the communication may be insufficient. An illustration was given during discussions on the future of the human rights institutions: the authorities did not seem to be fully involved and aware of what was being discussed among the actors of the International Community.

### **Implementation of the BiH Constitutional Court's Decision on Constituent Peoples**

16. The institutions at State and Entity level have been formally established in accordance with the Constitutional amendments, which secure equitable participation of the three constituent peoples in BiH. This is an important achievement which needs to be followed-up in all public institutions: managing boards of administrative organs, education, health service etc. It is still difficult to assess the effective participation of the three constituent peoples in the decision-making process in the different institutions. But the delegation had signals and evidence to the effect that, in some cases, there have been some results. Nevertheless, it still remains to be seen what the final impact of the Constitutional Court's Decision on Constituent Peoples will be. However, the major challenge for BiH will be to ensure that the State interest prevails over purely national interests.



17. The fact that a number of appointments remain to be made is another concern (one RS-appointed judge in the State Constitutional Court and 7 Serb members of the Federation Parliament).

18. In addition, the problems of those who do not belong to any of the three constituent peoples, the so-called “Others” or in fact, the national minorities in BiH, need to be recognised. They can only accede to certain functions if a member of the constituent peoples renounces his/her position. This is a difficult issue for democracy and human rights which should be dealt with to ensure that every BiH national has a say in the future of the country.

### **Election Legislation in BiH**

19. Revision of the electoral law, in cooperation with the Venice Commission was one of the BiH post-accession commitments to be fulfilled by the 1<sup>st</sup> year of BiH accession to the CoE. On this issue, progress was recently registered: early September 2003, the BiH Election Commission informed the CoE that it had established a working group for this purpose and requested the assistance of the Venice Commission. This is an important step forward. The authorities should ensure that this review produces results and leads to the adoption of new electoral legislation well before next elections. This is a matter of urgency since local elections will be held in autumn 2004.

<b>B. Development and functioning of local democracy (powers and finances)</b>
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20. BiH ratified the European Charter of Local Self-Government (ECLSG) in July 2002. Implementation of the Charter is monitored by the Congress of Local and regional authorities of Europe (CLRAE).

21. Local democracy is a key issue in BiH. Development and functioning of local democracy should accompany the strengthening of State institutions. This issue is particularly topical now with the preparation of local elections to be held in autumn 2004 and it will have to be followed closely by the CLRAE. However, it remains to be seen whether significant improvement can be achieved before these elections.

22. Local self-government takes very different forms in the two Entities: it is centralised in RS and decentralised (even fragmented) in FBiH. However the lack of competences and resources of municipalities concern both Entities. The CoE has analysed a new RS law on self-government and further consultations on this law will take place. In FBiH, the 10 cantons are still today the more powerful level of self-government. Streamlining of the administrative structure of FBiH (4 levels of administration: Entity/Cantons/cities/municipalities) is unavoidable for proper economic and social development of the Entity. The possibility for local authorities to raise taxes and have financial resources of their own –in conformity with the European Charter for Local Self-Government – is crucial for the future of local democracy in BiH. However, any reform would certainly meet with serious opposition, as it could affect political and personal interests.

23. Sarajevo – the capital of the State of BiH, of the Federation and seat of the Sarajevo Canton is an illustration of the difficulties in the field of local-self government. The delegation was informed that there was no law on the city of Sarajevo, although a draft law had already been prepared. The City has very limited competences and very scarce resources

to develop policies, which normally are those of a State capital City. The status of Sarajevo is therefore an issue which should be dealt with.

24. The city of Mostar is another illustration of difficulties encountered. The Commission for the re-unification of Mostar was not able to finalise the draft statute for a united City by the deadline fixed by the OHR (31 July 2003). Since local elections will be held in 2004, a solution must be found by the end of the year. Consequently, a new commission, chaired by an international, was recently set up and mandated to propose a new status for Mostar by 15 December 2003. CoE stands ready to support the work of the commission.

25. The CoE-supported project to set up a Local Democracy Agency is probably even more topical than ever, but evidently the viability of the project largely depends on the outcome of the work of the new commission and on the status of Mostar.

26. As regards transfrontier co-operation, Council of Europe assistance is planned, especially as regards the legal framework for transfrontier co-operation and to provide legal advice on signing and ratifying the Madrid Outline Convention on Transfrontier Co-operation between Local Authorities or Communities, and its two protocols (to be signed and ratified by the end of the second year of BiH membership of the CoE (24 April 2004)).

#### **IV. HUMAN RIGHTS**

27. Regarding the question of the transfer of competences of the Human Rights Chamber, a solution has been found only very recently and regarding the Ombudsman institutions a full solution remains a matter of the utmost urgency. Co-operation with the ICTY is still unequal from one Entity to the other: despite some recent progress in RS, the co-operation has yet to produce tangible results. As concerns refugees and IDPs, much progress has been achieved in the restitution of properties but this was not always followed by sustainable return, partly because of the difficult social situation in BiH, a matter of growing concern.

<b>A. The future of the Dayton human rights institutions</b>
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#### **The Human Rights Chamber**

28. The Peace Implementation Council meeting of 12 June 2003 agreed that the Chamber's competence should be transferred to the institutions of BiH as part of the process of strengthening and localising human rights protection in BiH, and that the Chamber should cease accepting new cases in the near future, with a target date of 31 July 2003. The Peace Implementation Council meeting stressed that the transfer plan must provide effective protection of human rights in BiH. Pending a final settlement, the Chamber continued to register new cases after 31 July 2003. However, it is a very positive development that an agreement was reached between the three Prime Ministers on 25 September 2003..

29. It should be noted that, at the time of the visit of the delegation, there were very intensive negotiations on the matter between the various actors in the International Community, but the relevant BiH authorities did not seem to be fully involved or aware of what was being discussed. When the delegation raised the question with the various national interlocutors, it obtained diverging replies.

30. According to the agreement, submitted by OHR, the Constitutional Court will deal with cases registered after 1 January 2004. In addition, a human rights commission with international participation, will be set up within the Constitutional Court to deal with the Chamber's backlog (around 9 500 cases). The focus now evidently needs to be on the implementation of this agreement and on proper processing of the cases.

31. Queries remain concerning the Constitutional Court's current capacity to deal with these cases. One judge still needs to be appointed by the RS National Assembly; meanwhile the Court is prevented from taking decision on important cases. In addition, it is clear that the Court's resources would have to be increased and the rules of procedure amended (in particular, the frequency of meetings).

32. Focus on the transfer of competence should not imply any less focus on implementation of the Chamber's decisions. During the visit, particular concern was expressed about the failure of the RS to fully implement the decision of the Human Rights Chamber of 7 March 2003 regarding Srebrenica cases. This decision gave the RS authorities six months to disclose the truth of the fate of victims and the whereabouts of their bodies and to pay compensations for the collective benefit of all applicants and families of Srebrenica victims to the Foundation of the Srebrenica-Potocar Memorial and Cemetery. Over the summer, Amnesty International and the International Community urged the RS authorities to fully comply with the Chamber's decisions. Although the RS Government has requested relevant Ministries to take appropriate measures, it would appear that the Chamber's decision has not yet been fully implemented since no payment and no investigation have been made so far by the RS authorities.

33. On the other hand, during the Secretariat delegation's visit, local NGOs again stressed the International Community's lack of proper dialogue with representatives of the civil society on human rights issues, particularly regarding OHR. They were also concerned that the present focus on the institutional aspects of the human rights protection was somehow overshadowing the debate on the human rights situation in the country and on the needs of the population, in particular as regards social rights. In this respect, preparations for the signature of the European Social Charter should be initiated, by the authorities, without further delay.

### **Ombudsman institutions**

34. As regards the Ombudsman institutions, two issues, presently considered as separate, have now emerged on the top of the agenda, namely the nationalisation of the State level Ombudsman institution and the merger of the State and Entity Ombudsman institutions.

#### **- Nationalisation of the State level Ombudsman:**

35. As of 1<sup>st</sup> January 2004, the BiH Ombudsman – at present an international appointment- will become a domestic institution headed by 3 BiH nationals and funded by the BiH budget. Therefore, the process of nationalisation should get underway immediately. Given the particular time constraints, an exceptional appointment process is now being put forward by the International Community: the Civil Service Agency would issue a vacancy notice; once the vacancy is closed, the relevant Committee of the BiH Parliament should assist the BiH Presidency in vetting the applicants. The BiH Presidency would then select its nominations and submit them to the BiH Parliament for approval.

- **Merger of the State and Entity Ombudsman institutions**

36. In July 2002<sup>2</sup>, the Venice Commission concluded that there is a commitment to consider in the long term, the establishment of a unified Ombudsman institution at State level.

37. While accepting the need for a merger of the institutions in the long term, Entity Ombudsmen, as well as local NGOs still consider that the time is not ripe for establishing a single unified human rights Ombudsman's office at State level. Much remains to be done to improve the situation regarding human rights in BiH and there would be no popular confidence, yet, in a unified State organ. In this respect, local NGOs in RS stressed the necessity to maintain proximity assistance; it was also of utmost importance to take into account the needs of civil society when reaching such important institutional decisions.

38. However, the parallel existence of three Ombudsman institutions might cause financial and other difficulties. Presently, in the view of the international community, the merger process should be fully completed by 1<sup>st</sup> January 2005.

39. Independently of this future merger, the authorities should ensure that the human rights institutions are properly funded, that they are able to perform their functions independently and that their recommendations are acted upon.

<b>B. Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY)</b>
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40. Some 18 publicly indicted persons are reportedly still at large; arrest warrants have been issued against all of them.

41. In its Resolution adopted on 11 July 2003, the UN Security Council underlined that "full cooperation by States and Entities with the ICTY includes, inter alia, the surrender for trial of all persons indicted by the Tribunal and provision of information to assist in Tribunal investigations".

42. At present, co-operation with the ICTY, varies: relations are considered satisfactory with the State and the Federation (where some indictees were arrested) and more difficult with the RS.

43. During its visit, the Secretariat delegation raised this issue with all its interlocutors in RS. In this respect, the new RS Government seems to be more cooperative and some measures have recently been taken: on the eve of ICTY Chief Prosecutor Carla Del Ponte's visit on 18 July 2003, it announced a package of measures to regulate the rights of indicted RS citizens who surrender voluntarily and urged all those indicted to surrender voluntarily. In addition, on 3 September 2003, RS police raided the Bijeljina home of a Serbian Orthodox Bishop after receiving information from EUPM that the indicted war criminal Radovan Karadzic was hiding in the premises. However, so far, there has not been a single arrest of indicted war criminals in RS and, according to ICTY, access to information remains insufficient (archives etc.).

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<sup>2</sup> CDL-AD (2002) 10, Opinion on certain issues related to the Ombudsman institutions in BiH and on the interpretation of certain commitments undertaken by BiH upon accession to the CoE.

44. Furthermore, according to ICTY representatives, there should be a large information campaign to depoliticise the issue of cooperation with the Tribunal and to demystify war crime indictees, who are still perceived as “heroes” by different parts of the population. In this respect, the support of politicians and media is necessary. Peoples in RS should be properly informed about the ICTY and, in particular, about the fact that it does not discriminate against Serbs.

45. The modalities of the setting up of a War Crimes Chamber in the BiH State Court are still being discussed. According to local NGOs, the process of national trials of war criminals, however painful it may be, could contribute to enhance the State building and the political maturity of the State, as would also the adoption of a Law on a reconciliation committee.

46. The Secretariat delegation continuously reminded the authorities of their commitment to fully comply with the ICTY and stressed that it was also part of the further European integration of BiH. The message was clearly received by all interlocutors; it remains to be seen if concrete action will follow.

47. Co-operation with the ICTY is very much related to the question of missing persons. According to Amnesty International (press release of 30.08.2003), “despite real progress in the exhumation and identification of the victims of “disappearances” and abductions throughout BiH there has been little progress in bringing those responsible for these human rights violations and abuses to justice. The authorities - especially (but not exclusively) those in the RS - have shown almost a wilful refusal to end impunity for those suspected of ‘disappearances’, abductions and other human rights violations carried out in the war in BiH”. On the other hand, the Srebrenica cases (see para 32) illustrate the difficulties for the families of ‘disappeared’ persons to obtain information on the fate of victims and the whereabouts of their bodies.

48. The BiH Minister for Human Rights and Refugees (MHRR), Mr Kebo, indicated that a Law on missing persons was being prepared and that an institute for missing persons would start operating next year.

<b>C. Sustainable return of refugees and displaced persons, on the basis of freedom of choice</b>
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### **Property Law Implementation (PLI)/restitution of property**

49. Restitution of property is in the process of completion: according to the latest information, some 86 % of the property claims throughout BiH were resolved by the end of July 2003 (85 % in RS and 87 % in FBiH). However, according to OHR, looting of apartments and houses remains a serious problem throughout BiH. Banja Luka is the town with the lowest percentage of property restitution to its pre-war owners. On 26 August 2003, OSCE, OHR and UNHCR met with RS Prime Minister Dragan Mikerević to discuss this issue. The Prime Minister agreed to a catalogue of actions with a view to completion of PLI in RS by the end of this year, as requested throughout BiH.

50. During the visit, the RS authorities explained that obstacles to PLI in RS and return were mainly connected to the situation in Croatia, whereby Serb refugees, presently residing in RS, experience major difficulties in repossessing their property in Croatia and to return.

### **Return of refugees and IDPs**

51. All interlocutors stressed again that the return of property on many occasions does not equal sustainable return. In many cases the properties were sold, possibly to their temporary resident and their previous owner returned to the temporary residence which became permanent residence.

52. According to UNHCR, since the signing of Dayton, almost 1 million (963,655) refugees and IDPs have returned to their pre-war homes in BiH . Out of this total, 419,711 have been minority returns. Out of the 963,655 returns, 703,790 have returned to the FBiH, 239,191 to the RS and 20,674 to Brcko District (see <http://www.unhcr.ba/> “return statistics for July 2003” ). “However, a large number of persons remain displaced within the region and in need of a durable solution. These include some 125,000 refugees from BiH who are in neighbouring Serbia and Montenegro and Croatia and some 45,000 refugees outside the region, as well as some 350,000 IDPs who remain displaced within BiH” [...] “Despite significant progress, individual refugees or IDPs are still not in a position to return to their pre-war municipalities. In addition to the wide range of conditions required to make return sustainable, continuing concerns over the safety of individual returnees remain” (see <http://www.unhcr.ba/> “UNHCR’s Concerns with the Designation of BiH as a Safe Country of Origin, July 2003” ).

53. During the visit, representatives of the civil society expressed their concern with the low level of minority return, in particular in Sarajevo. According to the BiH Ombudsman, “Serb return to Sarajevo must be promoted” and “administrative obstacles must be removed (including facilitating health insurances routines, receiving pensions and war veteran welfare, registering in schools, issuance of ID cards etc.)” [...] “Many Serbs who have returned are satisfied with the general atmosphere in Sarajevo and the security ensured by the police” (see <http://www.ohro.ba> , press release dated 10.07.2003).

54. On the other hand, representatives of the international community reported that the situation in Srebrenica was particularly bad. However, the recent inauguration of the Memorial Centre, gives hop for a possible rebuilding of a multiethnic Srebrenica. The lack of implementation of the existing legislation, as well as the lack of administrative and, in particular, financial means and responsibilities of local authorities were also mentioned.

55. The BiH Ministry for Human Rights and Refugees (MHHR) acknowledged that there were ‘hot spots’ in Eastern Bosnia (such as Srebrenica) and Canton 10 (Livno) where return was particularly difficult and informed the delegation that a revised Law on Refugees and IDPs aims at harmonising existing provisions in the legislation throughout BiH, regulating the use of funds for return through a Commission for refugees and establishing linkages between both Entities was being prepared. In addition, discussions were ongoing with Croatia and Serbia-Montenegro. Finally the MHHR informed the delegation that BiH was planning to become a member of the CoE Development Bank, allowing BiH to receive loans in order to continue its efforts to support the return process in the country.

## D. Other relevant issues

### **CoE Conventions in the field of Human Rights, to be ratified within one year of accession to the Organisation**

56. The instruments of ratification of Protocols Nos 12 and 13 were deposited on 29 July 2003. The commitment regarding signature and ratification of ECHR and its protocols has therefore been fully respected. During the visit, the delegation insisted again on the necessity to establish the BiH Government Agent Office as soon as possible. It is also to be hoped that a judge on behalf of BiH to the European Court of Human Rights could be elected as soon as possible.

### **Social rights**

57. Representatives of the civil society in both Entities – NGOs and Ombudsmen - unanimously expressed their major concern with the social climate in BiH. They referred to widespread violations of social rights –including cases of discrimination at work- and to the increased protests by employees and retirees to request overdue salaries and back pensions. The situation of unemployed, elderly and ill persons, refugees and IDPs, as well as the health protection system was particularly critical.

58. The MFA underlined the difficulties of the country in implementing the principles of the European Social Charter. Nevertheless, in view of the signature of the latter, Entities were requested by the State authorities to submit relevant information. This is an encouraging step and the CoE stands ready to provide expertise and assist in this process.

### **Protection of national minorities**

59. On 3 September 2003, the CoE Ministers' Deputies took note of the fact that BiH, has failed to supply its State report, due on 1<sup>st</sup> June 2001 under the Framework Convention on the Protection of National Minorities, ratified in 2000, and decided, for the first time, to authorise the Advisory Committee to commence monitoring in respect of BiH without a State report.

60. The MHRR stressed the lack of staff and resources within the Ministry and informed the Secretariat delegation that the State report would be prepared by the end of this year.

61. As concerns implementation of the new Law on protection of rights of national minorities (not submitted to CoE expertise), the Ministry of Civil Affairs indicated that a Council on Minorities would soon be established. He also underlined that representatives of Minorities (the "Others") were present in both Entity Parliaments. In this respect, it should be noted that the latter expressed their dissatisfaction with the term "Others" in the Constitution, used to name BiH citizens who are not Constituent peoples (Bosniaks, Croats or Serbs). Upon request the CoE could provide an expertise of the legislation in the field of national minorities in BiH.

62. With respect to minority protection the Secretariat delegation insisted on the importance of the European Charter for Regional or Minority Languages, to be signed and ratified by the second year of BiH membership to the CoE (24 April 2004).

### **Freedom of expression and information**

63. During the visit, representatives of the civil society and International Community raised two main issues concerning the media in BiH: the weakness of independent media and the low level of ethics and professionalism of journalists.

64. As concerns the Public Broadcasting System in BiH, CoE is presently providing expertise of the model legislative framework proposed by OHR at State and Entity level.

### **State legislation relating to commitments**

65. Progress in putting in place the required legislative framework was made over the summer. The Secretariat delegation was informed that the State Parliament adopted the BiH Law on Citizenship as well as the Law on 'movement and residence of foreigners' to replace the 1999 law on immigration and asylum.

## **V. RULE OF LAW**

66. The judicial reform is progressing well, given the extent of existing challenges. The legislative framework is now mostly in place and the appointment procedure is pursued. But the lack of resources, as well as the lack of training of the judges and prosecutors –who have not yet all been appointed- are hampering its implementation. The lack of proper execution of decisions of justice and the widespread lack of confidence in the judiciary are other key issues undermining the judicial system. On the other hand, steady and substantial progress is being made in consolidating judicial institutions at State level.

<p><b>Functioning of the judicial system, particularly with regard to execution of court decisions and the fight against corruption and organised crime</b></p>
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### **A. Reform of the Judiciary**

67. Much progress has been achieved in the reform of the judiciary. The FBiH adopted the Criminal Code and Criminal Procedure Codes on 9 July 2003. Civil and Criminal Codes have now been adopted at State level and in both Entities. The process of appointment of judges and prosecutors is still underway and should be completed by spring 2004.

68. However, several interlocutors pointed out the lack of resources, staff, court equipment etc. in implementing these reforms. Training – through the newly established Judicial Training Centres - was also of the utmost importance. [NB: a new EC/CoE Joint programme will be concluded in the nearest future to provide support to the development of the Judicial Training Centres.] Others expressed concern about the economic situation, which could, eventually, jeopardise the judicial reform. Support from the International Community was therefore still necessary. In addition, court backlogs, the lack of execution of court decisions and the general lack of confidence in the judiciary reportedly still undermine the judicial system.

69. With respect to reform of the judiciary at State level, the recent establishment of a BiH Ministry of Justice and of a State Court is considered as a major step forward. These



institutions, which, at present, lack adequate premises, staff, budgetary resources and equipment, need to be strengthened in order to function properly. The establishment of a single State High Judicial and Prosecutorial Council –necessitating a transfer of competencies from the Entities to the State-, of a War Crimes Chamber within the State Court (for which the CoE could provide legislative expertise) and the strengthening of the State Constitutional Court will be other important benchmarks.

70. During the visit, the Secretariat delegation stressed the importance of CoE conventions in the judicial field (e.g. Conventions on extradition, on legal assistance in criminal matters, on money laundering, etc.) to be signed before the end of the second year of BiH membership to the CoE. The Secretariat Delegation was informed of the progress in the preparation for the signature or ratification of some of these instruments.

71. As concerns the fight against corruption, it should also be noted that BiH authorities have agreed to the publication of the first GRECO evaluation report on the country. A proper follow-up should now be given to the report's conclusions and recommendations which focus on the judiciary.

## **B. Police and fight against organised crime**

72. The European Union Police Mission (EUPM) mandate is to establish sustainable policing arrangements under BiH ownership, in accordance with best European and international standards. Its strategic priorities are: the protection of returning refugees and IDPs and the fight against organised crimes and human trafficking. Its other challenges include the strengthening of state-level institutions (in particular the State Border Service and the State information and Protection Agency), the de-politicisation of police work and uneven police salaries.

73. According to EUPM, further restructuring of the police forces may be forthcoming. CoE advice to identify concerns and to ensure compliance with European standards would be most welcome.

74. In June 2003, a statement by EUPM (see <http://www.eupm.org/>) referred to the crime of trafficking of women as one of the most serious aspects of organised crime in BiH. In August 2003, the BiH Council of Ministers concluded an agreement between the State, Entities and Brčko District on establishing and improving co-operation in the fight against trafficking in human beings. In addition, a regional seminar organised in co-operation with the Ministry of Foreign Affairs of BiH within the framework of the CoE Programme against Corruption and Organised Crime in South-Eastern Europe (PACO) took place in Sarajevo from 25 to 27 September 2003. The seminar reviewed progress made in the co-operation between the countries of south-eastern Europe against organised crime and corruption, and addressed the question of the protection of witnesses in relation to acts of corruption, organised crime, and in particular of trafficking in human beings. The seminar aimed at updating the Manual of Co-operation against Organised Crime and Corruption in South-Eastern Europe and elaborating a set of witness protection measures based on international standards and good practice for implementation in the countries of the region.

## **VI. EDUCATION**

75. Major progress has recently been made in the field of primary, secondary and higher education. As concerns eradication of segregation at schools, important progress has also been achieved, in particular with the introduction of a common core curriculum. However, segregation remains *de facto* in a number of schools and deserves particular attention. The accession of BiH to the Bologna process is another benchmark in the education reform process.

**Adoption of education legislation at all levels, reform of curricula and eradication of all segregation in the school system.**

### **A. Laws on Primary and Secondary Education**

#### **- State Framework law**

76. A major step forward has been taken with the adoption of the State Framework law on primary and secondary education on 30 June 2003 and of a Common Core Curriculum, to be used in schools as of 1 September, on 8 August 2003. The Curriculum Agency, foreseen in the law has still to be established. According to some interlocutors of the Secretariat delegation, the very limited time available between the adoption of the State framework Law and the Common Core Curriculum and the entry into force of these new regulations on 1 September 2003 explains some of the difficulties encountered in the implementation of the law. Some still perceive the new law as a threat to their identity. Proper information on the objectives of the reform could help those concerned to overcome such fears and apprehensions.

#### **- Legislation at lower level (Entities and cantons in FBiH)**

77. The International Community is presently drafting a 'prototype' law, which will be used as a basis for the revision of Entity and cantonal laws. During the visit, the delegation called on the authorities to adopt laws fully in line with the State Framework law and the prototype law under preparation. The RS President gave full assurances that the RS law, which already is under preparation, would be fully in line with the principles.

### **B. Eradication of segregation in schools**

78. The persistence of ethnically segregated schools in BiH (the 52 "two schools under one roof" where Bosniaks and Croats are separated) is a matter of grave concern for the CoE. Elimination of all aspects of segregation and discrimination based upon ethnic origins is one of the post-accession commitments. The International Community has repeatedly called for instructions to be issued for the administrative and legal unification of the "two schools under one roof" by the beginning of the school year 2003/2004. In August 2003, the CoE Secretary General urged the authorities at all levels – and especially in Cantons 6 and 7 - to end segregation as a matter of urgency. Later in August, Education Ministers in Canton 6 and 7 finally issued the appropriate instructions on the administrative unification of these "two schools under one roof".

79. The common core curriculum is also expected to be a driving force in tackling segregation and discrimination in the classrooms.

80. However, during its visit, the Secretariat delegation was informed of a resolution on the education reform process adopted by the HDZ on 6 September 2003 which could lead to obstruction of the implementation of administrative and legal unification of “two schools under one roof”. Consequently, some Croat parents prevented their children from joining Bosniaks on the first day of school. In addition, bussing of children to “ethnically pure” schools and bussing of students across the Inter-Entity Boundary Line continue in certain areas. When meeting the Secretariat delegation, State and Federation representatives argued that time was lacking, after the adoption of the Law in June, to ensure a proper implementation of the law as from September 2003. The International Community is currently discussing the situation with authorities, parents and teachers. Renewed efforts of information and clarification (possibly with the active participation of the CoE) could help resolve the problem.

81. Implementation of the new legislation and ending segregation are not only post-accession commitments. They are of the utmost importance for the citizens concerned and for the further European integration of Bosnia and Herzegovina.

### **C. Higher education**

82. On 17 July 2003 the BiH Parliament completed the ratification procedure for the Lisbon Convention on diploma recognition, which also allows for the accession to the Bologna Process (aiming at establishing a European higher education area by the year 2010). This is another benchmark in the reform of higher education in BiH. The Bologna Process will increase mobility of students both within the country and abroad, facilitate recognition of qualifications and improve quality of degree programmes. The authorities are now urged to implement their commitments under the Bologna Declaration and the Education Reform Strategy.

## **VII. COUNCIL OF EUROPE CO-OPERATION PROGRAMMES WITH BiH**

83. The Council of Europe assistance programmes with BiH have continued on an important scale. More than 60 activities have so far been carried out in 2003, in fields such as criminal reform, local government, penitentiary reform, policing, education, freedom of expression and support with policy guidelines in the social sector. The post-accession programme, which was in force for one year, has paved the way for new specialised assistance projects, many of which are carried out together with the European Commission.

84. Since April 2003, a two-year joint programme with the European Commission (the European Initiative for Democracy and Human Rights (EIDHR)), worth € 1,5 M, is in force. This programme is focussing on judicial and penitentiary reform, training in human rights’ standards as well as civic and human rights education. Together with the Commission’s CARDS programme, locally managed by the EC Delegation, the Council of Europe is preparing detailed commentaries on the criminal laws that recently have entered into force in BiH.

85. Two other separate joint programmes with the European Commission are commencing. The first programme concerns support to the establishment of Judicial Training Centres, worth approximately € 903,000. The second programme will support university governance and management (€ 500,000).

86. Bosnia and Herzegovina has in many respects emerged as a model country for the tripartite co-operation between the authorities, the Council of Europe and the European Commission. A first tripartite Steering Committee meeting on further steps within the new joint programmes was organised on 18 September 2003 (a separate document with meeting conclusions is forthcoming).

## Appendix I

### Programme of the Mission of the Secretariat Delegation

#### Thursday, 11 September 2003

##### SARAJEVO

14:15                   Arrival of the first two members of the Secretariat delegation  
16:30-17:30           Briefings at the CoE Sarajevo office

#### Friday, September 12

09:00-10:00          Meeting with representative of ICTY in BiH  
- **Mr. Jan Van Hecke**, Head of Mission

10:00-11:30          Meeting with representative of Helsinki CHR for BiH  
- **Mr Srdjan Dizdarevic**, President

11:30-12:30          Meeting with representative of “State Commission for War Crime”  
- **Mr. Mirsad Tokaca**, President

12:30-13:30          Meeting with representatives of EUPM  
- **Ms. Anika Hansen**, Chief Political Adviser  
- **Mr Rod Rastan, Strategic Analysis Unit**

13:45-14:45          Meeting with representatives of the Constitutional Court of BiH  
- **Mr. Mato Tadic**, President  
- **Mr. Dusko Kalembur**, Secretary General

#### Saturday, September 13

10:00-11:30          Meeting with representatives of Centre for Civil Society Promotion  
- **Mr. Fadil Sero**  
- **Mr. Milan Mrdja**

13:00-15:00          Working lunch with **Mr. Claude Kieffer**, Deputy Director for Education  
OSCE BiH

#### Monday, September 15

09:00-10:00          Meeting with representative of State Court of Bosnia and Herzegovina  
- **Mrs. Vahida Jeftic**, Secretary General of the Court

09:30-11:00          Meeting with Federation BiH Ombudsmen  
-**Ms. Vera Jovanovic**  
- **Mr. Esad Muhibic**

11:00-12:00          Meeting with representative of the Human Rights Chamber BiH  
- **Ms. Therese Nelson**, Executive Officer

12:15-13:30          Meeting with representative of OHR  
- **Mr. Eduard Daust**, Head of the Legal Department

- 14:45 Arrival of Mr. Jean-Louis Laurens, Head of CoE Monitoring Delegation
- 16:00-16:30 Meeting with the BiH MFA  
- **Mr. Mladen Ivanic**, Minister
- 16:35-17:05 Meeting with BiH Presidency (**President Tihic**)
- 17:15-18:15 Meeting with representatives of the BiH Council of Ministers  
- **Mr. Mirsad KEBO**, Minister of HR and Refugees  
- **Mr. Safet Halilovic**, Minister of Civil Affairs
- 19:00-20:00 Meeting with representatives of the BiH Council of Ministers  
- **Mr. Adnan TERZIC**, Prime Minister, BiH Council of Ministers  
- **Mr. Slobodan Kovac**, Minister of Justice
- 20:30 Dinner, hosted by the MFA  
(**Ambassador Hadzimusic**, Multilateral Director)

### **Tuesday, September 16**

- 08:00-08:30 Meeting with the FBiH Presidency  
- **Mr. Niko Lozancic**, President  
- **Mr. S., Dzihanovic, Vice-President**  
- **Mr. D. Radivojevic, Vice-President**
- 08:40-10:05 Meetings with representatives of Federation BiH  
- **Mr. Ahmed Hadzipasic**, Prime Minister  
- **Mr. Zijad Pasic**, Minister of Education  
- **Mrs. Borjana Kristo**, Minister of Justice  
- **Mr. Gavrilo Grahovac**, Minister of Culture  
- **Mr M., Halilovic**, Minister of the Interior
- 10:20-11:50 Meeting with representatives of Collegiums of House of Representatives and House of Peoples BiH Parliamentary Assembly and BiH Parliamentary Delegation to CoE  
- **Mr. Sefik Dzaferovic**, Speaker of the HR BiH PA  
- **Mr. Martin Raguz**, Deputy  
- **Mr. Nikola Spiric**, Deputy  
- **Mr. Velimir Jukic**, Speaker of the HP BiH PA  
- **Mr. Mustafa Pamuk**, Deputy  
- **Mr. Goran Milojevic**, Deputy  
- **Mrs. Azra Hadziahmetovic**, BiH PA delegation to CoE
- 12:05-13:00 Meeting with representatives of the Collegium of the House of Representatives and the House of Peoples, Federation BiH
- 13:15-14:45 Working lunch with BiH PA Delegation to CoE Parliamentary Assembly  
(*transfer by car to Banja Luka*)

**BANJA LUKA**

- 20:00 Working dinner with
- **Mr. Dragan Mikerevic**, Prime Minister, RS Government
  - **Mr. Omer Brankovic**, Deputy Prime Minister
  - **Mr. Branko Krsmanovic**, Minister of Finance

**Wednesday, September 17**

- 09:00-09:55 Meeting with President of Republika Srpska
- **Mr. Dragan Cavic**
- 10:00-11:15 Meeting with representatives of RS Government
- **Ms. Ljiljana Pejic**, assistant Minister, Ministry of Justice
- 11:30-12:45 Meeting representatives of Peoples Assembly of RS and House of Peoples
- **Mr. Dragan Kalinic**, Speaker
  - **Mr. Tomislav Tomljenovic**, Deputy
  - **Mr. Sefik Hafizovic**, Deputy
  - **Mr. Remzija Kadric**, Speaker, Council of Peoples ?
  - **Mr. Miroslav Mikes**, Deputy Speaker, Council of Peoples ?
  - **Mr. Stevanovic Mirko**, Secretary of Council of Peoples
- 13:00-14:45 Lunch, hosted by **Mr. Dragan Kalinic**, Speaker of Parliament  
*Departure for Sarajevo by a part of the Delegation*
- 15:00-16:00 Meeting with **Ms Lidija Zivanovic**, Helsinki Citizens Assembly, and Mr Bubic, Lex International
- 16:00-17:00 Meeting with Ombudsmen of RS **Mrs Branka Kolar-Mijatovic** and **Mr Franjo Crnjac**
- 17:00-18:00 Meeting with **Mrs Sanja Stefanovic**, Head of the Legal Office, OHR

**SARAJEVO**

- 20:00 (Consultations with the EC prior to 18 September Steering Committee)

**Thursday, September 18**

- 07:30-08:45 Working breakfast with representative of City of Sarajevo
- **Mr. Muhidin Hamamdžić**, Mayor
- 08:45-12:45 EC/CoE Joint Programmes Steering Committee meeting
- 12:45-13:15 Meeting with the Ambassador of the Netherlands (representing the Chair of Committee of Ministers) and the Ambassador of Italy (representing the European Union)
- 13:00-14:00 Lunch for the Steering Committee participants (Representatives of Italy, the Netherlands, OHR and the OSCE also invited)
- 14:00 Delegation departure for the airport

**Appendix II****UN Resolution (1491) 1993 adopted by the Security Council on 11 July 2003****UNITED  
NATIONS****S**

Distr.  
GENERAL  
S/RES/1491 (2003)  
11 July 2003

Original: ENGLISH

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**Resolution 1491 (2003)****Adopted by the Security Council at its 4786th meeting,  
on 11 July 2003**

*The Security Council,*

*Recalling* all its previous relevant resolutions concerning the conflicts in the former Yugoslavia and relevant statements of its President, including resolutions 1031 (1995) of 15 December 1995, 1088 (1996) of 12 December 1996 and 1423 (2002) of 12 July 2002,

*Reaffirming* its commitment to the political settlement of the conflicts in the former Yugoslavia, preserving the sovereignty and territorial integrity of all States there within their internationally recognized borders,

*Emphasizing* its full support for the High Representative's continued role in Bosnia and Herzegovina,

*Underlining* its commitment to support the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (collectively the Peace Agreement, S/1995/999, annex), as well as the relevant decisions of the Peace Implementation Council (PIC),

*Emphasizing* its appreciation to the High Representative, the Commander and personnel of the multinational stabilization force (SFOR), the Organization for Security and Cooperation in Europe (OSCE), and the personnel of other international organizations and agencies in Bosnia and Herzegovina for their contributions to the implementation of the Peace Agreement,

*Emphasizing* that a comprehensive and coordinated return of refugees and displaced persons throughout the region continues to be crucial to lasting peace,

*Recalling* the declarations of the Ministerial meetings of the Peace Implementation Conference,



*Noting* the reports of the High Representative, including his latest report of 21 October 2002 (S/2002/1176),

*Determining* that the situation in the region continues to constitute a threat to international peace and security,

*Determined* to promote the peaceful resolution of the conflicts in accordance with the purposes and principles of the Charter of the United Nations,

*Recalling* the relevant principles contained in the Convention on the Safety of United Nations and Associated Personnel adopted on 9 December 1994 and the statement of its President of 10 February 2000 (S/PRST/2000/4),

*Welcoming and encouraging* efforts by the United Nations to sensitise peacekeeping personnel in the prevention and control of HIV/AIDS and other communicable diseases in all its peacekeeping operations,

*Acting* under Chapter VII of the Charter of the United Nations,

## I

1. *Reaffirms* once again its support for the Peace Agreement, as well as for the Dayton Agreement on implementing the Federation of Bosnia and Herzegovina of 10 November 1995 (S/1995/1021, annex), *calls upon* the parties to comply strictly with their obligations under those Agreements, and *expresses* its intention to keep the implementation of the Peace Agreement, and the situation in Bosnia and Herzegovina, under review;

2. *Reiterates* that the primary responsibility for the further successful implementation of the Peace Agreement lies with the authorities in Bosnia and Herzegovina themselves and that the continued willingness of the international community and major donors to assume the political, military and economic burden of implementation and reconstruction efforts will be determined by the compliance and active participation by all the authorities in Bosnia and Herzegovina in implementing the Peace Agreement and rebuilding a civil society, in particular in full cooperation with the International Tribunal for the Former Yugoslavia, in strengthening joint institutions, which foster the building of a fully functioning self-sustaining state, able to integrate itself into the European structures and in facilitating returns of refugees and displaced persons;

3. *Reminds* the parties once again that, in accordance with the Peace Agreement, they have committed themselves to cooperate fully with all entities involved in the implementation of this peace settlement, as described in the Peace Agreement, or which are otherwise authorized by the Security Council, including the International Tribunal for the Former Yugoslavia, as it carries out its responsibilities for dispensing justice impartially, and *underlines* that full cooperation by States and entities with the International Tribunal includes, inter alia, the surrender for trial of all persons indicted by the Tribunal and provision of information to assist in Tribunal investigations;

4. *Emphasizes* its full support for the continued role of the High Representative in monitoring the implementation of the Peace Agreement and giving guidance to and coordinating the activities of the civilian organizations and agencies involved in assisting the parties to implement the Peace Agreement, and *reaffirms* that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make

recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997;

5. *Expresses* its support for the declarations of the Ministerial meetings of the Peace Implementation Conference;

6. *Recognizes* that the parties have authorized the multinational force referred to in paragraph 10 below to take such actions as required, including the use of necessary force, to ensure compliance with Annex 1-A of the Peace Agreement;

7. *Reaffirms* its intention to keep the situation in Bosnia and Herzegovina under close review, taking into account the reports submitted pursuant to paragraphs 18 and 20 below, and any recommendations those reports might include, and its readiness to consider the imposition of measures if any party fails significantly to meet its obligations under the Peace Agreement;

## II

8. *Pays tribute* to those Member States which participated in the multinational stabilization force established in accordance with its resolution 1088 (1996), and *welcomes* their willingness to assist the parties to the Peace Agreement by continuing to deploy a multinational stabilization force;

9. *Notes* the support of the parties to the Peace Agreement for the continuation of the multinational stabilization force, set out in the declaration of the Ministerial meeting of the Peace Implementation Conference in Madrid on 16 December 1998 (S/1999/139, annex);

10. *Authorizes* the Member States acting through or in cooperation with the organization referred to in Annex 1-A of the Peace Agreement to continue for a further planned period of 12 months the multinational stabilization force (SFOR) as established in accordance with its resolution 1088 (1996) under unified command and control in order to fulfil the role specified in Annex 1-A and Annex 2 of the Peace Agreement, and *expresses* its intention to review the situation with a view to extending this authorization further as necessary in the light of developments in the implementation of the Peace Agreement and the situation in Bosnia and Herzegovina;

11. *Authorizes* the Member States acting under paragraph 10 above to take all necessary measures to effect the implementation of and to ensure compliance with Annex 1-A of the Peace Agreement, *stresses* that the parties shall continue to be held equally responsible for compliance with that Annex and shall be equally subject to such enforcement action by SFOR as may be necessary to ensure implementation of that Annex and the protection of SFOR, and *takes note* that the parties have consented to SFOR's taking such measures;

12. *Authorizes* Member States to take all necessary measures, at the request of SFOR, either in defence of SFOR or to assist the force in carrying out its mission, and *recognizes* the right of the force to take all necessary measures to defend itself from attack or threat of attack;

13. *Authorizes* the Member States acting under paragraph 10 above, in accordance with Annex 1-A of the Peace Agreement, to take all necessary measures to ensure compliance with the rules and procedures established by the Commander of SFOR, governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic;

14. *Requests* the authorities in Bosnia and Herzegovina to cooperate with the Commander of SFOR to ensure the effective management of the airports of Bosnia and Herzegovina, in the

light of the responsibilities conferred on SFOR by Annex 1-A of the Peace Agreement with regard to the airspace of Bosnia and Herzegovina;

15. *Demands* that the parties respect the security and freedom of movement of SFOR and other international personnel;

16. *Invites* all States, in particular those in the region, to continue to provide appropriate support and facilities, including transit facilities, for the Member States acting under paragraph 10 above;

17. *Recalls* all the agreements concerning the status of forces as referred to in Appendix B to Annex 1-A of the Peace Agreement, and *reminds* the parties of their obligation to continue to comply therewith;

18. *Requests* the Member States acting through or in cooperation with the organization referred to in Annex 1-A of the Peace Agreement to continue to report to the Council, through the appropriate channels and at least at monthly intervals;

\* \* \*

19. *Welcomes* the deployment by the European Union (EU) of its Police Mission (EUPM) to Bosnia and Herzegovina since 1 January 2003;

20. *Also requests* the Secretary-General to continue to submit to the Council reports from the High Representative, in accordance with Annex 10 of the Peace Agreement and the conclusions of the Peace Implementation Conference held in London on 4 and 5 December 1996 (S/1996/1012), and later Peace Implementation Conferences, on the implementation of the Peace Agreement and in particular on compliance by the parties with their commitments under that Agreement;

21. *Decides* to remain seized of the matter.

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