



**REPUBLIC OF SRPSKA**  
**GOVERNMENT**  
OFFICE OF THE PRIME MINISTER

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Trg Republike Srpske 1, Banja Luka, tel.: 051/339-103, fax: 051/339-119 e-mail:kabinet@vladars.net

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Baroness Catherine Ashton  
High Representative for Foreign Affairs and Security Policy  
Vice President of the European Commission  
European Union  
Rue de la Loi 200  
1000 Brussels, Belgium

Dear Baroness Ashton:

I wish you every success as the European Union's first High Representative for Foreign Affairs and Security Policy, and the Government of Republika Srpska ("Government") looks forward to working cooperatively with you in the coming years.

Having read the twenty-first report to the UN Security Council on the activities of EUFOR, however, I must express the Government's surprise and disappointment with respect to certain assertions made in that report. I am thus writing to clarify the positions of the Government with regard to these issues. While this letter will outline the Government's views on some key points, I have also attached the Second Report of the Republika Srpska to the UN Security Council, as well as other papers the Government has issued, which provide a more complete exposition.

**A Dramatic Departure From Past EUFOR Reports**

The twenty-first EUFOR Report ("Report"), as it states in its Introduction, is in response to UN Security Council resolutions requesting periodic reports "on the activities of EUFOR." Section III of the Report, which concerns the "Security Situation and EUFOR Activities," and Section IV, the "Outlook," are a suitable response to the Security Council's request. As the Report observes, "The overall security situation in BiH remained calm and stable throughout the reporting period,"<sup>1</sup>

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<sup>1</sup> Twenty-first Three-monthly Report on Operation ALTHEA to the United Nations Security Council ("Report") at para. 9.

and the “security situation is expected to remain stable despite prospects of continuing political tension.”<sup>2</sup>

Sections III and IV are also fully consistent with Article XII of Annex 1A to the Dayton Accords, which provides that the IFOR Commander (and the EUFOR Commander as his successor) “is the final authority in theatre regarding interpretation of this agreement on the military aspects of the peace settlement [Annex 1A] . . . .” Moreover, the content of Sections III and IV is in line with that of the 20 earlier EUFOR reports.

By contrast, Section II, entitled “Political Background,” departs radically from earlier EUFOR reports and exceeds the scope of the Security Council’s request and EUFOR’s mandate under Annex 1A to the Dayton Accords. In particular, the Government is dismayed at the Report’s pronouncement that Republika Srpska has been “in open violation of Annexes 2, 4 and 10” and has “refused to honour the High Representative’s Annex 10 authority.”<sup>3</sup> It is unprecedented for a EUFOR report to declare that a party is in violation of the Dayton Accords — an assertion which the Government categorically rejects. It is difficult to respond to claims that the Government is violating certain annexes of the Dayton Accords because the Report, despite the seriousness of the allegations, does not identify any factual basis or what provisions of these annexes Republika Srpska is alleged to be breaching.

Perhaps most confounding is the Report’s claim that the Government is violating Annex 4, the BiH Constitution. The Government strictly adheres to the BiH Constitution (along with the rest of the Dayton Accords) and does not know to what this allegation might refer. More importantly, the legal determination of whether a party is in breach of the Constitution is primarily the right and duty of the BiH Constitutional Court – not EUFOR, the European Union, OHR, or any other non-BiH institution.<sup>4</sup>

### **The High Representative’s Legal Authority**

The Government does not, as the Report asserts, refuse “to honor the High Representative’s Annex 10 authority.” The Government has always honored and respected any exercise of authority by the High Representative that is grounded in Annex 10. What the Government cannot accept is the High Representative’s assertion of unbridled powers that cannot be found in even the most imaginative reading of Annex 10. Annex 10 gives the High Representative powers such as to “facilitate,” “mobilize,” and “coordinate.” 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 opportunity to appeal.<sup>5</sup> The High Representative’s use of preemptory powers – the so-called “Bonn powers” – has been condemned by, *inter alia*, the Council of Europe’s Parliament<sup>6</sup> and Venice Commission<sup>7</sup> as violating the European Convention on Human Rights.

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<sup>2</sup> Report at section IV.

<sup>3</sup> Report at para. 4.

<sup>4</sup> Parties to Annex 4 have the right and obligation to interpret the Annex, in accordance with principles of treaty interpretation under international law.

<sup>5</sup> A copy of Annex 10 is attached.

<sup>6</sup> *See, e.g.*, Council of Europe Res. 1384 (2004).

<sup>7</sup> *See, e.g.*, Venice Commission, Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (1995).

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.

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 an order of the High Representative conflicts 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. Attached is a statement of the Government explaining in greater detail its decision not to accept unlawful decrees of the High Representative.

### **Legal Redress For Individuals Summarily Punished by the High Representative**

The Report criticizes the Government for saying "that it would sue the current and previous High Representatives for misuse of the Bonn Powers."<sup>8</sup> This refers to the Government's efforts to secure a peaceful and legal remedy on behalf of the citizens whose rights have been violated by the High Representative. 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 violated other 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.

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 Human Rights ("ECHR").<sup>9</sup> In response, however, the High Representative nullified the Constitutional Court's decision<sup>10</sup> in defiance of the BiH Constitution's command that "[d]ecisions of the Constitutional Court shall be final and binding."<sup>11</sup> 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."<sup>12</sup> 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. In October, the Government wrote to Swedish Foreign Minister Carl Bildt, in Sweden's capacity as President of the European Union, and asked him 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

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<sup>8</sup> Report at para. 4.

<sup>9</sup> Appeal of Milorad Bilbija et al, No. AP-953/05, Decision on Admissibility and Merits, published Feb. 2007.

<sup>10</sup> 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.

<sup>11</sup> BiH Constitution, art. VI(4).

<sup>12</sup> 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.

within the Council of Europe.<sup>13</sup> Although the Government has not received a response, it will continue to work to secure legal recourse for individuals injured by the High Representative's summary decrees. A more detailed examination of this issue is found in the letter to the Swedish Minister, which is attached. The attachment referred to in the letter to Foreign Minister Bildt is the annex to the Government's Second Report to the Security Council, which is also attached.

### **The Government Is Not Planning A Secession Referendum**

The Report alleges that “[o]ccasionally, Republika Srpska political leaders . . . called into question BiH's integrity as a state and raised the possibility of secession.”<sup>14</sup> The Government believes this charge stems from a misunderstanding of Republika Srpska's plans to hold a referendum, including the Republika Srpska National Assembly's approval of updated referendum legislation. Some have alleged that the Government is planning a secession referendum. This is false, as the Government has stated officially and unofficially. 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. 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, 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.”<sup>15</sup> 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 . . . .”<sup>16</sup> 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. The attached position paper on referenda explains the Government's position in greater detail.

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<sup>13</sup> 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.

<sup>14</sup> Report at para. 4.

<sup>15</sup> Council of Europe, Parliamentary Assembly Res. 1592 (2007), 23 Nov. 2007, para. 1.

<sup>16</sup> Council of Europe, Congress of Local and Regional Authorities Res. 235 (2007) (emphasis added).

## **The State Property Issue**

The Report is correct that no progress has been made recently on the apportionment of state property, which is one of the PIC's five objectives and two conditions for its support of the end of the High Representative's mission. The reason is simple: for a negotiation to have any prospect of success, all sides must want a resolution. The Government, which believes OHR's closure is long overdue, is 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 OHR to remain in place, at least until the BiH Constitution is "reformed" to replace the Dayton federal system with a centralized state.

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.<sup>17</sup>

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.<sup>18</sup>

The EU and other members of the international community should not allow such actions to hold hostage the closure of the High Representative.

## **The European Court of Human Rights' Decision in *Sejdic and Finci***

In light of the recent decision of the European Court of Human Rights in the *Case of Sejdic and Finci v. BiH*, noted in the Report, 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 *Sejdic and Finci* decision has highlighted the urgent need for this reform.

As the Venice Commission has recognized, reforming election eligibility would make the Constitution fully compatible with the ECHR.<sup>19</sup> BiH leaders should focus on the achievable task of reforming the election eligibility provisions in time for this year's elections. The need for specific changes to the Constitution in response to the ECHR's decision should not be used as a pretext, as it has been, to pressure BiH leaders into a broader – and infinitely more controversial – constitutional transformation.

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<sup>17</sup> International Crisis Group, *Bosnia's Dual Crisis*, 12 Nov. 2009 ("ICG Report"), pp. 5-6.

<sup>18</sup> ICG Report at p. 10. *See also* fn 17.

<sup>19</sup> In a 2005 Opinion analyzing the consistency of the BiH Constitution with the ECHR, the Venice Commission stated that aside from the election eligibility provisions, "[n]o other problems of compatibility of the BiH Constitution with the ECHR are apparent . . . ." Venice Commission, *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative*, (2005) at para. 66.

**Conclusion**

I hope this letter and its attachments help clarify the Government's positions on these important issues. The Government wishes to express its appreciation for the interest and support of the European Union with respect to the situation in BiH. My Government is committed to having a cooperative relationship with the European Union as BiH continues on the path of EU integration. I would be pleased to meet with you at your convenience to discuss these matters or to arrange for members of my staff to meet with your staff for this purpose.

Please be assured of my highest consideration.

Sincerely,

Milorad Dodik

Prime Minister of Republic of Srpska

