

# **The Path to Partnership for Peace**



**Report of the  
Defence Reform Commission**

# THE PATH TO PARTNERSHIP FOR PEACE: REPORT OF THE DEFENCE REFORM COMMISSION

Change is resisted because many people fear the uncertain future it will produce. We must, therefore, envision, describe, and chart a path to the attractive future that is within Bosnia and Herzegovina's grasp. Partnership for Peace, NATO, and the European Union - this future offers security and prosperity that is much greater than the current situation.

Submitted by the Defence Reform Commission

Sarajevo

September 25, 2003

25 September 2003

Chairman  
**Mr. James Locher III**

Lord Paddy Ashdown  
High Representative  
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**Mr. Enes Becirbasic**  
Secretary General, SCMM

**Amb. Robert Beecroft**  
OSCE Representative

Dear Lord Ashdown:

**Mr. Lutvo Mehonic**  
Representative of the  
President of FBiH

We are pleased to present the report of the Defence Reform Commission, in accordance with your Decision 139/03 of May 9, 2003.

**Mr. Miroslav Nikolic**  
Minister of Defence, FBiH

The legislative proposals offered in this report comply with the requirements of your decision, guidelines for membership in NATO's Partnership for Peace programme, and OSCE politico-military commitments of Bosnia and Herzegovina. If the Commission's legislative proposals are enacted into law, Bosnia and Herzegovina will become a credible candidate for Partnership for Peace.

**Mr. Stjepan Pocrnja**  
Deputy Secretary  
General, SCMM

**Mr. Nikola Radovanovic**  
Representative of the  
President of the RS

The Commission established three criteria to guide its work. It agreed that its recommendations needed to be organizationally sound, politically acceptable, and capable of full and timely implementation.

**Amb. Robert Serry**  
NATO Representative

**Mr. Savo Sokanovic**  
Deputy Secretary  
General, SCMM

Consistent with these criteria, this report recommends creation of a single defence establishment with an appropriate and workable division of responsibilities between State and entity officials and organizations. The Commission reached consensus on a wide range of contentious issues, suggesting that many interests will support its recommendations. Throughout its work, the Commission considered the implementation challenges of its recommended changes and is convinced that they can be managed as long as there is sufficient motivation and political will.

**Mr. Milovan Stankovic**  
Minister of Defence, RS

**Lt.Gen. William Ward**  
SFOR Representative

**Amb. Werner Wnendt**  
Representative of the EU  
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The Commission gave special attention to the need for the Armed Forces of Bosnia and Herzegovina to be affordable. It has recommended downsizing of many elements of the defence establishment: active forces, reserves, conscription, ministry headquarters and field staffs, weapon storage sites, and excess property. State and entity governments will need to act decisively on downsizing if Bosnia and Herzegovina is to have a balanced defence budget and to create a modern and professional force capable of meeting NATO standards. The international community will also need to act decisively to provide financial assistance needed to initiate key defence reforms or downsizing programs.

Observers:  
**Amb. Sina Baydur**  
Representative of the  
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**Amb. Clifford Bond**  
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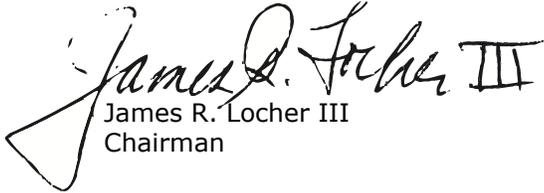
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Representative of the  
European Union Presidency

**Amb. Alexander  
Grishchenko**  
Representative of the  
Russian Federation

The Commission has also recommended that Bosnia and Herzegovina look beyond Partnership for Peace and make an explicit commitment to achieving membership in NATO in the future. Qualifying for NATO membership will require additional reforms. The Commission's recommendations provide a basis for these future reforms. In this regard, the Commission considers its recommendations as an important first step on Bosnia and Herzegovina's road to NATO membership and full integration with Euro-Atlantic structures.

The Commission looks forward to assisting State and entity governments and parliaments in their consideration of the recommendations in this report.

*Commissioners:*



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Chairman



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## **1. Executive Summary**

The Defence Reform Commission based its work on achieving the defence targets and pledges of Bosnia and Herzegovina (presented to the Peace Implementation Council in January 2003), mandates contained in the High Representative's decision of May 9 establishing the commission, guidelines for Partnership for Peace membership, and OSCE politico-military commitments of Bosnia and Herzegovina. To achieve these objectives and commitments, the Commission adhered to three overarching criteria. It ensured that its recommendations were organisationally sound, politically acceptable, and capable of full and timely implementation.

The benefits of Partnership for Peace membership are many. NATO has assisted Partner countries in improving their defence and security capacities in numerous areas. Beyond such tangible benefits, an invitation to Partnership for Peace signals an acceptance by NATO and member nations that a country has been accepted into an association of like-minded democratic nations. An invitation also reflects a strengthened political legitimacy, with favourable implications for the political and economic viability of an emerging democracy. Nations who have joined and actively participated in Partnership for Peace have found that their involvement has facilitated further steps toward European integration. The recognition of political and military stability encourages foreign investment, which creates jobs and increases prosperity. The fulfilment of recommendations from this report, the defence structures of Bosnia and Herzegovina, as well as the laws establishing those structures, would be a significant step towards harmonisation with Euro-Atlantic standards, and would help to ensure credible Partnership for Peace candidacy.

Joining Partnership for Peace is an important step. The Commission also urges Bosnia and Herzegovina to look beyond the Partnership for Peace programme and make an explicit commitment to seeking NATO membership. Bosnia and Herzegovina will need to undertake additional reforms in the future to meet

NATO's standards. The Commission has envisioned possible options for such future reforms and has ensured that its recommendations in the immediate period will facilitate future changes.

Bosnia and Herzegovina is not currently a credible candidate for Partnership for Peace. Current arrangements and the excessive size of the entity armies have led to the following deficiencies:

- lack of adequate State-level command and control of the armed forces of Bosnia and Herzegovina;
- ambiguity and inconsistency in the law regarding the competencies of the State and entities for defence matters;
- insufficient democratic oversight and control of the armed forces, especially by parliaments;
- lack of transparency at all levels for defence matters;
- non-compliance with international obligations, primarily OSCE politico-military accords;
- an unjustifiable number of reserves and the small arms and light weapons to arm them;
- excessive, deteriorating arms at too many locations;
- waste of human and financial resources in the defence sector;
- forces sized and equipped for missions no longer appropriate for the security situation.

The Commission determined that each of its recommended reforms is consistent with the provisions of the Constitution of Bosnia and Herzegovina. Four Constitutional provisions provide the bases for the Commission's recommendations. Article III.5 envisages the State assuming responsibilities as necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina and that "additional institutions may be established as necessary to carry out such responsibilities." This provision articulates a fundamental principle of Statehood: a State must have the capacity to defend its territorial integrity and sovereignty. To

have this capacity, a State must control its armed forces. Article III.1 determines that foreign policy is the responsibility of the institutions of Bosnia and Herzegovina. The conduct of foreign policy includes defending borders and projecting force abroad. Article III.2 stipulates the responsibility of the entities to provide all necessary assistance to the Government of Bosnia and Herzegovina to enable it to honour the international obligations of the State. Article IV.4 grants authority to the Parliamentary Assembly to enact legislation necessary to implement the decisions of the Presidency of Bosnia and Herzegovina.

The new Defence Law of Bosnia and Herzegovina, proposed by the Commission, is supported by these Constitutional imperatives, as are the proposed amendments to the entity Constitutions, Laws on Defence, and Republika Srpska Law on Army. In addition to these legislative proposals, the Commission recommends a new Law on Army of the Federation of Bosnia and Herzegovina (presented separately) and a legislative framework for a new State-level Ministry of Defence. This framework includes amendments to the Law on Council of Ministers and Law on Ministries and a proposed decision by the Presidency of Bosnia and Herzegovina to transfer competencies to the Ministry from the Standing Committee on Military Matters.

Most fundamentally, the Commission's recommendations recognise the supremacy of the State for defence matters. A single defence establishment for Bosnia and Herzegovina is proposed with an appropriate and workable division of responsibilities between State and entity institutions. The Presidency would act collectively in exercising command and control of the Armed Forces of Bosnia and Herzegovina in peacetime, crises, and war. A State-level Ministry of Defence, headed by a Minister of Defence with assistance from two Deputy Ministers, would be created to assist the Presidency. The Minister would be a full-voting member of the Council of Ministers and would be appointed like all other State Ministers. The Minister would be in both the chain of command for military operations, known as the operational chain of command, and the chain of command for manning, training, and equipping the armed forces, known as the administrative chain of command.

Subordinate to the Minister in the operational chain of command would be a Chief of Staff of a new Joint Staff of Bosnia and Herzegovina. Key duties of

the Chief of Staff would include acting as the senior military advisor to the Presidency and Minister and transmitting orders to operational commands and units. The Joint Staff would prepare and oversee the execution of orders and plan and direct military operations. A second new State-level military institution would be created: an Operational Command, headed by a Commander. This officer would serve as the commander for any mission requiring the deployment or employment of any operational element of Armed Forces of Bosnia and Herzegovina. Under the Commission's recommendations, the State would have the exclusive right to mobilise and employ forces, except in a highly extraordinary natural disaster or accident during which an entity President could authorise an immediate, but limited use of units from the entity army to assist civil authority.

The entities would continue to make an important contribution to defence in Bosnia and Herzegovina. They would still perform the administrative functions of manning, training, and equipping the Army of the Federation of Bosnia and Herzegovina and Army of the Republika Srpska. Each entity would have a Ministry of Defence, headed by a Minister. The Joint Command would continue to exist in the Federation of Bosnia and Herzegovina, and the Republika Srpska would retain its General Staff. The duties of these two military staffs would be narrowed to only administrative functions. The Army of the Federation of Bosnia and Herzegovina and Army of the Republika Srpska would continue to exist and provide the operational capabilities of the Armed Forces of Bosnia and Herzegovina.

In addition to the day-to-day administration and support of their armies, the entity ministries and military staff would have responsibility for supporting any operations or activities of units under State operational command. The entity Ministers of Defence would report to the State Minister of Defence who would establish standards for the administrative activities of the entities. Common standards would promote compatibility and interoperability between units of the entity armies and better ensure meeting the support requirements of the operational chain of command.

The Commission's recommendations for parliamentary reforms are guided by the principles of democratic civilian control of the armed forces, transparency in defence planning and budgeting, and the need for fiscal limits for defence

to be established by political authorities in a democratic manner. Key among recommended reforms is the creation of a new Joint Committee on Defence and Security in the Parliamentary Assembly of Bosnia and Herzegovina. Furthermore, under the proposed recommendations the Parliamentary Assembly would have exclusive power to declare a state of war and ratify a State emergency at the request of the Presidency of Bosnia and Herzegovina. It would exercise legal oversight authority over the Armed Forces of Bosnia and Herzegovina and all State-level institutions. The Parliamentary Assembly would have primary authority to make and approve laws governing the organisation, funding, manning, training, equipping, deploying, and employing the Armed Forces of Bosnia and Herzegovina. It would confirm the nomination of the Minister and Deputy Ministers of Defence, Chief and Deputy Chiefs of Staff of the Joint Staff of Bosnia and Herzegovina, and all General officers. Entity parliamentary responsibilities would be amended to reflect the new division of competencies between the State and entities. The entity parliaments will need to undertake significant reforms to meet Euro-Atlantic standards on democratic parliamentary oversight and control of the armed forces.

The Armed Forces of Bosnia and Herzegovina are not affordable. Many areas of the defence system will need to be reduced to balance defence budgets and provide modern and professional armed forces. The Commission recommends reductions in professional soldiers from 19,090 to 12,000 and in reserves from 240,000 to 60,000. The intake of conscripts would be reduced by 50 percent, and the conscript training period shortened from six to four months. The headquarters and field staffs of the entity Ministries of Defence would also be reduced by 25 percent. The Commission also recommends accelerated efforts to reduce weapon storage sites and excess property, including business holdings. To demonstrate the capacity of the Armed Forces of Bosnia and Herzegovina to work compatibly, under a single chain of command, the Commission recommends that Bosnia and Herzegovina combine the entity demining teams into a single demining unit organised under the State. This would have the added benefit of enhancing Bosnia and Herzegovina's credibility in the field of demining, thereby attracting greater attention to the problem as well as international donors. If implemented, the Commission's recommendations would lead to lower defence budgets and reduce the defence burden on the peoples and economy of Bosnia and Herzegovina.

Because successful reforms require an effective implementation process, the Commission has given considerable attention to implementation. It has identified steps to be taken and offered ideas on organisational structures, personnel levels, facilities, and equipment for new institutions. The Commission recommends the establishment of a Transition Management Office, whose duties would be to oversee, assist and support the implementation process from start to finish, identify and eliminate obstacles, and keep leadership informed.

## **2. Concept Paper**

The Defence Reform Commission has approved the following concepts in order to guide its work toward creation of a modern, effective defence establishment that adheres to the principles set forth in the Decision of the High Representative. This paper summarises the Commission's recommendations.

### **Preamble**

The purpose of the defence system of Bosnia and Herzegovina is to serve the State, in accordance with the Constitution of Bosnia and Herzegovina, by organising, training and equipping armed forces and executing the missions established for those forces in law and the Defence Policy of Bosnia and Herzegovina. This defence system consists of State- and entity-level defence institutions and structures as well as the armies of the Federation of Bosnia and Herzegovina\* and the Republika Srpska. The Presidency of Bosnia and Herzegovina, as a collective body, is the supreme authority over the Armed Forces of Bosnia and Herzegovina and, as the sole legal authority to authorise the mobilisation and employment of armed forces, both active and reserve, will exercise command and control over all armed forces of BiH at all times. The entities will be responsible for organizing, training and equipping their respective armies, in accordance with standards and readiness levels established by the State, in order to assure those forces are prepared to carry out the lawful orders of the Presidency.

\*The Army of the Federation of Bosnia and Herzegovina consists of units of the Army of BiH and Croat Defence Council up to the Corps level.

## **Division of Competencies between the State of BiH and the Entities**

**State Competencies** - The State of BiH would have the following competencies in defence matters:

- Operational and administrative command and control of all armed forces of BiH, during peace, operations, and war.
- Responsibility for developing BiH strategy and policy for defence and military matters.
- Mobilizing, deploying, and employing forces, including reserve forces, within BiH and abroad.
- Establish force structures and standards for armed forces capability and readiness levels.
- Set priorities for training and equipping armed forces to meet capability and readiness levels.
- Establish standards for organizing, manning and paying armed forces.
- Declaring war or a State emergency.
- Oversight of all aspects of defence and military matters.
- Planning and oversight for all military intelligence and the conduct of all strategic and operational intelligence.
- Confirmation or approval of all general officer appointments, promotions, removals.
- Representing BiH in international forums.
- Ensuring that entity defence laws, regulations and policies are consistent with State laws, regulations and policies.
- Organizing, manning, paying, training and equipping State-level defence structures.
- Democratic parliamentary oversight and control over defence plans and budgets.

- Approval of the budget for defence institutions at BiH level.

**Entity Competencies** - The entities would have the following competencies in defence matters:

- Organizing, manning, and paying entity armies, according to standards set by the State.
- Support in implementation of operational commands.
- Authorise the short-term use of military units to assist civil authorities in responding to extraordinary natural disasters and accidents, according to procedures established by the BiH Minister of Defence.
- Promotion, assignment and retirement of members of the military in accordance with the laws and regulations and policies established at BiH level.
- Equipping, supplying, and maintaining entity armies according to standards set by the State.
- Training entity armies according to standards set by the State.
- Maintaining reserves according to standards set by the State.
- Implementation of democratic parliamentary control over defence institutions in the entity.
- Approval of defence budget at the entity level, within defined fiscal limits.
- Ensuring of transparency of all activities conducted and implemented by the entity armies.
- Other issues from the field of defence that are not within the competence of defence institutions at BiH level.

**Operational Chain of Command (illustrated in the following diagram)**

The three members of the Presidency of the State of BiH would exercise collectively civilian command of the armed forces of BiH. The operational chain of command would pass from the collective Presidency, through the Minister of Defence, through the Chief of Staff of the BiH Joint Staff, and through the Commander of the Operational Command directly to the commanders of operational commands and units of all BiH armed forces.

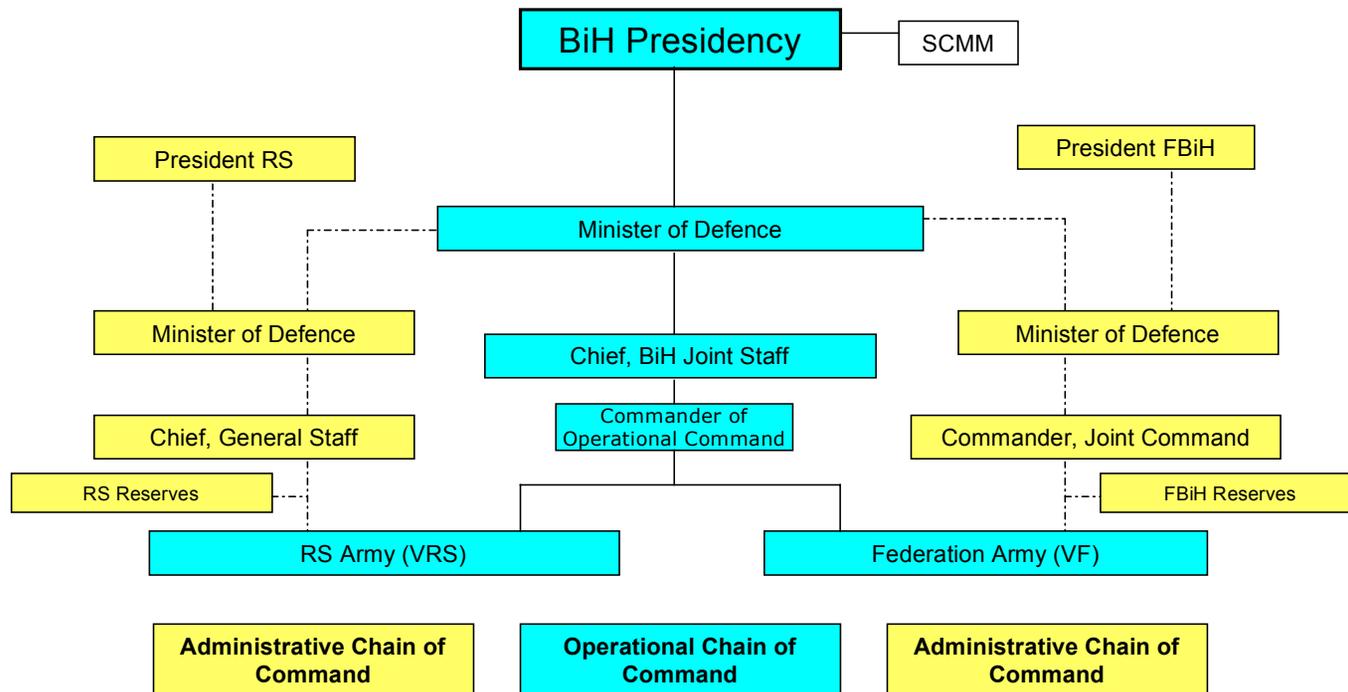
The positions of BiH Minister of Defence, Chief of Staff of the BiH Joint Staff, and Commander of the Operational Command would be filled by different Constituent peoples.

Any orders to deploy or mobilize BiH armed forces would come through the operational chain of command. The operational chain of command would have authority to organise and employ commands and forces, assign tasks, designate objectives, and give authoritative direction over all aspects of military operations, specifying readiness, multi-unit training, and logistics necessary to accomplish missions assigned by the BiH Presidency.

**Administrative Chain of Command (illustrated in the following diagram)**

The administrative chain of command is the chain of command for organizing, manning, equipping, and training entity armies. The administrative chain of command would pass from the collective BiH Presidency through the Minister of Defence, through the entity Minister of Defence, and through the entity General Staff or Joint Command to their subordinate units.

The administrative chain of command would have authority over subordinate organisations for administration and support, including organisation of units, control of resources and equipment, personnel management, unit logistics, individual and unit training, mobilisation, demobilisation, and discipline.



## **Roles and Functions of State Institutions**

### **The Parliamentary Assembly of Bosnia and Herzegovina would:**

- Have oversight authority for all BiH defence and military matters.
- Have powers to oversee, investigate and report on any defence or military matter.
- Have the exclusive power to declare state of war, at the request of the Presidency.
- Ratify State emergency at the request of the Presidency.
- Continue to exercise its existing constitutional responsibilities for approving the State budget, including supplemental budgets for unanticipated military operations; adopting necessary legislation, including rules to govern and regulate the Ministry of Defence and armed forces; and ratifying treaties, including international defence agreements.
- Confirm the nomination of the Minister and Deputy Minister of Defence, Chief of Staff of the BiH Joint Staff and his deputies, the Commander of the Operational Command, and other general officers of BiH armed forces.
- Have access to confidential documents and an obligation to respect confidentiality.
- Establish a joint committee responsible for defence whose mandate would include:
  - Reviewing reports on the work of BiH executive bodies in the field of defence.
  - Providing opinions, evaluations, and recommendations to the House of Peoples and House of Representatives after reviewing reports and information from the field of defence.
  - Reviewing and proposing laws in the committee's work scope.
  - Reviewing and providing opinions, recommendations, and amendments to pre-drafts, drafts, and proposals of the defence budget, including structure and personnel strength of the Armed Forces of BiH.

- Reviewing reports on budget implementation and financial reports by auditors.
- Submitting opinions to the BiH Parliamentary Assembly on approval for ratification of international agreements in the field of defence and review reports on implementation of international agreements.
- Providing an opinion on the confirmation of the Minister and Deputy Minister of Defence, the Chief of Staff of the BiH Joint Staff and his deputies, the Commander of the Operational Command, and other general officers of BiH armed forces.
- Co-operating with parliamentary committees of the entities.
- Co-operating with other states as well as international organisations and their defence bodies.
- Exercising the following means of parliamentary control: requesting public or closed hearings; calling upon witnesses from any office and rank within the BiH defence establishment, including the armed forces; requesting reports; conducting investigations; and requesting assistance from the Public Auditor and non-government experts.

**The Presidency of BiH would act collectively to:**

- Exercise civilian command.
- Request a declaration of war, which the Parliamentary Assembly of BiH must approve.
- Declare a State emergency, which the Parliamentary Assembly of BiH must approve if it is in session.
- Commit forces to armed conflict, or to situations likely to result in combat or the use of armed force.
- Adopt the *BiH Security Policy*, including the *BiH Defence Policy*, and transmit it to the Parliamentary Assembly of BiH for its information.
- Ensure transparency and responsiveness to parliamentary oversight of defence and military matters.

- Adopt doctrines in the field of defence.
- Adopt the basis for defence plans and measures.
- Sign agreements and contracts with countries and international organisations and associations in the field of defence on behalf of BiH.
- Appoint, upon confirmation by the BiH Parliamentary Assembly, the Chief of Staff of the BiH Joint Staff and his deputies, the Commander of the Operational Command, and other general officers of BiH armed forces.

### **The Standing Committee on Military Matters (SCMM)**

Unless directed otherwise by the BiH Presidency, the duties of the SCMM would include:

- Acting as a State defence and security advisory council.
- Advising on key appointments and policies such as, the Chief of Staff of the BiH Joint Staff, the *BiH Security Policy*, the *BiH Defence Policy*, and others.
- Exercising appellate authority for general officer appointments, promotions, and removals.

### **Council of Ministers**

- Provides the required financial means for the financing of defence institutions at BiH level, according to the defined fiscal framework.
- Proposes for consideration by the BiH Presidency, the *BiH Security Policy*, including *BiH Defence Policy* as an integral part.

### **Minister of Defence**

The Ministry of Defence is headed by a Minister of Defence, who is a civilian appointee, and would be a full, voting member of the Council of Ministers. The Minister of Defence shall have two deputies, who will be from different constituent peoples and are responsible to the Minister of Defence for different areas of responsibility. The Minister of Defence would serve as a member of the chain of command and, subject to the authority, direction, and control of

the BiH Presidency, have authority to give legally binding orders and directions.

The Minister of Defence would be nominated, appointed, and removed according to the provisions of the Law on Council of Ministers, which means that:

- The Minister and Deputy Ministers of Defence would be nominated by the Chairman of the Council of Ministers and approved by the House of Representatives of the Parliamentary Assembly of BiH.
- The Minister and Deputy Ministers of Defence may be removed from office by the House of Representatives of the Parliamentary Assembly of BiH upon the proposal of the Chairman of the Council of Ministers.

The Minister of Defence would have responsibility for:

- Oversight of all aspects of the military.
- Representing the State of BiH in defence matters at the ministerial level and in international forums.
- Developing, reviewing, and updating at least every two years, the *BiH Defence Policy* for approval by the BiH Presidency.
- Developing and approving policies and regulations governing the organisation, administration, training, equipping, and employment of the armed forces, to ensure maximum interoperability among BiH armed forces and with NATO forces.
- Ensuring that defence structures fulfil commitments undertaken by BiH within the politico-military dimension of the OSCE.
- Signing all orders activating reserve units and categories of reservists for any operation other than planned training.
- Signing all orders deploying or employing any element from the armed forces abroad for any operation or training event.
- Issuing instructions to the Chief of Staff of the BiH Joint Staff for employing or deploying any unit of the armed forces inside BiH for purposes other than training.

- Approving military assistance to civil authorities in cases of disasters and accidents, under powers delegated by the Presidency.
- Establishing procedures ensuring compliance and transparency (appoints auditors, inspectors, etc.).

### **Chief of Staff of the BiH Joint Staff**

The BiH Joint Staff is headed by the Chief of Staff of the BiH Joint Staff who serves as the highest-ranking military officer in BiH and is a member of the operational chain of command. The Chief of Staff of the Joint Staff would have two deputies – a Deputy Chief of Staff for Operations and a Deputy Chief of Staff for Resources, who shall be from different constituent peoples.

The Minister of Defence would nominate the Chief of Staff of the BiH Joint Staff, and the BiH Presidency, with the advice of the SCMM, would approve and appoint upon confirmation by the BiH Parliamentary Assembly.

The Minister of Defence would recommend the removal of the Chief of Staff of the BiH Joint Staff to the BiH Presidency, and the BiH Presidency would remove.

The Chief of Staff of the BiH Joint Staff:

- Acts as the senior military advisor to the Presidency, SCMM, and Minister of Defence.
- Represents BiH in all international forums at the “Chief of Defence” level.
- Directs, oversees, and is responsible for the activities of the Joint Staff.
- Will have two deputies who would be appointed and removed by the same procedures as the Chief of Staff of the BiH Joint Staff. The Chief of Staff and the two deputies will be from different Constituent peoples.
- Transmits orders received through the operational chain of command to the Commander of the Operational Command.

## **Ministry of Defence**

The Ministry of Defence would consist of a civilian Secretariat and a BiH Joint Staff.

### **a. Civilian Secretariat**

- An expert, professional, primarily civilian staff of about 100 people that may include active military personnel.
- Personnel would be appointed to positions in the Ministry of Defence based upon professional expertise and the Law on Civil Service.
- Assists the Minister of Defence in carrying out his duties within the Ministry of Defence and in support of the SCMM.
- Drafts common personnel, recruitment, training and procurement policies for all BiH armed forces and performs other duties as designated by law or by the Minister of Defence.

### **b. BiH Joint Staff**

The Joint Staff is composed of a small, professional, military staff that works for the Chief of Staff of the BiH Joint Staff. The overall size of the Joint Staff and the Operational Command would be about 50 people.

- Personnel would be appointed to the most immediate subordinate positions in the BiH Joint Staff based upon professional expertise and equality of Constituent peoples. Other military personnel would be appointed on the basis of professional expertise and appropriate representation of Constituent peoples and Others.

The BiH Joint Staff would:

- Prepare military orders and oversee their execution.
- Plan and conduct military operations to support the policies and orders of the BiH Presidency and Minister of Defence.
- Provide military staff support to the Secretariat.

## **Operational Command**

The Operational Command is headed by a Commander who will be in the operational chain of command. The Commander of Operational Command shall have two deputies who will be from different constituent peoples and are responsible to the Chief of Staff of the Joint Staff for different areas of responsibility. The Commander of Operational Command will be the commander of the operational units of the Armed Forces of BiH. The Commander would:

- Develop readiness requirements for the Armed Forces of BiH for incorporation into Joint Staff and Ministry of Defence planning.
- Be responsible for readiness of State-level units.
- Work with the Joint Staff in preparing plans for missions.
- Be responsible for the execution of operational orders received through the operational chain of command.
- Determine tactical command and control arrangements for the successful execution of missions.

## **Roles and Functions of Entity Institutions**

### **The entity parliaments would:**

- Exercise democratic parliamentary control over the work of entity defence institutions and the entity army in accordance with entity defence competencies and standards established at BiH level.
- Approve the entity defence budget.
- Adopt a long-term development plan for the entity army in accordance with the long-term BiH armed forces development plan.
- Monitor the execution of laws and other regulations in accordance with BiH defence policy.
- Discuss and adopt entity government reports on the readiness and overall status of defence systems in accordance with the defence plan under entity competency.

- Pass defence laws and regulations for the entity, which are based on BiH-level defence law and policy.
- Provide its opinion on proposals for appointment and removal of officers in high positions within its competencies.
- Confirm the appointment and, if necessary, the removal of the entity Minister of Defence pursuant to the entity constitution.

**The Entity President, in accordance with entity laws, would:**

- Participate in the work of the SCMM in accordance with the Book of Rules.
- Authorise the short-term use of military units to assist civil authorities in responding to extraordinary natural disasters and accidents on entity territory.
- Participate in the appointment of the entity Minister of Defence pursuant to the entity constitution.
- Oversee the work of the entity Minister of Defence.

**The entity Ministry of Defence would:**

- Maintain competencies within the administrative chain of command.
- Restructure and reform in order to conform to the new State defence structures.
- Ensure transparency.
- Ensure democratic, civil control over the entity army.
- Perform managerial and expert duties in matters of defence under entity authority, in accordance with entity defence laws.
- Conduct inspections of entity defence institutions and the entity army.
- Implement established policy and guidelines and ensure implementation of defence laws and other defence regulations.

- Propose or participate in the proposal of military and civilian officials to man positions in BiH-level defence institutions.
- Ensure the support in implementation of operational commands (orders).
- Elaborate a defence development plan in accordance with the BiH defence development plan.
- Establish and maintain a reserve component according to standards established by BiH policies.

**The entity General Staff/Joint Command would:**

- Serve as the highest-level entity expert-staff organisation for the preparation of the entity army.
- Exercise administrative command and control over the entity commands and units in accordance with entity laws and established BiH-level guidelines.

**Other Issues**

**Military Assistance to Civil Authorities**

A State law on defence would include a basic framework for military assistance to civil authorities. The use of armed forces for internal policing functions would be precluded.

The Minister of Defence will develop specific procedures to deal with disasters and accidents, based on the draft Military Doctrine on Military Assistance to Civil Authorities.

**Reserves**

A State law on defence would have the Presidency approve the number of reserves, and the Ministry of Defence establish standards for training. It would note that reserves may be required to complete a period of active duty training, in which case they would be considered mobilised.

### **Conflict of Interest and Professionalism**

A State Law on Defence should be consistent with the BiH Law on Conflict of Interest, BiH Law on Civil Service, and BiH Election Law. The Law should cover general issues related to political activity and financial interests and authorise the Minister of Defence to further develop conflict of interest provisions in a code of conduct for military personnel.

### **Budget**

A reformed defence structure in BiH must:

- Operate effectively within the fiscal limits established by political authorities through the democratic process.
- Provide for the regular pay of members of the armed forces.
- Meet benchmarks for specific force reductions.
- Have sufficient sources of revenue to fund new State-level competencies.
- Harmonize State-level planning and financing with entity-level financing.

The BiH budget process would be:

- The Minister of Defence, in cooperation with the entity defence ministers, prepares a draft defence budget covering all proposed State and entity expenditures for all defence structures and Armed Forces of BiH.
- Entity portions of the budget would be adopted by the entities through their normal parliamentary procedures.
- The State-level portion of the budget would be adopted through normal parliamentary procedures.
- State and entity parliaments should be informed of the entire defence budget.

### **Personnel**

Personnel laws, policies, and regulations related to defence structure must:

- Be harmonized in order to promote efficiency.
- Encourage and reinforce the unity of a state command and control structure.

#### **a. Personnel Management System**

A single personnel management system for all BiH armed forces, to include entity armies and State-level institutions and structures, should be implemented and meet the following criteria:

- Is compatible with NATO norms and commonly used NATO personnel systems.
- Applies equally to all BiH armed forces, including uniform pay and allowances, per diem, and benefits.
- Is easy to understand and administer.
- Provides for open and transparent management of all military personnel and civilian defence personnel.

A Joint Personnel Commission should be formed to evaluate available personnel systems. In the interim, existing entity personnel management systems should continue to be used.

#### **b. General Officers**

The number of general officers in the Armed Forces of BiH should be significantly reduced, corresponding to the overall number of the Armed Forces. The Chief of Staff of the Joint Staff should hold the rank of Lieutenant General, and the Commander of the Operational Command should hold the rank of Major General.

- The entity Minister of Defence, in consultation with the Chief, VRS General Staff, and Commander, VFBiH Joint Command, would recommend the appointment or promotion of a brigadier general to the BiH Minister of Defence, who would then, in consultation with the Chief of Staff of the BiH

Joint Staff, nominate, and the BiH Presidency would appoint upon confirmation by the BiH Parliamentary Assembly.

- The entity Minister of Defence would recommend the removal of a brigadier general to the BiH Minister of Defence, who would then make a recommendation to the Presidency who would remove with the SCMM as the appellate authority.

### **c. Appointment and Removal of Military Attaches and Liaison Officers in Diplomatic-Consular Offices and Missions**

- The Chief of Staff of the BiH Joint Staff would nominate to the Minister of Defence, and the Minister would recommend to the Presidency who would appoint with the concurrence of the Minister of Foreign Affairs.
- The Chief of the Diplomatic Mission would request removal through Minister of Foreign Affairs, and the Presidency would remove after consultation with the Minister of Foreign Affairs and Minister of Defence. In the case of a general officer, the SCMM would serve as the appellate authority.

### **Conscription**

Reform of the conscription program, one of the most expensive elements of the defence budget, is necessary in order to make the Armed Forces of BiH affordable. As a first step in reform, there should be a fifty percent cut in the conscript contingent and a reduction to a four-month training period.

### **Force Reductions**

The Armed Forces of BiH should be reduced to no more than 12,000 professional military personnel, to include military officers in the State and entity-level ministries of defence and military headquarters. Civilian and military personnel in the entity ministries of defence should be reduced by twenty-five percent by the end of 2003 or as soon as possible thereafter, but not later than by June 2004.

### **Weapons and Ammunition Storage Sites**

The number of Weapons Storage Sites should be significantly reduced, down to a single digit number for all of BiH in accordance with OHR directive. SFOR and the entity Ministries of Defence are working to achieve this objective. Ammunition Storage Sites must be brought up to basic safety standards. Many thousands of tons of unsafe ammunition must be destroyed. Excess quantities of ammunition and weapons must be disposed of, through sale or destruction.

### **Divestiture of Businesses and Excess Property**

Each entity Ministry of Defence has efforts underway to divest business holdings and excess property. The efforts should be accelerated. Divesting such holdings and property provides assets for use by other government institutions and revenues for government functions as well as reduces the financial burden on the ministries of defence.

### **Resource Requirements for Defence Reform**

Implementing defence reforms would involve significant expenditures in the following areas:

- Man and train BiH Ministry of Defence and BiH Joint Staff to Euro-Atlantic standards.
- Renovate (and perhaps lease) facilities for the Ministry of Defence, Joint Staff, Operations Centre, and Operational Command.
- Communication systems for command and control.
- Management systems integration, installation, and training.
- Professional military education.
- Stand-up of State-level units.
- Training for peace support operations.
- Establish a Transition Management Office.
- Force reductions.
- Reductions/upgrades in weapon and ammunition storage sites.

Implementing defence reforms would involve potential savings in the following areas:

- Force structure reductions.
- Downsizing of entity ministries of defence.
- Reduction in conscription.
- Conversion/sale of military premises and excess property/inventory reductions.

### **Implementation**

- The BiH Ministry of Defence, BiH Joint Staff, and Operational Command should be stood up quickly by transferring personnel, facilities, and equipment, where appropriate and in accordance with the existing laws and recruitment regulations, from existing institutions.
- BiH should seek ways to contribute to international security, especially by early deployment of forces for peace support operations.
- A Transition Management Office should be established to centrally direct and supervise the implementation of defence reforms.

### **NATO Membership**

Bosnia and Herzegovina should make an explicit commitment to joining NATO.

### **Definitions**

- As used in this concept paper, the following terms mean:
  - Armed forces: A military organisation, including command and control elements, with the legal and technical bases to conduct operations involving deadly force under State authority.
  - Army: A service providing military capabilities but without legal or technical bases to conduct operations involving deadly force.
  - Armed Forces of BiH: State and entity defence institutions below ministry levels taken together.

### **3. Partnership for Peace Benefits and NATO Membership Requirements**

#### **3.1. Partnership for Peace Benefits**

In January 1994, at their Summit meeting in Brussels, the Heads of State and Government of the North Atlantic Treaty Organisation created the Partnership for Peace (PfP) programme and invited democratic states participating in the North Atlantic Co-operation Council (NACC) and other Conference on Security and Co-operation in Europe (CSCE) countries to join with NATO Allies in this Partnership. The intent was to strengthen the commitment made by NATO in its Strategic Concept to expand and improve security for Europe as a whole, and reflect the Alliance's desire to enhance co-operation and dialogue with the its European neighbours. Heads of State and Government also made clear that active participation in Partnership for Peace would play an important role in the evolutionary process of NATO expansion.

The basic aims of PfP are to promote transparency in national defence planning and military budgeting and the democratic control of national armed forces, as well as to develop the capacity for joint action between forces from Partner countries and those of NATO member countries, for example, in peacekeeping or disaster-response operations.

To assist in accomplishing these objectives and pursuing shared goals, Partner nations are invited to establish offices at NATO Headquarters and provide liaison officers at various NATO military headquarters. Through political and military mechanisms, the Alliance seeks to provide Partners with advice and assistance in the defence- and security-related aspects of domestic reform processes and, where possible, support for larger policy and institutional reforms. NATO also seeks to contribute to international security by preparing interested Partners for, and engaging in, NATO-led operations and activities.

NATO has assisted Partner countries in improving their capacities in security and defence in numerous areas, including defence reform and reorganisation, armed forces restructuring, training and exercises, defence planning, procurement, budgeting, interoperability, defence policy, democratic control of the armed forces, and civil emergency planning. Assistance can take the form of information sharing, participation in seminars and exercises, training and education, and through expert teams to help Partners with particular security problems upon request. In case of need, NATO has subsidised Partner participation in selected PfP activities.

Each country's interaction within PfP is somewhat unique, because it is based on the Individual Partnership Programme (IPP). The IPP is drawn up between NATO and Partner countries from an extensive menu of activities – the PfP Work Programme – according to each country's specific interests and needs. The biennial programme contains more than 2,000 activities, ranging from large military exercises down to small workshops. Areas covered range from purely military to defence-related co-operation in fields such as crisis management, peacekeeping, civil emergency planning, air-traffic management and armaments co-operation.

One programme that may be of specific benefit to Bosnia and Herzegovina is the Partnership for Peace Trust Fund. The Fund was established in September 2000 to assist NATO partner countries in the safe destruction of stockpiled anti-personnel mines and other munitions. Under the Fund, NATO members work together with individual partner countries to identify and implement projects aimed at the destruction of anti-personnel mines, munitions, small arms and light weapons. More than 4.2 million U.S. Dollars are earmarked to fund the destruction. There have been six Trust Fund Projects since its inception (Albania, Azerbaijan, Georgia, Moldova, and Ukraine; Serbia and Montenegro was included even though it is not a member of the PfP).

Another tangible benefit to joining PfP is access to the NATO educational system. Bosnia and Herzegovina would have a wide-range of options for training defence personnel. In addition to access to NATO schools, PfP Training Centres provide individual and unit training. In-country training assistance is also available.

PfP membership also brings Bosnia and Herzegovina into the “community of progress.” The NATO Force Planning System helps Partner nations improve the interoperability of their forces with those of NATO/PfP. All aspirant nations of PfP have used this program to increase interoperability of their forces. In the past, NATO has provided up to 80 percent financial assistance to support Partner nations’ participation in PfP activities.

Since its inception, thirty countries have joined the Partnership, and ten of these have either joined or been invited to join NATO. Today, only two European states are not members of the Alliance or PfP: Bosnia and Herzegovina and Serbia and Montenegro. Bosnia and Herzegovina officially declared its desire to join the Partnership in July 2001. Serbia and Montenegro followed suit in 2003. Poland, the Czech Republic, and Hungary, all former PfP members, have already joined the Alliance. At its recent summit in Prague, the Alliance invited seven more PfP members to join its ranks. A Membership Action Plan was initiated at NATO’s 1999 Summit in Washington, D.C., to help countries aspiring to NATO membership focus their preparations. This plan seeks to engage not only Ministries of Defence and Foreign Affairs, but also other governmental departments in a co-ordinated and systematic effort to prepare for eventual accession to the Alliance.

The benefits of membership in Partnership for Peace are many and extend beyond the direct benefits of participation in the defence and security-related aspects of the programme as described above. An invitation to join Partnership for Peace signals an acceptance by NATO and its member states that a country has been received into an association of like-minded democratic nations. An invitation reflects a strengthened political legitimacy, which also carries with it implications for the political and economic viability of an emerging democracy. Nations who have joined and actively participated in PfP have found that their involvement has facilitated further steps toward complete European integration. The recognition of political stability and a stable security environment encourages foreign investment, which leads to jobs and increased economic prosperity. The exposure of younger generations, in particular, to the wider Euro-Atlantic community increases the opportunity of peoples to increase their awareness of their neighbours and their European heritage. Transparency leads to trust, and this trust underpins broader politi-

cal and economic benefits. Although these benefits are not quantifiable, they are real.

When the Partnership for Peace was created, NATO's Heads of State and Government hoped that through outreach and openness the Alliance could enhance its contributions to the preservation of peace, its support and promotion of democracy, and thereby its contribution to prosperity and progress for all peoples in the Euro-Atlantic Community. NATO has been working closely with Bosnia and Herzegovina since 1995 to create the conditions whereby it too can benefit from membership in Partnership for Peace: a goal shared by the people of Bosnia and Herzegovina.

### **3.2. NATO Membership Requirements**

Enacting the reforms recommended in this report will make Bosnia and Herzegovina a credible candidate for Partnership for Peace. But Bosnia and Herzegovina should not stop there. It should strive towards full NATO membership. Although joining NATO is an incremental process, Bosnia and Herzegovina should now set NATO membership as a strategic goal.

The Commission recommends that the Presidency commit to the long-term goal of full NATO membership and to becoming a credible candidate for NATO membership, as soon as possible. Significant milestones towards this objective could be achieved as early as 2007. The Commission also recommends that Bosnia and Herzegovina join NATO's Planning and Review Process shortly after it is admitted to Partnership for Peace. This process is an essential step to prepare for potential NATO membership. Bosnia and Herzegovina should also explore joining the Membership Action Plan, as the next step in the process for eventual membership.

Joining NATO will require further political and military reforms. Key among military reforms would be the creation of a single army. Bosnia and Herzegovina will never be invited to join NATO if it insists on maintaining two armies. NATO membership will also depend upon Bosnia and Herzegovina's demonstration that it could contribute to NATO's mission and that it has achieved basic NATO standards for military forces and operations.

The Membership Action Plan describes the goals that nations aspiring to join NATO must meet:

Aspirant countries are expected to achieve certain goals in the *political and economic* fields. These include settling any international, ethnic or external territorial disputes by peaceful means; demonstrating a commitment to the rule of law and human rights; establishing democratic control of their armed forces; and promoting stability and well-being through economic liberty, social justice and environmental responsibility.

*Defence and military* issues focus on the ability of the country to contribute to collective defence and to the Alliance's new missions. Full participation in PfP is an essential component. Through their individual PfP programmes, aspirants can focus on essential membership related issues. Partnership Goals for aspirants include planning targets covering those areas that are most directly relevant for nations aspiring NATO membership.

*Resource* issues focus on the need for any aspirant country to commit sufficient resources to defence to allow them to meet the commitments that future membership would bring in terms of collective NATO undertakings.

*Security* issues centre on the need for aspirant countries to make sure that procedures are in place to ensure the security of sensitive information.

*Legal* aspects address the need for aspirants to ensure that legal arrangements and agreements that govern co-operation within NATO are compatible with domestic legislation.

NATO will look for action in each of these five categories in determining Bosnia and Herzegovina's candidacy in the Membership Action Plan. Specifically, Bosnia and Herzegovina should take the following actions. In the political/economic realm, Bosnia and Herzegovina needs to implement fully the Dayton Peace Accords, including steps toward reconciliation and apprehending war criminals. Bosnia and Herzegovina will need to establish effective civilian control over the armed forces – both by the executive and legislative

branches. Additionally, Bosnia and Herzegovina must demonstrate commitment to the Rule of Law by promoting good governance, fighting organized crime and corruption, and strengthening the judiciary. Finally, Bosnia and Herzegovina must demonstrate that it is a net contributor to security in the region through bilateral relations with neighbours, effective participation in regional co-operation and effective participation in multilateral and UN Peace Support operations.

Concerning defence and military issues, Bosnia and Herzegovina must demonstrate full participation in Partnership for Peace. It should also start participating in the NATO Planning and Review Process, a programme that all aspirant nations have previously participated in, and ensures conformity with NATO planning processes. Bosnia and Herzegovina will need to create one army and to demonstrate its ability to effectively command and control its armed forces.

In the resource area, Bosnia and Herzegovina must demonstrate that it can sustain the Armed Forces of Bosnia and Herzegovina. It should adopt multi-year budget planning – to conform its programming and budgetary processes to those of other Alliance nations. Additionally, the defence budget must allow for modernisation and training. This will require the realignment of current budgets to decrease the proportion spent on personnel. This may require future reductions in personnel.

In order to meet the security criteria, Bosnia and Herzegovina will need to establish a State-wide system for protecting classified information. This will entail creating a national security authority, as well as ensuring that there is a unified legal framework in place to vet military and civilian defence personnel for security clearances. In the final category of legal issues, Bosnia and Herzegovina must ensure that there are no constitutional or other legal impediments to Bosnia and Herzegovina joining the Alliance (i.e., the ability to deploy forces abroad, the stationing of forces in Bosnia and Herzegovina, and the ability of Bosnia and Herzegovina to live up to Article 5 commitments).

Full NATO membership presents the best guarantee for the future security of Bosnia and Herzegovina, as well as the entire region. The NATO charter provides that the member states agree “an armed attack on one or more of them in Europe or North America shall be considered an attack against them all.”

Being part of NATO would provide real security for Bosnia and Herzegovina. Additionally, NATO membership is a further logical step on the road towards full integration in Euro-Atlantic structures. This road should eventually lead to European Union membership. The requirements for joining NATO are compatible with fulfilling requirements for joining the European Union.

## **4. Mandate for Defence Reform**

*"This scandal...goes to the very heart of inadequate control of the armed forces and the military industrial complex... We need to assess...the degree and extent of the systematic failure [and] to take action that responds to these issues."*

*- High Representative, Paddy Ashdown, Speaking on the Orao Affair, February 21, 2003*

From the beginning of the formation of the Dayton framework, there have been efforts to overcome the military division of the State. Efforts within the framework of Article II and IV of Annex 1B of the Dayton Agreement were the first initiatives to reduce the effects of the military division of Bosnia and Herzegovina.

More substantive attempts to reform began after significant changes in the security environment of Bosnia and Herzegovina. These initial attempts manifested themselves in the restructuring and 'standing-up' of the Standing Committee on Military Matters and its Secretariat.

Parallel to these developments, efforts were also undertaken to bring Bosnia and Herzegovina closer to and finally into, the Partnership for Peace. The crucial event was the NATO Secretary General's message in July 2001, outlining several key criteria for accession.

Developments took a sharp turn in August 2002 when it became known that defence related institutions of Republika Srpska had illegally exported weapons technology to Iraq. This scandal and other disturbing incidents in Bosnia and Herzegovina highlighted the current inadequacies of Bosnia and Herzegovina's legal, organisation, and institutional arrangements for defence – both at State and entity level – and underlined the need for systemic and legislative

reform. Strengthening State-level command and control and establishing full democratic civilian oversight and control over all armed forces and defence structures were identified as essential reform priorities.

A significant step forward was the presentation of the pledges of Bosnia and Herzegovina in the field of defence and security delivered by the Standing Committee on Military Matters Secretary General to the Peace Implementation Council in January 2003. These contained the pledge to conduct the necessary reforms to become a member of the Partnership for Peace by mid-2004.

On May 9, 2003, the High Representative decided to establish the Defence Reform Commission to recommend specific reforms.

This section presents the developments and considerations that constituted the basis of the Defence Reform Commission's work, i.e.: the defence targets and pledges of Bosnia and Herzegovina; the Decision of the High Representative; guidelines for the Partnership for Peace and NATO memberships; and, commitments within the OSCE politico-military accords.

#### **4.1. Summary of the Defence Targets of Bosnia and Herzegovina**

On 30 January 2003, the Secretary General of the Standing Committee on Military Matters presented Bosnia and Herzegovina's defence targets, on behalf of the Presidency of Bosnia and Herzegovina, to the Peace Implementation Council.

These targets, presented as a message to the people of Bosnia and Herzegovina, stated an intent to achieve membership of the European Union and Euro-Atlantic defence structures, and to become a credible candidate for the Partnership for Peace within eighteen months or sooner.

These pledges acknowledged that in order to achieve these goals, the implementation of defence reforms was of paramount importance. They committed Bosnia and Herzegovina to carry out the reforms necessary to establish effective civilian command and control at the State level and parliamentary oversight over all defence matters.

The message declared that Bosnia and Herzegovina's over-arching objective was to transform the Armed Forces of Bosnia and Herzegovina into a modern, credible, affordable force, capable of protecting the sovereignty and territorial integrity of Bosnia and Herzegovina and participating in peace support missions.

In order to achieve these objectives, the following list of five pledges were presented, outlining the substance of defence reform:

- to implement defence reforms that will hasten European integration and contribute to regional stability;
- to strengthen State-level institutions that exercise civilian command and control over the Armed Forces of Bosnia and Herzegovina;
- to provide comprehensive and transparent parliamentary oversight over State-level defence institutions;
- to ensure professional, modern and affordable Armed Forces;
- and, to restructure armed forces to be able to participate in the PfP, integrate into wider Euro-Atlantic structures, and engage in peace support operations.

In order to achieve the objective of PfP membership, the pledges emphasised the need to strengthen State-level command and control, so that the Presidency of Bosnia and Herzegovina would be able to perform in full its role as the supreme command authority over the Armed Forces of Bosnia and Herzegovina. It was recognised that this would require institutions capable of executing Presidency decisions on the security and defence of the State and to co-ordinate the activities of the Armed Forces. These institutions would provide support to the Secretary General in his tasks, and the Secretary General would be made the single focus and point of contact on defence matters for Bosnia and Herzegovina.

The Secretary General, in his presentation, pledged also to adopt a legal framework to ensure the effective oversight of State-level defence structures by a properly resourced and authorised security committee in the Parliamentary Assembly of Bosnia and Herzegovina. This pledge included the develop-

ment of financial structures and procedures to ensure the full transparency of all defence appropriations and expenditures.

The Secretary General pledged to ensure the harmonisation of the laws and procedures of the Armed Forces of Bosnia and Herzegovina, in order that they become instruments of the State, similar to and compatible with the armed forces of other European States.

The pledges reaffirmed that armed forces must be resourced, equipped and trained to a level that is commensurate to the security needs of the State and to their key tasks, enabling them to participate in Partnership for Peace.

In more specific terms, the Secretary General pledged the development of a defence doctrine to enable forces to operate together, for peace support, disaster relief and territorial integrity operations in accordance with NATO forces and standards. This was to include humanitarian and disaster relief capability so that forces can undertake operations inside and outside Bosnia and Herzegovina.

#### **4.2. Summary of the Decision of the High Representative of May 9, 2003**

The Decision of the High Representative of 9 May 2003 established the Defence Reform Commission and defined its mandate as well as objectives. The Commission was tasked to examine the legal measures necessary to reform defence structures in Bosnia and Herzegovina, identify constitutional and legislative provisions at variance with such requirements, and propose legislation and other legal instruments in accordance with a number of core principles.

These core principles guided the Commission's work: the prospective candidacy of Bosnia and Herzegovina in the Partnership for Peace – mindful of future commitments that would arise as a result of further integration into Euro-Atlantic structures; commitments within the scope of the OSCE; the necessity to establish democratic oversight and control over the armed forces; and, the fiscal limitations of Bosnia and Herzegovina towards the funding of defence structures.

Additionally, the Commission's work encompassed the provisions stipulated within the Constitution of Bosnia and Herzegovina; specifically, with reference to Article III.5(a), that "Bosnia and Herzegovina shall assume responsibility for," *inter alia*, matters "necessary to preserve the sovereignty, territorial integrity, political independence and international personality of Bosnia and Herzegovina;" Article V.3(a), which stipulates the responsibility of the Presidency of Bosnia and Herzegovina for conducting, *inter alia*, the foreign policy of Bosnia and Herzegovina; Article V.5(a), which provides, *inter alia*, that "each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces" and that "All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina."

These fundamental principles set the agenda of the Commission: to reform Bosnia and Herzegovina's defence structures and related legislation to:

- be consistent with Euro-Atlantic standards;
- ensure the capacity to apply as a credible candidate to the Partnership for Peace;
- ensure full compliance with commitments already made within the politico-military accords of the OSCE;
- establish full democratic civilian oversight and control of the armed forces of Bosnia and Herzegovina and defence structures at both the State and entity levels;
- establish transparency of all defence structures and institutions;
- ensure full State level command and control of the armed forces;
- allow for the interoperability of defence structures throughout Bosnia and Herzegovina;
- and, enable defence funding to be within fiscal limits established by political authorities in a democratic manner.

### **4.3. Guidelines for Partnership for Peace and NATO Memberships**

Partnership for Peace (PfP) provides the principal mechanism for forging security links between the Alliance and its Partners. Through detailed programmes

that reflect individual Partner's capacities and interests, Allies and Partners work towards the improvement of the following:

- transparency in national defence planning and budgeting;
- democratic control of defence forces;
- preparedness for civil disasters and other emergencies;
- and, development of interoperability and co-operation, including in NATO-led Partnership for Peace operations.

Membership commits Partner countries to co-operate with NATO in the pursuit of the Partnership's principal objective of strengthening confidence building, security and stability in the Euro-Atlantic area. Commitments encompass the resolutions to deepen political and military ties with NATO and between Partner countries.

The Partnership's co-operation and common action express a joint conviction to the preservation of democratic societies and the promotion of fundamental freedoms and human rights, and the safeguarding of freedom, justice and peace. Membership entails both privileges and responsibilities.

For consideration as a credible candidate for membership, prospective Partner countries must have reached a level of development and modernisation consistent with the standards of modern democratic states. Prospective Partner countries must be able to demonstrate the capacity to make an effective and tangible contribution to the Partnership. However, the process of development and modernisation is particular to each individual aspiring country, and is primarily a process political in nature – as NATO is primarily a political organisation. Consequently, no official checklist of membership requirements exists.

Although there is no definitive list of requirements, there are expectations of standards that prospective Partner countries should have achieved, which range from good governance to operational aspects of armed forces. With reference to Bosnia and Herzegovina, on various occasions a number of factors have been highlighted as guidelines for attaining credible Partnership for Peace candidacy.

In particular, as indicated by the NATO Secretary-General to the Presidency of Bosnia and Herzegovina in July 2001, perhaps the most important criterion

and prerequisite is the existence of an effective and credible State-level civil command and control structure, which would include a State-level Ministry responsible for defence matters – a factor that he again emphasised in his letter of November 2002 to the Presidency of Bosnia and Herzegovina. Furthermore, NATO has indicated that the State must demonstrate that it has full competency within the chain of command. The roles, functions and capacities of those State-level institutions and structures tasked with command and control responsibilities must contain no ambiguities.

Other enumerated factors included the provision at the State level for:

- democratic parliamentary oversight and control over the armed forces of Bosnia and Herzegovina;
- transparency of defence plans and budgets;
- the development of common doctrine and standards to train and equip the armed forces of Bosnia and Herzegovina;
- and, the development of a Bosnia and Herzegovina Security Policy.

Additionally, NATO has indicated that Bosnia and Herzegovina must fulfil its obligations to co-operate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY): above all, to detain and surrender persons indicted for war crimes.

Other issues have also been emphasised. In particular, Bosnia and Herzegovina should promote co-operation and reconciliation; tackle crime and corruption that have links to political nationalism; and improve interoperability – towards the modernisation of armed forces that are more efficient and better able to operate collectively, as well as with the forces of Partner countries and NATO member states.

The fundamental premise is that Bosnia and Herzegovina must be able to make an effective contribution, with solid capacities to organise, train and deploy troops, in order to enhance the stability and collective activities of Partner countries. Once a member, the PfP assists Partners in improving these capacities and to meet its Partnership responsibilities. Membership demands that Partner countries be exporters of stability rather than consumers.

#### 4.4. Summary of OSCE Politico-Military Obligations

Bosnia and Herzegovina, a participant in CSCE/OSCE since 1992, is subject to OSCE obligations between participating States and the organisation.

Commitments within the OSCE's politico-military dimension arise from an array of documents, out of which the following have an immediate impact on Bosnia and Herzegovina: the Code of Conduct on Politico-Military Aspects of Security (1994), Document on Principles Governing Conventional Arms Transfers (1993), Document on Small Arms and Light Weapons (2000), and the Vienna Document (1999). By the consensus of all CSCE/OSCE participating States, including Bosnia and Herzegovina, each of these documents was adopted. As an OSCE participating State, Bosnia and Herzegovina is bound to comply fully with all commitments enshrined therein.

Although the other documents contain mainly obligations of a technical nature (for example, notification of military activities, exchange of military information, verification procedures, criteria for arms exports, regulations for preventing the uncontrolled spread of small arms and light weapons), the Code of Conduct pertains to key criteria for the participating States' defence and security policies. It places clear emphasis on democratic control and the application of the rule of law in defence and security matters.

The Code of Conduct on Politico-Military Aspects of Security regulates both the external and internal sides of the security policies of the participating States. On the *external* side, it imposes clear duties on each participating State, including Bosnia and Herzegovina, to co-operate and implement the various documents of the OSCE, and to fulfil the requirements of international agreements by which participating States are bound.

On the *internal* side, the democratic control of armed forces, paramilitary and internal security forces, and the police and intelligence services is emphasised. The Code of Conduct commits participating States to maintain only those military capabilities commensurate with individual or collective legitimate security needs. It stipulates that constitutionally established authorities vested with democratic legitimacy and under legal responsibilities should guide and control armed forces. It calls on participating States to ensure that

their relevant internal documents, procedures and legal instruments reflect the commitments made within the Code.

Section VII outlines these commitments more specifically. Basic obligations, together with more detailed provisions commit States to the following:

- provide for and maintain democratic control of military, paramilitary and internal security forces, intelligence services and the police (*paragraph 20*);
- provide controls to ensure that authorities fulfil their constitutional and legal responsibilities (*paragraph 21*);
- provide for the legislative approval of defence expenditures as well as exercise restraint in defence expenditures (*paragraph 22*);
- provide for transparency and public access to information related to the armed forces (*paragraph 22*);
- ensure that armed forces are politically neutral (*paragraph 23*);
- provide for the individual service member's exercise of his or her civil rights (*paragraph 23*);
- provide and maintain measures to guard against accidental or unauthorised use of military means (*paragraph 24*);
- and, not to tolerate or support forces uncontrolled by their constitutionally established authorities (*paragraph 25*).

## **5. Current Situation**

This section presents current organisational arrangements for defence in Bosnia and Herzegovina, constitutional provisions and laws governing defence matters, parliamentary responsibilities at the State and entity levels, the current situation of the armed forces of Bosnia and Herzegovina, and an analysis of the current levels of defence spending.

### **5.1. Current Institutional Arrangements**

The laws and constitutions of the State and entities divide existing institutional arrangements for defence into two distinct competencies: the State level and the entity level. These competencies run parallel with each other, and current arrangements prescribe chains of command and organisational arrangements that extend from both the State level and entity level.

Defence institutional arrangements at the State level derive from four primary sources:

- Constitution of Bosnia and Herzegovina;
- Defence Policy (adopted in May 2001);
- Decision on Organisation and Functioning of the Defence Institutions of Bosnia and Herzegovina (adopted August 2002);
- and, Standing Committee on Military Matters Terms of Reference (adopted December 2002).

These documents define the existing competencies, relationships and functions of institutions within the institutional framework for defence at the State

level, and attempt to delineate the chain of command from the State down to the entities.

Corresponding provisions exist within the entity constitutions and defence laws prescribing competency and functions to entity institutions. These provisions confer supremacy in defence matters and command and control to the entities and thus create ambiguity as to where command and control supremacy rests.

Both the Constitution and the Law on Defence of Republika Srpska confer command and control authority over the Army of Republika Srpska to the President of the entity.

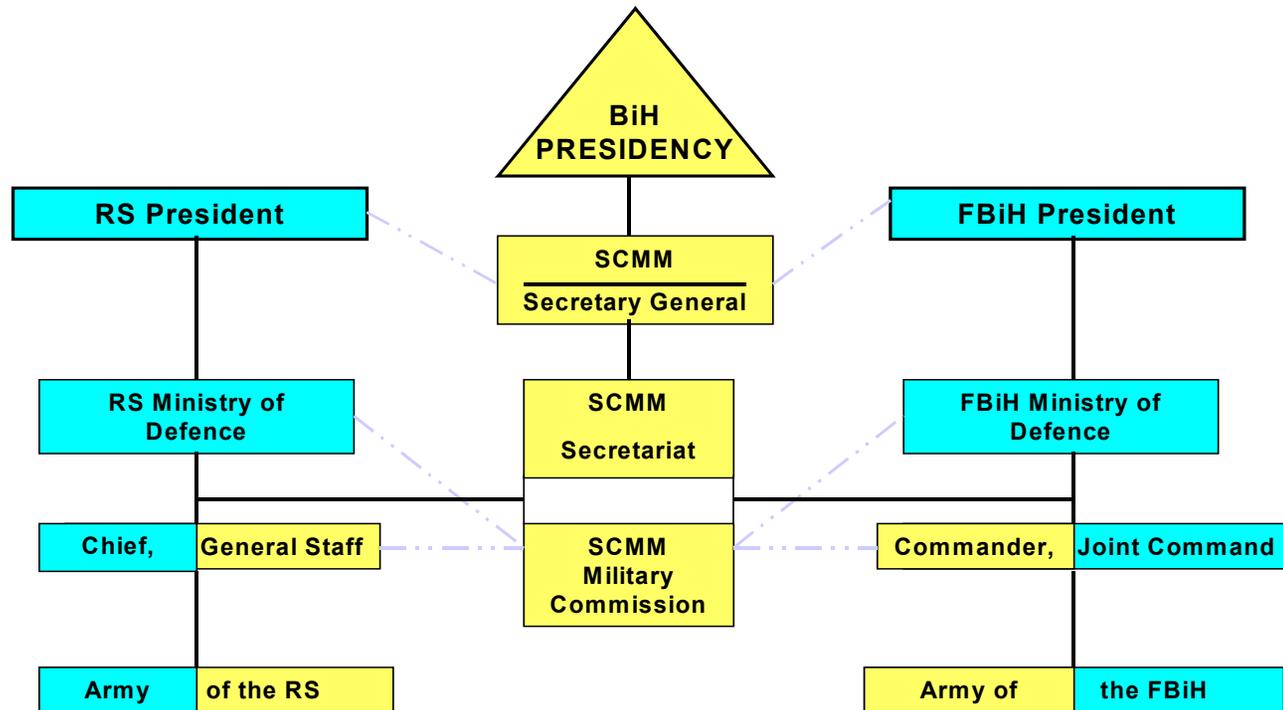
In the Federation of Bosnia and Herzegovina, the legal and constitutional provisions are not consistent. Command and control authority over the Army of the Federation of Bosnia and Herzegovina rests with the President of the entity. However, ambiguity arises because other provisions conferred command and control authority over the Army of the Republic of Bosnia and Herzegovina to the then Bosniak member of the Presidency of Bosnia and Herzegovina. Conversely, command and control over the Croatian Defence Council remained with the President or Vice-President of the entity (depending upon whom was from the Croat people). The Law on Defence, however, acknowledges the supremacy of the members of the Presidency of Bosnia and Herzegovina and explicitly stipulates that the establishment and execution of its provisions must be concordant with the Constitution of Bosnia and Herzegovina. The rights and responsibilities of entity bodies are provided for within a transitional period, assuming the implementation of amendments that were never realised.

The diagram on the following page shows current organisational arrangements for defence in Bosnia and Herzegovina.

As can be seen, there are two parallel, potentially conflicting, chains of command: one that emanates from the Presidency of Bosnia and Herzegovina (according to the Constitution of Bosnia and Herzegovina, Defence Policy, and subsequent documents designed to elaborate the competencies of the Standing Committee on Military Matters (SCMM) and its institutions) and the other emanates from entity Presidents (according to entity constitutions and laws).

At the same time, the diagram also shows that both entity Presidents are within the *State* chain of command, as they are SCMM members. The entity Ministers of Defence, Commander of the Joint Command of the Army of the Federation of Bosnia and Herzegovina, and Chief of General Staff of the Army of Republika Srpska are also placed within the *State* chain of command as members of the SCMM Military Commission.

### Current Organisational Arrangements



- Chain of command
- - - Denotes relationship
- State Chain of Command
- Entity Chain of Command

### 5.1.1. Presidency of Bosnia and Herzegovina

Article V (5)(a) of the Constitution of Bosnia and Herzegovina defines the competency of the Presidency of Bosnia and Herzegovina to act within matters of defence. Accordingly, each member of the Presidency of Bosnia and Herzegovina, by virtue of the office, has civilian command authority over armed forces.

The Defence Policy of Bosnia and Herzegovina elaborated this competency further. It stipulates that the Presidency of Bosnia and Herzegovina operates at the highest political and strategic level of decision-making in defence and security matters. Article II of the SCMM Terms of Reference re-affirms this, stipulating that the Presidency of Bosnia and Herzegovina is the supreme authority of the State in matters of security and defence.

The Defence Policy further delineates the competencies of the Presidency in terms of collective and individual authority. As a *collective* body, the Presidency performs a number of technical duties, which include, *inter alia*:

- the supervision of the implementation of security/defence policy;
- management of the Standing Committee on Military Matters;
- examination of cases of non-constitutional conduct of the armed forces;
- negotiation and ratification of international agreements relating to the field of defence;
- work and create conditions for the development of an armed forces concept;
- decision on the number, composition and location of military representatives to countries and missions;
- and discussion of matters that generally pertain to defence in Bosnia and Herzegovina.

The Presidency of Bosnia and Herzegovina discusses and establishes activities related to readiness, mobilisation and engagement of the armed forces, but only for three purposes:

- to preserve the sovereignty and territorial integrity of Bosnia and Herzegovina;
- to participate in international peace support missions;

- and, to render assistance to civil authorities in dealing with the consequences of natural disasters, accidents and other social needs.

As *individuals*, each member of the Presidency monitors compliance of the armed forces in Bosnia and Herzegovina with their designated constitutional obligations – in relation to their non-trespass onto the territory of the other entity without authorisation, and in compliance with provisions not to threaten and use force against the other entity. They are also individually responsible for ensuring the implementation of positions harmonised and co-ordinated at sessions of the Presidency of Bosnia and Herzegovina and SCMM.

### **5.1.2. Standing Committee on Military Matters**

The Standing Committee on Military Matters (SCMM) has been established by the Constitution of Bosnia and Herzegovina as an instrument of the Presidency. Its competencies are defined within Article V (5)(b) of the Constitution of Bosnia and Herzegovina: the SCMM co-ordinates the activities of the armed forces in Bosnia and Herzegovina. The members of the Presidency of Bosnia and Herzegovina are also members of the SCMM.

The Defence Policy of Bosnia and Herzegovina further defines the role of the SCMM. The SCMM acts as an advisory body to the Presidency in matters related to security and defence activities, and operates at the political, military, strategic and executive levels, co-ordinating the activities of the armed forces in a number of fields, including, *inter alia*:

- the security and defence policy of Bosnia and Herzegovina;
- co-ordination of armed forces to protect the sovereignty and territorial integrity of Bosnia and Herzegovina;
- co-operation with State and entity institutions in defence matters;
- the planning of military assistance rendered for natural and industrial disasters;
- restructuring of armed forces;
- the fulfilment of international military obligations and liaison with foreign defence and security organisations;
- international peace support operations;

- transparency of the budget and foreign military support;
- public information processes;
- and, technical co-ordination of matters relating to the SCMM and its working groups.

In August 2002, the Presidency of Bosnia and Herzegovina issued the Decision on Organisation and Functioning of the Defence Institutions of Bosnia and Herzegovina to strengthen defence institutions at the State level. The decision identified areas requiring clarification, adjustment and improvement. One result changed the composition of the SCMM and its Secretariat. Consequently, the structure now consists of seven members, each with voting rights:

- the three Members of the Presidency of Bosnia and Herzegovina (with each member having the right to veto any decision);
- Chairman of the Council of Ministers;
- Minister of Foreign Affairs of Bosnia and Herzegovina;
- President/Vice President of Republika Srpska;
- and, President/Vice President of the Federation of Bosnia and Herzegovina.

The new composition also includes non-voting permanent members in the capacity of observers, including: the chairmen of parliamentary defence and security commissions at State and entity levels; and, the military advisors to the members of the Presidency of Bosnia and Herzegovina.

The SCMM Terms of Reference further elaborated the responsibilities and composition of the SCMM. Accordingly, the SCMM co-ordinates and controls the implementation of decisions in all areas related to the security and defence of Bosnia and Herzegovina that require action at the State level.

The SCMM composition was also changed through creation of the post of Secretary General, who chairs the SCMM but has no voting rights. The Secretary General, along with two deputies, is the supreme co-ordinating authority of the two SCMM executive structures, the SCMM Secretariat and the SCMM Military Commission. In this capacity, the Secretary General has competencies to prepare, chair and execute actions resulting from sessions of the SCMM. The Secretary General also directs and exercises control over the SCMM Secre-

tariat and Military Commission, and co-ordinates co-operation between these two bodies.

According to the Decision on Organisation and Functioning of the Defence Institutions of Bosnia and Herzegovina and the SCMM Terms of Reference, the Secretary General represents Bosnia and Herzegovina at the State level in all defence matters. The Secretary General is also tasked with co-operating with international military associations and acting as a point of contact for them.

### **5.1.3. The SCMM Secretariat**

The SCMM Secretariat is the expert, operational, and planning executive body that executes SCMM decisions and other tasks as assigned by the Secretary General. The Secretariat co-operates with all relevant executive authorities at State and entity level, and its primary task is to co-ordinate and harmonise the implementation of strategic and operational implications of the decisions of the Presidency of Bosnia and Herzegovina, the SCMM, and the SCMM Military Commission. The Secretariat's tasks are allocated and executed within four departments:

- Department for Management of Security and Defence Issues;
- Department for Co-operation with NATO;
- Department for Internal and Foreign Military Affairs;
- and, Department of Personnel Management and Administrative Affairs.

### **5.1.4. The SCMM Military Commission**

The SCMM Military Commission is the military and executive authority in defence matters at the State level. The Commission consists of six members:

- Minister of Defence of Republika Srpska;
- Minister of Defence of the Federation of Bosnia and Herzegovina;
- Deputy Minister of Defence of the Federation of Bosnia and Herzegovina;
- Commander of the Joint Command of the Army of the Federation of Bosnia and Herzegovina;

- Deputy Commander of the Joint Command of the Army of the Federation of Bosnia and Herzegovina;
- and, Chief of Staff of the Army of Republika Srpska.

The Commission is accountable to the Presidency of Bosnia and Herzegovina and the SCMM, through the Secretary General. It is responsible to co-ordinate and exercise direct control over activities that are defined within the Decision on Organisation and Functioning of the Defence Institutions of Bosnia and Herzegovina and the SCMM Terms of Reference, including, *inter alia*:

- defence, sovereignty and territorial integrity of Bosnia and Herzegovina;
- participation of the armed forces in U.N. Peace Missions and other international commitments;
- participation of armed forces in providing assistance to civil authorities in natural and industrial disaster relief;
- the restructuring of armed forces;
- and, participation in preparing doctrine and modern standards of training and equipping armed forces.

Although the diagram of current organisational arrangements pictures the SCMM Military Commission underneath the SCMM Secretariat, it is established equal in status.

However, the SCMM Military Commission has never had an inaugural session due to factors involving its composition. One formal reason is that an amendment to the Constitution of the Federation of Bosnia and Herzegovina abolished the position of Deputy Minister of Defence. The Law on Modifications and Amendments to the Law on the Government of the Federation of Bosnia and Herzegovina codified the new composition of government departments. The Commission's composition has yet to be determined in light of this amendment to the Constitution and law; therefore, this institution exists formally, but has yet to be established and convene.

Formally, the documents elaborating the authority of the SCMM and its institutions define the State-level chain of command. As such, the chain of command commences at the Presidency of Bosnia and Herzegovina, passes through the SCMM, is executed by the Secretary General, who directs the ex-

executive structures of the SCMM to co-ordinate and harmonise the implementation of the strategic and operational implications of these decisions with corresponding authorities at State and entity levels. However, the substantive nature of the entity constitutional and legislative provisions conferring supremacy to the entities conflict with these provisions. Thus, the State is potentially paralysed in defence matters.

## **5.2. Current Constitutions and Laws**

The following examination of current constitutions and laws enumerates the arrangements pertaining to State and entity competencies within defence.

### **5.2.1. State of Bosnia and Herzegovina**

#### ***Constitutional Arrangements***

The Constitution of Bosnia and Herzegovina does not explicitly mention defence as a State prerogative but contains several provisions pertaining to defence, primarily within its provisions on the Presidency (Article V). Its paragraph 5, "Standing Committee," stipulates that each member of the Presidency of Bosnia and Herzegovina has command authority over the armed forces, and that the members of the Presidency shall establish the SCMM.

In a wider sense, the enumeration of foreign policy as a State competency in Article III.1, given the fact that defence by definition pertains to an aspect of foreign policy, namely external security of the State *vis-à-vis* other States, could be seen as defence related.

The potential exists under Article III.5(a) for the State level of Bosnia and Herzegovina to assume responsibilities that are necessary to preserve the sovereignty, territorial integrity, political independence and international personality of Bosnia and Herzegovina.

#### ***Legal Arrangements***

No State Law on Defence exists to regulate and define the competencies of the State and its institutions for defence matters. Although the Defence Policy, Decision on Organisation and Functioning of Defence Institutions of Bos-

nia and Herzegovina and the SCMM Terms of Reference define the competencies at State-level for the Presidency of Bosnia and Herzegovina, the SCMM and its institutions, these documents are not laws.

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

### ***Constitution of the Federation of Bosnia and Herzegovina***

The Constitution of the Federation of Bosnia and Herzegovina was adopted in June 1994, before the signing of the Dayton Peace Agreement. Under Article III.1(a), it grants the entity the exclusive responsibility for “organising and conducting the defence of the Federation and protecting its territory, including establishing a joint command of all military forces in the Federation, controlling military production, signing military agreements according to the Constitution of Bosnia and Herzegovina; co-operating with the Standing Committee on Military Matters and the Council of Ministers.”

The Constitution grants command and control authority over the Army of the Federation of Bosnia and Herzegovina to the Entity President. Specifically, Article IV.B.3.7(a)(ii), as amended by the April 2003 Decision of the High Representative, stipulates that the President serves as Commander-in-Chief of the military of the entity, subject to the provisions on civilian command in Article V.5(a) of the Constitution of Bosnia and Herzegovina. Article IV.3.8 grants the entity President, with the consent of the Vice-President, the authority to nominate officers of the armed forces.

However, there is ambiguity as to where command and control authority over the Army of the Federation of Bosnia and Herzegovina rests. Article IX.11(2) stipulates that “until the Presidency of Bosnia and Herzegovina is established according to Annexes III and IV to the General Framework Agreement, civilian command authority over the Army of Bosnia and Herzegovina...shall be exercised by the Chairman of the Presidency of Bosnia and Herzegovina, and civil command authority over the Croatian Defence Council...shall be exercised by the President or the Vice-President of the Federation who is from the Croat people.” This provision was passed in June 1996 as an amendment to the previous article providing for arrangements until a final peace agreement was reached and implemented. Until the implementation of the Agreement on Elections (Annex III) and the establishment of the institution of the Presi-

gency of Bosnia and Herzegovina according to the Constitution (Annex IV), these provisions were to be considered as interim arrangements. In the absence of the corresponding State institutions, the then Bosniak member of the Presidency, Alija Izetbegovic, assumed command and control over the Army of the Republic of Bosnia and Herzegovina, and the President of the Federation of Bosnia and Herzegovina, Kresimir Zubak, assumed command and control over the Croatian Defence Council. It was intended that, once the Presidency of Bosnia and Herzegovina was established, command and control authority would transfer from the respective entity authorities to the State-level Presidency. However, there have been no amendments to either the Constitution or the Law on Defence of the Federation of Bosnia and Herzegovina – although the Law on Defence acknowledges the supremacy of the Presidency of Bosnia and Herzegovina in matters related to defence.

The practice has been to follow the wording of the Law on Defence of the Federation of Bosnia and Herzegovina. For example in the case of the 2002 downsizing of the Army of the Federation of Bosnia and Herzegovina, the Bosniak and Croat Members of the Presidency of Bosnia and Herzegovina signed the decision on behalf of the entity. However, constitutionally and legally, there is still inconsistency and ambiguity, and some command and control responsibilities still rest with the institutions of the Federation of Bosnia and Herzegovina.

Additionally, there is a disparity in terminology regarding the function that is bestowed to the President of the Entity under Article IV.B.3.7(a)(ii), which prescribes *supreme* command authority to the President of the Entity, and within the provisions of Article IX.11(2), which prescribes *civilian* command authority to the Chairman of the Presidency of Bosnia and Herzegovina and the President of the Federation of Bosnia and Herzegovina.

### ***Law on Defence of the Federation of Bosnia and Herzegovina***

The Law on Defence of the Federation of Bosnia and Herzegovina (amended in June 2002 and April 2003) determines the system and organisation of defence. The law defines the competencies of the entity and its institutions, and the rights and responsibilities of the cantons, municipalities, citizens, and other legal bodies in the sphere of defence. It includes the protection of the

borders, financing of the entity army, and other questions of relevance to the defence of the entity.

Article 1 defines the general purpose of the law as to ensure the existence of a comprehensive programme aimed towards the future security of the Federation of Bosnia and Herzegovina. This should constitute an aspect of the programme for the defence, sovereignty and territorial integrity of Bosnia and Herzegovina. The principal aims of the Law are to:

- establish civilian control over the Army of the Federation of Bosnia and Herzegovina;
- create a unified Ministry of Defence and structure of the military command;
- establish a single, short and applicable chain of command regarding military operations;
- prescribe clear authorities and responsibilities for the civilian officials of the defence and officer corps;
- ensure decisive co-ordination and unified control over the Entity Army;
- and, ensure that all military forces act only under an integrated command of the entity and the civilian command of the Members of the Presidency of Bosnia and Herzegovina.

The Law on Defence also endeavours to establish apolitical, professional military forces, respectful of the religious beliefs of individuals. The law envisages the establishment of a common policy governing procedures for State and entity level bodies in the sphere of defence. The primary aim is the creation of a military organisation capable of efficient operations in peace and war.

Section III, listing rights and responsibilities of entity bodies, is particularly significant as it recognises that entity control will be for a transitional period only. In particular, Article 22 acknowledges the supremacy of the Presidency of Bosnia and Herzegovina over the Army of the Federation of Bosnia and Herzegovina. The law "accepts the regulations of the Constitution of Bosnia and Herzegovina agreed upon in Dayton, which states that: 'each member of the Presidency, by virtue of the office, has civilian command authority over armed forces.'" The Law allows for a special law that would determine the rights and responsibilities of the Presidency of Bosnia and Herzegovina and

the President and Vice-Presidents of the Entity. However, given that the foreseen amendments have never been realised and that these responsibilities still lie with entity institutions, a *de jure* and *de facto* set of arrangements are in effect created. In addition, the contradictions create ambiguity as to where responsibilities and competency lie.

Article 20 prescribes the competencies of the **Federation of Bosnia and Herzegovina** within the sphere of defence, which include, *inter alia*:

- responsibility for organising the system of defence;
- planning for defence measures;
- organising, preparing and leading the Armed Forces in the Federation of Bosnia and Herzegovina;
- establishing the Joint Chiefs of Staff (command) of the Army of the Federation of Bosnia and Herzegovina;
- concluding military agreements;
- organising the system of protection and rescue (civil defence);
- and, organising, preparing the surveillance / intelligence service.

Article 21 defines the competencies of the **Parliament of the Federation of Bosnia and Herzegovina**, as including, *inter alia*:

- regulation of the entity system of defence;
- organising the financing of the entity army;
- adopting defence plans;
- approving appointments of members of the Joint Command;
- ratifying and abrogating international treaties and agreements;
- and, giving consent for any use of military force by the Federation of Bosnia and Herzegovina.

Under Article 25, the **Government of the Federation of Bosnia and Herzegovina**, has competency for, *inter alia*:

- implementation and execution of the defence policy of the entity;
- determination and organisation of civil defence, the armed forces, surveillance and intelligence services;

- drafting defence plans, including threat assessment;
- and, making overall supply and equipment decisions.

Article 26 defines the role of the Government during a state of war or emergency. These responsibilities and duties extend to the following:

- commanding the evacuation of designated categories of the population from threatened/inhabited areas;
- execution of measures to transform entity bodies from peacetime to war-time organisations;
- ensures implementation of measures to remove the causes and effects of a state of emergency
- and, providing for the implementation of measures for preparedness in the entity.

Article 27 defines the responsibilities and competencies of the **Ministry of Defence of the Federation of Bosnia and Herzegovina**. These extend to:

- planning, research and development of arms and military equipment;
- determining elements for threat perception;
- proposing criteria and standards for personnel and equipment to all bodies and institutions involved in the decision-making process;
- determining the wartime and peacetime formation of the Army of the Federation of Bosnia and Herzegovina;
- and, responsibility for drafting a plan for the defence of the entity.

Article 36 notes that the armed forces can be used to “perform certain tasks under a state of emergency and in cases of natural disasters or other accidents.”

Article 52 regulates procedures pertaining to the mobilisation of armed forces in peacetime and in case of an armed attack or imminent threat of war. Mobilisation would be conducted according to plans that conform to the unified system of mobilisation determined by the persons in Article 22 of the law. However, due to the ambiguity of the provisions relating to command and

control authority, it is unclear as to whether this refers to the Entity President or members of the Presidency of Bosnia and Herzegovina.

### ***Law on the Army***

Generically, a Law on Army/Service should regulate and provide for the competence and the work of the armies, as well as the rights, duties and commitments of persons serving in such institutions. These provisions extend to the establishment of scales of ranks for professional military personnel, punitive procedures, and other regulations pertaining to scales of pay and regulations of service. In addition, this law must be reflective of provisions stipulated within employment laws and other applicable laws that regulate social security and service provisions.

Most notably, there is no common Law on Army/Service in the Federation of Bosnia and Herzegovina. Currently, the Bosniak and Croat components of the Army of the Federation of Bosnia and Herzegovina use two pieces of legislation that pre-date the Washington Agreement. The Bosniak component uses the Law on the Service in the Army of the Republic of Bosnia and Herzegovina (adopted in August 1992) and the Croat component uses the Law on the Service in the Croatian Defence Council (recorded in June 1994 in the People's Gazette of the Croatian Republic of Herceg-Bosna). The absence of a common law adds to the duality and parallelism of defence structures in the Army of the Federation of Bosnia and Herzegovina.

However, unified ranks in the Army of the Federation of Bosnia and Herzegovina, consisting of the two components, Bosniak and Croat, were introduced in June 1997 by order of the Bosniak and Croat Members of the Presidency of Bosnia and Herzegovina (which again shows that in practice, the prescribed supremacy of the Presidency of Bosnia and Herzegovina over entity institutions is followed).

### **5.2.3. Republika Srpska**

#### ***Constitution of Republika Srpska***

The Constitution of Republika Srpska prescribes command and control authority over the Army of Republika Srpska to the Entity President. Specifically, Article 106 stipulates "At war and at peacetime, the Army of Republika Srpska shall be commanded by the President of the Republic, according to the Constitution and law subject to the provisions on civilian command in Article V.5(a) of the Constitution of Bosnia and Herzegovina."

Article 68 prescribes the competencies and responsibilities of the entity within the field of defence, including, *inter alia*:

- Regulation and preservation of integrity, constitutional order and territorial unity;
- defence and security;
- and, taking measures in case of the immediate threat or state of war and in the case of a state of emergency.

Under Article 70, the **National Assembly of Republika Srpska** has the competency to declare:

- a state of war in the case of an armed attack on Republika Srpska;
- an imminent threat of war in case of a serious threat of war;
- and, a state of emergency in the case if the "security, human rights and freedoms and normal functioning of the constitutional institutions are threatened."

According to Article 80, the President of Republika Srpska performs, in accordance with the constitution and law, tasks related to defence, security and relations with other countries and international organisations.

Article 81, defines procedures in the case of a state of emergency. In the case that the National Assembly is unable to convene due to a state of emergency, the President of Republika Srpska shall, upon obtaining the opinion of the Government, establish the existence of a state of emergency and order that measures are taken for its remedy. This competency extends to the declara-

tion of a state of war or imminent threat of war, in the event that the National Assembly is unable to convene. Additionally, the President of Republika Srpska, in the event that the National Assembly is unable to convene, at the proposal of the Government or on his own initiative, can pass decrees with the force of law regarding issues falling under the competence of the National Assembly.

Article 104 and 105 stipulate the requirement to have two laws regulating the distribution of rights and duties in the field of defence and dealing with the Army of Republika Srpska. These laws reflect the constitutionally stipulated supremacy of the entity President and institutions over the armed forces.

### ***Law on Defence of Republika Srpska***

The Law on Defence of Republika Srpska (amended in 2001 and 2003) defines the defence system of the entity, and the rights and duties of institutions and individuals in defending the territory and constitutional order of Republika Srpska.

Under Article 3 (1), the defence of the entity is to be realised through "organisation and preparation of the armed forces for carrying out tasks in the defence of Republika Srpska." Defence preparations are organised, planned and carried out in peacetime, and defence shall be realised in the case of a state of emergency, immediate threat of war or state of war. Additionally, Article 4 stipulates that the forces used for defence are the "Army of Republika Srpska in peacetime and the armed forces in the period of a state of war and the immediate threat of war." 'Armed forces' are defined as including both the Army and police forces.

According to Article 6 (2), in the case of a state of war and immediate threat of war, "the armed forces of Republika Srpska shall act in accordance to the plans of mobilisation and use of the armed forces and orders of the President of Republika Srpska." In addition, the Entity Government will propose the overall mobilisation plan and plan on defence preparations, and the General Staff of Republika Srpska the plan on mobilisation and use of the armed forces.

According to Article 9, mobilisation shall be planned and conducted based on regulations passed by the Minister of Defence. The mobilisation of bodies, companies and other legal subjects shall be planned and conducted based on regulations passed by the Entity Government.

The General Staff is defined under Article 11 as the “highest professional and command body for the preparation and use of the Army of Republika Srpska in peacetime, that is of armed forces during the state of war and the immediate threat of war.” The Law on the Army of Republika Srpska defines the competencies of the General Staff in more detail.

Article 16 defines the duties and responsibilities of the **National Assembly of Republika Srpska**, which extend to:

- organising the defence system and determining policy in the field of defence;
- considering the state of preparations for defence and determining its organisation, development and strengthening;
- adopting the defence development plans within the entity development plan;
- and, determining the provision of the material reserves and sources of funding for defence during the immediate threat of war and the state of war.

The competencies of the **President of Republika Srpska** are defined in Articles 17 and 18. Most notably, Article 18 stipulates that the President is the Supreme Commander of the Armed Forces; and Article 17 states that the President within the field of defence, *inter alia*:

- passes and orders the implementation of the Republika Srpska Defence Plan;
- governs defence and commands the Army of Republika Srpska in peace, or the armed forces during a state of war;
- orders the implementation of alert and other measures relevant for the defence and general or partial mobilisation;
- defines the strategy of armed combat and rules in the use of forces for the defence of Republika Srpska and in waging war;

- imposes receivership in municipalities and companies during the immediate threat or state of war, when the conduct of local authorities and achievement of production is not in line with defence aims;
- defines the strategy of armed combat and rules in use of forces for defence and war;
- and, determines the needs for equipping and arming for the defence of Republika Srpska.

Under Article 8, in the case of a state of emergency and immediate threat of war, the President of Republika Srpska orders measures of alert, mobilisation and the use of the armed forces and other steps and actions which the armed forces undertake for the prevention or elimination of the danger that threatens the defence of Republika Srpska and its safety.

Article 19 prescribes various duties and responsibilities to the **Government of Republika Srpska** in the field of defence, which include, *inter alia*:

- the execution of laws and regulations of the National Assembly related to defence;
- organisation of preparations of citizens for the Defence Plan of Republika Srpska;
- establishment of criteria for the distribution of citizens and material assets for the needs of army staffing or other defence needs;
- establishment of proposals for documents stipulating measures for the organisation and implementation of defence preparations;
- and, proposing the organisation, development and provision of equipment of the armed forces.

Article 20 defines the competencies of the Entity Government during an immediate threat of war or state of war, extending to:

- deciding upon the use of material resources of the entity;
- determining the war organisation of ministries and other entity and State-level organs;

- and, determining war and economic measures for the provision of material and financial support of the armed forces.

Under Articles 21 and 22, the **Ministry of Defence of Republika Srpska**, is competent for, *inter alia*:

- implementation of determined policy and guidelines;
- planning and implementing the mobilisation of armed forces of the entity organs, units and civil defence services;
- determining the organisation and conducting the material supply of the Army of Republika Srpska during the immediate threat of war and during the state of war;
- and, performing inspections in regard to the application of the law and other regulations, plans and measures within the field of defence.

Many other regulations define technical issues relating to such matters as the rights and duties of citizens (though there is no provision for conscientious objection nor civilian service), and the rights and duties of enterprises and other legal subjects. In particular, various provisions define factors within the field of civil defence and protection, as well as competencies in the field of training, planning, safety and finance.

### ***Law on Army of Republika Srpska***

The Law on Army of Republika Srpska regulates the establishment and scale of military ranks, and provides for the rights and duties of professional military personnel, as well as conscripts and regulations pertaining to conscription, including the period of military service. The law allows for conscientious objection and defines the rights and duties of those serving in a civilian capacity. The law also regulates and provides for scales of pay and regulations of service, as well as punitive, disciplinary procedures. The amendments to this law, dated September 2001, harmonised its provisions with the Law on Employment and the Law on Pension and Invalidity Insurance.

### 5.3. Current Parliamentary Responsibilities

#### 5.3.1. Parliamentary Assembly of Bosnia and Herzegovina

Inasmuch as there has been no reference in the Constitution to competencies at the State-level for defence other than the command authority of members of the Presidency and the SCMM, there is no express provision within the Constitution of Bosnia and Herzegovina prescribing competencies within the sphere of defence to the bicameral State-level Parliamentary Assembly. The Rules of Procedure of both parliamentary chambers reflect this situation; thus, no provision allows for a permanent committee that would examine issues exclusively within the field of defence.

There is, however, the option of establishing *ad hoc* committees. Such committees are currently drafting proposals on modifications and amendments to the Rules of Procedures within each chamber, considering the issue of the formation of permanent defence committees.

The *ad hoc* committees of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina, within a draft decision, have recommended the establishment of a *Joint Committee for Security Policy and Oversight and Control over the Agency for Information and Protection of Bosnia and Herzegovina*.

This committee would have competency for a wide range of issues, which, *inter alia*, should include:

- the monitoring of security and defence policy implementation;
- parliamentary control and oversight over the work of the SCMM and other bodies engaged with security and defence related issues;
- co-operation with international organisations;
- and, monitoring the operational activities of the Agency for Information and Protection of Bosnia and Herzegovina.

Under Article 3.1.26 of its Rules of Procedure, the House of Representatives may establish *ad hoc* or investigatory committees, with the capacity to engage temporary professional experts. The issues of consideration can range

between a wide array of subjects, including issues relating to defence and security.

The case of the discovery of illegally stored weapons in Mostar last year provided an illustrative example of the House of Representative's capacity to establish investigatory commissions. The House established a Commission to consider information from State and entity-level authorities and international organisations. The Presidency of Bosnia and Herzegovina, Minister of Defence of the Federation of Bosnia and Herzegovina, Ministry of Internal Affairs of the Sarajevo Canton, Public Prosecutor's Office of the Federation of Bosnia and Herzegovina, as well as SFOR, were asked to supply information. The Commission submitted the final report to the House of Representatives in September.

However, parties are under no legal obligation to submit information, and investigatory commissions or committees cannot serve subpoenas to appear before any hearing. Provision of material is solely on a discretionary basis.

### **5.3.2. Parliamentary Assembly of the Federation of Bosnia and Herzegovina**

Based on the Constitution of the Federation of Bosnia and Herzegovina, the entity Parliamentary Assembly has two main powers within the sphere of defence: authorising the use of military force by the entity and financing the armed forces of the entity. The Law on Defence of the Federation of Bosnia and Herzegovina specifically prescribes the responsibilities of the entity Parliamentary Assembly for defence matters.

According to Article 21 of the Law, the Parliamentary Assembly of the Federation of Bosnia and Herzegovina performs a number of functions in the sphere of defence, including, *inter alia*:

- organising the system of defence of the entity;
- reviewing the status of preparedness for the defence and security of the entity;
- taking measures towards the organisation, development and strengthening of the defence of the entity;
- drafting the defence plan;

- organising the financing of the army;
- and, giving consent for any use of military force by the entity.

The Rules of Procedure of both chambers of the Parliamentary Assembly establish a mechanism for parliamentary scrutiny and oversight through permanent committees examining defence and security matters. Furthermore, as with the case of the Parliamentary Assembly of Bosnia and Herzegovina, the Rules of Procedure allow for the establishment of joint, ad hoc and investigatory committees.

### ***House of Representatives***

Article 53 of the Rules of Procedure of the House of Representatives provides for the establishment of the *Commission for Defence and Security*.

According to Article 58, the Commission takes into consideration the "system and policy in the domain of defence and security within the rights and duties of the House of Representatives, and...gives opinions and suggestions to the House." The Commission can also propose measures for organising, performing and the development of the defence and security of the entity, and for the protection of its territory. The Commission has the competence to review the financing of the Army of the Federation of Bosnia and Herzegovina (budget) and propose appropriate changes. In addition, the Commission discusses granting approval for every possible use of the entity army.

Furthermore, Article 58 stipulates that the Commission provides control of the legality of services for the protection of the constitutional order of the entity – in respect of the performance of human and civil rights as defined by the Constitution and Law.

The commission has the right to organise investigations and subsequently ask for testimonies, evidence and documents towards this purpose. Compliance, however, is not compulsory, and it is possible that such bodies and persons asked to provide information could refuse.

### **House of Peoples**

Article 61 of the Rules of Procedure of the House of Peoples provides for the establishment of the *Commission for Defence, Security and Control of the Legality of the Work of Services for the Protection of the Constitutional Order of the Federation*.

According to Article 67, the Commission considers issues of policy in the field of security and defence. The Commission has the right to issue proposals and opinions to the House regarding the organisation and development of the defence and security of the entity. The Commission has oversight and scrutiny of the requirements of the entity army and competency to examine the defence budget and propose measures for the financing of the entity army.

In addition, entity authorities are bound to make all data available to the Commission, especially information pertaining to the protection of the constitutional order of the entity. Additionally, the Commission has investigatory responsibilities as directed by the chamber.

### **5.3.3. National Assembly of Republika Srpska**

Based on the Constitution of Republika Srpska, the National Assembly has the competency to declare a state of war, imminent threat of war, or state of emergency. The Law on Defence of Republika Srpska specifically prescribes the responsibilities of the National Assembly for defence matters.

According to Article 16, the National Assembly of Republika Srpska performs a number of functions in the sphere of defence, including, *inter alia*:

- organising the defence system and determining policy in the field of defence;
- considering the state of preparations for defence and determining its organisation, development and strengthening;
- adopting the defence development plans within the entity development plan;
- and, determining the provision of the material reserves and sources of funding for defence during the immediate threat of war and the state of war.

The Rules of Procedure of the National Assembly allow for the scrutiny and oversight of defence matters. Article 33 allows for the formation of permanent commissions and boards to examine issues within the authority of the assembly, as well as the formation of other working bodies of a temporary nature to examine any particular issue.

The Rules of Procedure also provide for the establishment of permanent commissions and boards examining certain thematic matters. In particular, Article 50 provides for the creation of the *Commission for Supervision and Control of the Work of the Bodies and Institutions in the Field of Defence and Internal Affairs*.

Article 67 prescribes a number of duties and responsibilities to the commission, including, *inter alia*:

- examination of the preparedness of entity defences and suggestion of measures for the establishment of policy;
- suggestion of measures towards the organisation, development and strengthening of defence;
- control of the legitimacy of the work of bodies and institutions in the field of defence and internal affairs;
- and, inform the National Assembly of conditions and problems in the sphere of defence and internal affairs, and to suggest corresponding measures.

## **5.4 Current Situation of the Armed Forces of Bosnia and Herzegovina**

This section examines the current situation of the Armed Forces of Bosnia and Herzegovina.

### **5.4.1 Size of Armies**

At the end of the war, the strength of the Army of the Federation of Bosnia and Herzegovina (VFBiH) and the Army of Republika Srpska (VRS) totalled

264,500 and 154,500 respectively. In accordance with Dayton Annex 1B, in 1996, representatives of the two entities and the State of Bosnia and Herzegovina agreed to reduce the number of heavy weapons held by the two armies to negotiated levels, and announced that the size of the VRS should not exceed 56,000 and the VFBiH 55,000. Dayton Annex 1B specified that the ratio of forces between the two entities should be 2:1.

Since 1996, over 4,700 pieces of heavy equipment have been removed by the two entities. Beginning in 1999, the leaderships of the State and the entities realised that the size of the two armies could not be sustained economically and reform efforts began. The armies then downsized to 30,000 for the Federation of Bosnia and Herzegovina and 12,000 for Republika Srpska. However, this total of 42,000 in the armed forces remained much higher than Bosnia and Herzegovina could afford.

In 2002, further downsizing was conducted and the armed forces reduced from a total size of 33,000 to 19,090.

Today, the Army of the Federation of Bosnia and Herzegovina consists of 12,910 professional soldiers. The Army of Republika Srpska consists of 6,180 professional soldiers. This number of professional soldiers and conscripts remains economically unsustainable.

#### **5.4.2. Purpose of the Armed Forces of Bosnia and Herzegovina**

The Defence Policy of Bosnia and Herzegovina defines the purposes of the Armed Forces of Bosnia and Herzegovina as:

- protection of the sovereignty and territorial integrity of Bosnia and Herzegovina in accordance with international law and the Constitutions of the State and entities;
- contribution to international peace support missions;
- and, providing assistance to civil authorities in the event of natural disaster or other emergency as well as social needs such as de-mining and infrastructure development.

Consequently, the training, equipping and financing of the armed forces must enable them to perform these primary tasks. However, they cannot today. The enormous economic burden of maintaining the current size of the armies has meant that little is left for training, spare parts, general maintenance, or weapons modernisation. The quality of the armies has correspondingly deteriorated over the past several years. Only the U.S.-led Train and Equip Programme, which officially ended in 2003, helped the VFBiH realise some training and equipment advances.

There is another reason the current armies are unable to carry out the missions assigned: the lack of common military doctrine, standards of training, differing military organisation and equipment. Today, the two armies would have difficulty working together, and the concept of interoperability of the Armed Forces of Bosnia and Herzegovina with NATO remains theoretical.

#### **5.4.3. Military Doctrine**

Some steps have been made toward developing a common military doctrine. At its fourth session in June 2003, the SCMM accepted the Military Doctrine of the Armed Forces in Bosnia and Herzegovina. This document sets forth the tenets and principles that govern the Armed Forces of Bosnia and Herzegovina in the implementation of the tasks described in the Defence Policy. It is an essential requirement for Partnership for Peace that the Armed Forces of Bosnia and Herzegovina have a common military doctrine.

#### **5.4.4. Training**

Training in the two armies has, for financial reasons, aimed only at developing basic soldier skills in support of the mission to protect the State. There has been little or no training for peace support missions or military assistance in case of natural disasters, which require different skills.

The U.S. Train and Equip Programme, which started in 1996 and officially ended in 2003, provided resources allowing VFBiH training to address tactical level requirements for the protection of the State. Based on U.S. Army doctrine, tactics and procedures, this training has given the VFBiH some compatibility with NATO standards. It is acknowledged that there should be increased

training in terms of individual intellectual military development. This development is required in order for all ranks to adapt their experience and knowledge to the full range of requirements for peace support missions.

The VRS until recently relied heavily on the former Federal Republic of Yugoslavia (today, Serbia and Montenegro) for the education of officer personnel. Like the VFBiH, the VRS needs to address intellectual military development towards the requirements of peace support missions.

SFOR units control the training activities of the two armies. There has been no common training for the two entity armies. No request for training at the battalion level has been made to SFOR. There is no indication that training is addressed at a level higher than company. Live-fire exercises do not take place at a level higher than platoon.

A common training policy is being developed. In particular, programmes and training initiatives are in development to address collective training. The purpose of these documents is to establish policies and procedures for managing and conducting training for the Armed Forces of Bosnia and Herzegovina in order to achieve compatible operational standards in the execution of military missions and operations. This common training system will merge the divergent military operations and standards of the Armed Forces of Bosnia and Herzegovina into a common set of tasks and standards. The next step will be to apply NATO standards to individual courses and collective training activities.

Common training for peace support missions is now a matter of high priority, considering that a joint unit has been created – a transportation company – which might shortly be deployed as part of a peacekeeping mission. Some initial steps are being undertaken:

- OSCE, supported by SFOR, has organised a Disaster Relief Exercise testing State-level capacities for search and rescue operations in the case of a large-scale disaster involving populations on the territories of both entities.
- NATO courses for both senior and young officers are being offered with the aim of forming future leaders of the Armed Forces of Bosnia and Herzegovina.

- In May 2003, the SCMM decided to create a Peace Support Operations Centre at Camp Butmir, sponsored by the UK, in co-operation with several other countries. The aim is to deliver internationally approved education and training in multinational peace support and humanitarian operations to selected junior officers of the Armed Forces of Bosnia and Herzegovina. Courses should begin in 2004.

#### **5.4.5. Equipment**

Largely because of the war, the entity armies today have an excessive amount of heavy, light and small weapons and disarray in the types of weapons used. The variety of models and calibres used, together with the number of sites they are located in, represent a logistical challenge that must be remedied. For example, there are more than 300,000 assault rifles, of nineteen different models and six different calibres. Because of this, compatibility and interoperability are impossible to achieve now. However, a common logistics system can be implemented once the number and types of weapons are reduced. This common logistics system can be a source of savings.

The Florence Agreement limits heavy weapons to 410 tanks, 340 armoured combat vehicles, 1500 artillery pieces, 62 aircraft and 21 attack helicopters for the Armed Forces of Bosnia and Herzegovina. However, these were numbers negotiated in 1996, to establish a military balance with neighbouring countries of a potentially threatening character. In today's view, they no longer correspond to the security needs of Bosnia and Herzegovina, and do not represent the number of heavy weapons actually available to the entity armies. On the other hand, the VFBiH is short of armoured personnel carriers, and there is a general shortage of combat aircraft. As the Armed Forces of Bosnia and Herzegovina reduce to a maximum of 12,000 professionals, a large number of these heavy weapons will become unnecessary.

### **5.5 Defence Expenditures in Bosnia and Herzegovina**

NATO guidelines for PFP membership require full transparency in defence plans and budgets. In addition, OSCE commitments and the OHR mandate to

the Defence Reform Commission call for defence spending to be restrained and within limits set by political authorities through democratic processes.

This section describes aggregate defence expenditures in relation to the total economy and public spending in comparison with other European countries. Defence expenditures are also summarised in broad categories of activity. Utilising local and independent data, the International Monetary Fund has developed estimates of defence expenditures in aggregate economic categories, and defence budget totals are also available through entity governments and international sources. Actual expenditures, however, are difficult to measure, and local accounting reports and defence estimates are often considered unreliable. As discussed below, these problems currently prevent compatible, transparent and reliable estimates of defence expenditures. The continuing defence reform process in Bosnia and Herzegovina will need to address these problem areas.

### **5.5.1. Aggregate Levels of Spending**

#### **Comparison of Selected European Defence Levels**

<b>Countries</b>	<b>BiH</b>	<b>Sweden</b>	<b>Belgium</b>	<b>Hungary</b>	<b>Slovenia</b>	<b>Finland</b>
Defence / GDP	2,9%	1,9	1,2	1,3	1,5	1,3
Prof. Soldiers / population	0,51%	0,21	0,38	0,1	0,21	0,32
Defence / public spend.	5,5%	3,7	2,2	3,4	3,5	5,5
Personnel spend. / budget	>69%				60	45

Source: IMF BiH Country Report 03/204, July 2003; The Military Balance 2001 - 02, The International Institute for Strategic Studies

**GDP:** IMF estimates that defence budgets in Bosnia and Herzegovina will constitute approximately 2.9 percent of GDP in 2003. According to NATO figures, this level exceeds the average of 2 percent of GDP for current PfP members and is twice the level of comparably sized European countries such as Hungary, Slovenia and Finland.

**Percent of Public Spending:** Combined entity 2003 spending for defence is estimated by IMF to be 5.5 percent of all public spending in Bosnia and Herzegovina, a level higher than the average of 3.7 percent for comparable European countries.

## 5.5.2. Analysis of Defence Budgets

<b>Approved 2003 BiH Defence Budgets (KM Mil. )</b>					
<b>Account Category</b>		<b>FBIH</b>	<b>RS</b>	<b>Total</b>	<b>%</b>
611000	Employee Salaries and Expenses	191	53	244	69
612000	Employers Contributions	19	2	21	6
613000	Material & Services	51	32	83	24
821000	Procurement of Fixed Assets	3	1	4	1
<b>TOTAL</b>		<b>264</b>	<b>88</b>	<b>352</b>	<b>100</b>

*Source: Federation and RS data provided by OSCE*

In 2002, a Financial Information Management System (FIMS) was installed in State and entity Ministries of Finance to improve financial accounting and controls in Bosnia and Herzegovina. The FIMS accounting structure includes several major categories for spending, four of which are most often used by entity ministries of defence: salaries and related expenses; other social contributions paid by employers; expenses for material and services, such as utilities and maintenance; and procurement of fixed assets such as land and buildings.

Although this financial system does not adequately support the specific planning and budgeting needs of defence ministries, it is nonetheless clear that personnel costs represent the largest share of entity defence budgets. Salary and benefits alone account for 69 percent of the two defence budgets. Based on information provided by entity ministries of defence, OSCE estimates that total personnel costs - factoring in salaries and benefits plus social contributions, living expenses, and prior-year salary debts - could consume over as much as 90 percent of defence expenditures in 2003.

Even personnel obligations are not fully met. Generally, salaries are paid but payments are usually two months behind, which results in debts being carried over to the next budget. Prior to 2001, only salaries, food, and some expenses were paid; and pension and health payments could seldom be made. Longstanding debts for telephone and electricity have periodically resulted in utilities being disconnected.

Though a thorough analysis of defence budgets by the Defence Reform Commission has not been possible given the limited data and time available, broad conclusions can nevertheless be drawn. The high percentage of resources

committed to personnel costs indicates that the defence budgets are out of balance. The high percentage of spending for personnel, in practical terms, prevents adequate funding for maintenance, education, training, procurement of equipment and other activities necessary for a modern military compatible with NATO standards. Sustaining a large force over time at the expense of these needs would continue to degrade the readiness and capabilities of the Armed Forces of Bosnia and Herzegovina.

As outlined further in this report, reducing the size of the armed forces and related personnel issues are among the most urgent priorities for defence reform. These issues include: the objective size for the Armed Forces of Bosnia and Herzegovina; the timing and severance conditions under which planned rightsizing of forces will proceed; reserves; conscription; and professionalisation. Resolution of these personnel issues will have important implications for the size and balance of future defence budgets.

### **5.5.3. Problems in Defence Budgeting and Accounting**

Bosnia and Herzegovina currently lacks the financial and budgeting systems and processes necessary to produce adequate, reliable, and transparent summaries of defence expenditures. A number of factors contribute to this problem, including: a lack of co-ordination between civilian and military institutions and rationalisation of financial and budgeting systems; lack of financial controls; and under-pricing and under-budgeting of actual defence needs.

#### ***Lack of Adequate, Rationalised Defence Planning and Budgeting Systems***

As previously noted, the Financial Information Management System (FIMS) now operating at State and entity government and ministry levels does not support the specific planning and budgeting needs of a State-level Ministry of Defence. While FIMS appears to show similar data for entity military expenditures, the actual use of these and other categories for planning and budgeting military activities between the entities is inconsistent, making comparisons difficult. The office of the SCMM Secretary General from which the new Ministry of Defence of Bosnia and Herzegovina will emerge currently lacks an inter-

nal capability (including personnel, systems, and training) to rationalise, coordinate, and oversee defence budgets prepared by the entity ministries of defence. The lack of rationalised defence planning and budgeting systems at both the State and entity levels contributes to the inability to summarise the defence budgets and expenditures in categories of military activity potentially useful to defence officials and NATO. Further, the data currently available on defence expenditures is considered generally unreliable due to weak financial and budget controls as outlined below.

### ***Lack of Adequate Financial Controls***

Audits of year 2000 defence budgets for the Federation of Bosnia and Herzegovina and Republika Srpska conducted by the OSCE outlined numerous financial weaknesses and problem areas. These include spending in excess of authorised budget allocations, unrecorded liabilities, unreported sources of funding, unpaid obligations, lack of control over property and assets, inadequate financial controls, and unreliable and misstated reports. Many of these problems continue to undermine the reliability of data upon which the governments' new financial accounting system depends.

### ***Under-pricing and Under-funding of Defence Budgets***

OSCE analysis of 2003 budgets concluded that entity defence budgets are substantially under-priced. Under-pricing occurs when costs assumed for a given set of assumptions are lower than real costs. Whereas 2003 defence budget requests for the Federation of Bosnia and Herzegovina and Republika Srpska totalled KM 437m, more accurate pricing would have totalled KM 496m, indicating under-pricing of the requests by approximately 14 percent. This problem is compounded when under-priced budgets are then approved at levels lower than requested. In 2003, the *approved* budget levels for defence totalled KM 352m – an amount 19 percent lower than the requests and 29 percent lower than the amount necessary if the requests were accurately priced. This suggests the military may be operating with only 70 percent of the funds necessary to cover its real costs in 2003.

The loss of outside and indirect sources of revenue also contribute to the current financial crisis in defence. In prior years, entity defence budgets were

subsidised by contributions from neighbouring countries. These contributions are no longer available. Likewise, entity Ministries of Defence incurred debts that were forgiven through multilateral compensations. Ministries of Finance forgave tax debts from certain companies and those same companies forgave debts owed to them by budget users such as the Ministries of Defence. This represented an additional, indirect subsidy of defence expenditures. The size of multilateral compensations, however, has been recently reduced and its future is in doubt. This is resulting in further loss of indirect funding to the Ministries of Defence.

The under-pricing and under-funding of defence budgets is a continuing problem with significant impact on budget execution. The loss of outside sources of funding, combined with a budget shortfall of 30 percent, and the endemic weaknesses in financial controls reported by international auditors, explains the widely reported financial crises that have confronted defence officials over the past several years. Recent media reports describe conditions such as unpaid soldiers and contractors, the cut-off of utilities at military facilities, and early release of conscripts, among others. Public statements of entity defence officials have largely confirmed these reports.

### ***Conclusion***

Based on international estimates, Bosnia and Herzegovina is spending considerably more on defence than European countries of similar size, and more than can reasonably be sustained given its limited economy and other domestic needs. Reducing the size of the armed forces and resolving outstanding personnel issues are major priorities for reform. Reliable data on defence expenditures are not generally available through State and entity governments due to the lack of rationalised budget and financial systems, and weak financial controls. Under-pricing and under-funding of defence budgets routinely produce crises in budget execution. Without significant reform in this area, Bosnia and Herzegovina will remain incapable of producing reliable, transparent estimates of defence expenditures, allowing an affordable defence consistent with its OSCE and potential NATO PfP obligations.

## **6. Assessment**

This section compares current arrangements for defence in Bosnia and Herzegovina with the NATO PFP-candidacy guidelines, OSCE commitments, and High Representative's mandate. As such, it assesses why Bosnia and Herzegovina is currently unable to present itself as a credible candidate for PFP and highlights the nature and extent of necessary defence reforms.

Broadly speaking, the current structure and composition of the armed forces in Bosnia and Herzegovina remain based on wartime needs and arrangements that no longer apply. Current arrangements for defence in Bosnia and Herzegovina are wholly inadequate to meet the guidelines for Partnership for Peace candidacy and to fulfil existing international commitments.

### ***Command and Control***

The entities have maintained separate military forces, organised and commanded at the entity level, with insufficient State-level command, control and oversight. Each change by one entity is made conditional on changes by the other entity, and has prevented Bosnia and Herzegovina from developing armed forces commensurate with its security needs. Past reforms have failed to address the core issue: that the State is supreme and, as a fundamental principle of Statehood, must be empowered with command and control of its armed forces to have the capacity to defend its territorial integrity, sovereignty, political independence and international personality.

The 2001-02 reforms that stood up the SCMM and its institutions created a quasi State-level chain of command and control; yet actual power remained with the entities whose constitutions and laws define their defence responsibilities in detail. The result was two distinct and parallel chains of command

and levels of authority, creating conflicting command and control arrangements extending from both the State and entity levels.

From the perspective of Partnership for Peace candidacy, the State must be empowered with command and control authority over the armed forces, and the independent authority of the entities to control and command military forces must be deleted.

### ***Entity Armies and Defence Laws***

As noted in the previous chapter, in the Federation of Bosnia and Herzegovina, the legal and constitutional provisions relating to defence matters are inconsistent. The Constitution grants command and control authority to the Entity President, whereas the Law on Defence grants it to pre-Dayton figures, with a caveat that this must be resolved once the Dayton institutions were established. Because these interim arrangements were not updated, constitutional and legal inconsistency and ambiguity remain about whether some command and control responsibilities still rest with the institutions of the Federation of Bosnia and Herzegovina.

To a certain extent, the defence arrangements in the Federation of Bosnia and Herzegovina have continued the parallelism of pre-Dayton, Washington Agreement structures, in the then form of the Army of the Republic of Bosnia and Herzegovina and the Croatian Defence Council (HVO). This is illustrated by the lack of a common Law on the Army. The Croat component still uses the Law on Service in the Croatian Defence Council, and the Bosniak component currently uses the Law on Service in the Army of the Republic of Bosnia and Herzegovina. The absence of a common law adds to the duality and parallelism of defence structures in the Army of the Federation of Bosnia and Herzegovina.

The Constitution of Republika Srpska has - even more visibly than the Federation of Bosnia and Herzegovina - perpetuated the original self-understanding of the entity as a sovereign state, until the High Representative changed it in April 2003. The competencies related to defence reinforce a view of statehood, in which the framework for defence is defined with supremacy resting with entity institutions. Both the Constitution and Law on Defence of Repub-

lika Srpska grant supreme command and control authority over the army to the Entity President, therefore failing to acknowledge the supremacy of the State for matters of defence.

The entity armed forces are currently primarily developed to defend the territory of each respective entity and do not refer to the imperative of the defence of the entire State. They lack the capacities to address mission tasks other than defending territorial integrity, and they must address compatibility and interoperability with each other and NATO forces. Bosnia and Herzegovina must also address the training, doctrine and force structure of its armed forces so that it can make an effective PfP contribution, with solid capacities to organise, train and deploy troops, and thereby to enhance the stability and collective activities of partner countries.

From the perspective of the OSCE politico-military accords, specifically the Code of Conduct, it is obvious that the legal situation in Bosnia and Herzegovina is, on a wide scale, at variance with Code of Conduct commitments. The current arrangements in practise do not provide for adequate democratic control of the military nor provide controls to ensure that authorities fulfil their constitutional and legal responsibilities. Neither do they provide for adequate respect for international humanitarian law, or the protection of basic human rights or fundamental freedoms. The entity defence laws perpetuate pre-democratic doctrines and arrangements. This is also true, to a certain degree, for the commitments contained in the other OSCE documents, such as those relating to conventional arms transfers and small arms and light weapons. The State authorities of Bosnia and Herzegovina cannot meet these commitments as long as they are not in the situation to ensure compliance.

### ***Defence Spending***

Bosnia and Herzegovina, as an OSCE participating state, is committed to have only those armed forces necessary for its legitimate defence needs, a concept that includes fiscal responsibility. State authorities, entity authorities and parliaments all have the responsibility for ensuring the most effective armed forces possible within affordable resource limits. Defence spending by Bosnia and Herzegovina is substantially greater than that of European countries of

similar size and more than can reasonably be sustained given Bosnia and Herzegovina's limited economy and other domestic needs. Reducing the size of the armed forces and resolving outstanding personnel issues are major priorities for reform. Under-pricing and under-funding of defence budgets routinely produce crises in budget execution. Without significant reform in this area, Bosnia and Herzegovina will remain incapable of producing reliable and transparent estimates of defence expenditures, consistent with its OSCE and potential NATO PfP obligations.

### ***Parliamentary Oversight***

Parliamentary oversight of defence matters is a requirement both for PfP membership and OSCE commitments. Currently, no provision in law assigns oversight capability to the bicameral State-level Parliamentary Assembly. The Rules of Procedure of both parliamentary chambers reflect this situation; thus, for example, no provision allows for a permanent committee that would examine issues exclusively within the field of defence. Entity laws provide for legislative oversight by the National Assembly in Republika Srpska and the Parliamentary Assembly of the Federation of Bosnia and Herzegovina, but there is insufficient exercise of this responsibility.

### ***Conclusion***

In summary, current defence arrangements and army structure and size have led to the following, which defence reform must address:

- lack of adequate command and control at the State level;
- ambiguity and inconsistency in law regarding the competency of the State and entities for defence matters;
- insufficient oversight capabilities, including democratic parliamentary control of armed forces;
- lack of transparency at all levels for defence matters;
- non-compliance with international obligations, primarily OSCE politico-military accords;

- an unjustifiable amount of passive reserves and, thereby, also small arms and light weapons to arm them;
- excessive, deteriorating arms at too many locations;
- waste of human and financial resources in the defence sector; and,
- forces sized and equipped for missions no longer appropriate for the real security situation or PfP and NATO requirements.

These are among the reasons why Bosnia and Herzegovina currently is not a credible candidate for the PfP. In the sections that follow, the Defence Reform Commission proposes a new State law on defence, changes to entity constitutions and laws, changes in parliamentary responsibilities, and other reforms. If effectively implemented, these reforms would strengthen BiH defence and assist in making Bosnia and Herzegovina a credible candidate for PfP.

## **7. Findings of the Commission**

### **7.1. State-level Defence Reforms**

#### **7.1.1. Defence Law of Bosnia and Herzegovina**

##### ***Constitutional Basis***

A fundamental principle of Statehood is that a State must have the capacity to defend its territorial integrity and sovereignty. Control over armed forces, including the abilities to protect the national borders and to project force abroad, is a necessary competency of the State in order to protect its sovereignty, territorial integrity and political independence. This is reflected in the Constitution of Bosnia and Herzegovina, which stipulates that the State has competency for the protection of its territory, sovereignty and political independence.

The Constitutional basis for this law is contained in the provisions of Article III.5, which envisages the State assuming responsibilities as are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, and that “additional institutions may be established as necessary to carry out such responsibilities”; Article III.1, which determines that foreign policy is the responsibility of the institutions of Bosnia and Herzegovina; Article III.2, stipulating the responsibility of the entities to provide all necessary assistance to the government of Bosnia and Herzegovina to enable it to honour the international obligations of the State; and, Article IV.4, which grants the authority of the Parliamentary Assembly of Bosnia and Herzegovina, *inter alia*, to enact legislation necessary to implement the decisions of the Presidency of Bosnia and Herzegovina. The

commitment to sovereignty, territorial integrity and political independence is also found in the Preamble of the Constitution of Bosnia and Herzegovina.

As noted, the Constitution grants the State of Bosnia and Herzegovina express responsibility for the conduct of foreign policy. The conduct of foreign policy also includes the consideration of the State's ability to defend its borders and to project force abroad. Thus, the conduct of foreign policy and the command and control of armed forces are both necessary components for preserving the sovereignty, territorial integrity and political independence of the State.

Articles III.2 and Articles III.5, grant the explicit responsibility of the entities to provide all necessary assistance to the State to enable it to honour international obligations. This implies that the State must assume all authority and responsibility to enable it to honour international obligations. This includes the establishment of additional institutions and all those powers as are necessary to protect the sovereignty, territorial integrity, political independence and international personality of Bosnia and Herzegovina. The proposed Defence Law of Bosnia and Herzegovina is a natural consequence of this imperative, as are the recommended amendments to the entity Constitutions, Laws on Defence and Laws on Army.

### ***Explanation***

The proposed Defence Law of Bosnia and Herzegovina codifies the decisions of the Defence Reform Commission, as presented in the Concept Paper, to meet the objective of creating a modern, effective defence establishment that accords with the principles set forth in the Decision of the High Representative of May 9, 2003.

Most fundamentally, the task is to create a single State-level defence establishment, with a clear chain of command emanating from the State down to the entities, reinforcing the supremacy of the State for defence matters. The Law would ensure that State-level institutions, including the Presidency of Bosnia and Herzegovina, are able to carry out fully their responsibility for protecting the sovereignty and territorial integrity of Bosnia and Herzegovina.

To meet the guidelines for entry into the Partnership for Peace, it is necessary to ensure that relevant State institutions are able to exercise oversight over defence structures throughout Bosnia and Herzegovina. More specific tasks are to guarantee command and control of the Armed Forces of Bosnia and Herzegovina at the State level, and establish democratic civil oversight of armed forces in Bosnia and Herzegovina at both the State and entity level.

The Defence Reform Commission considers that the proposed Defence Law would meet these objectives, and recommends it to the governments and Parliaments of the State of Bosnia and Herzegovina and its entities.

The purpose of the defence establishment is to serve the State, in accordance with the Constitution of Bosnia and Herzegovina, by organising, training and equipping armed forces and executing the missions established for those forces in law and the Defence Policy of the State. The proposed defence system would consist of State and entity level defence institutions and structures as well as the armies of the Federation of Bosnia and Herzegovina – consisting of the Bosniak and Croat components - and Republika Srpska.

The Presidency of Bosnia and Herzegovina, as a collective body, would be the supreme authority over the Armed Forces of Bosnia and Herzegovina and, as the primary legal authority to authorise the mobilisation and employment of armed forces, both active and reserve, would exercise command and control over the Armed forces of Bosnia and Herzegovina at all times, both in peace and in war.

The Law envisages the establishment of a State-level Minister of Defence as the linchpin of the defence establishment of the State. Assigned with command, administrative and organisational responsibilities, the Minister of Defence would be entrusted with the oversight of all defence matters in Bosnia and Herzegovina. The creation of a State-level Ministry of Defence is a crucial part of meeting the PfP credible candidacy criteria.

This law would ensure that all of the interests in Bosnia and Herzegovina would be effectively represented in decision councils. To make sure that no peoples are placed at a disadvantage and that their interests are taken into account in the decision-making process, positions would be distributed both vertically and horizontally.

The Minister of Defence, Chief of Staff of the Joint Staff and Commander of Operational Command would be subject to a vertical distribution of posts and these positions would be spread across the constituent peoples of Bosnia and Herzegovina. Likewise, a horizontal distribution of posts would apply to the Minister of Defence and two Deputy Ministers of Defence. These officials cannot be from the same constituent peoples. The Chief of Joint Staff and Deputies would also not be from the same constituent peoples, nor would the Commander of the Operational Command and his two deputies.

The Defence Reform Commission's recommendations have taken into account existing laws and regulations. As a result of these, the distribution of posts cannot be fully equal. However, the Commission has ensured that within its recommendations constituent peoples' interests can be considered and articulated. Peoples would have equal opportunity to present important perspectives. This would ensure the appropriate distribution of authority over the constituent peoples to maintain equality and balance.

### ***Legislative Framework for a New Ministry of Defence***

The proposed State-level Ministry of Defence would be established in accordance with existing State legislation regulating the formation and functioning of the Ministries of Bosnia and Herzegovina. The creation of the new Ministry would therefore require the amendment of two existing laws. The Law on the Council of Ministers, Article 5, would be amended to add the new Ministerial position within the Council of Ministers. Article 7 would be amended to reflect that the Minister of Defence would have two deputies. The Law on Ministries and Other Bodies of Administration, Article 7, would be amended to create the Ministry. Article 15 would be amended to define the primary competencies of the new Ministry, based on those agreed in the Defence Reform Commission Concept Paper.

The Defence Law of Bosnia and Herzegovina, as reflected in the Concept Paper adopted by the Defence Reform Commission, envisages a new Ministry that assumes some of the competencies previously granted to the Standing Committee on Military Matters (SCMM). As the SCMM is a constitutional body under the authority of the Presidency of Bosnia and Herzegovina, a separate

decision of the Presidency would be required to transfer existing competencies and resources from the SCMM to the new Ministry.

The Law on the Council of Ministers, Article 6, requires that the composition of the Council of Ministers “ensure equal representation of the constituent peoples of Bosnia and Herzegovina”, with the possibility of one ministry position being held by a representative of the group of Others. There are currently nine positions within the Council of Ministers, which are distributed equally between the constituent peoples of Bosnia and Herzegovina. Creating a new ministry would change that distribution.

Ensuring equal representation of the constituent peoples in the Council of Ministers after the creation of a new ministry could be done in two ways. A representative of the group of ‘others’, with the remaining nine ministries distributed among the three constituent peoples could head one of ten ministries. The alternative is to combine two ministries into one, thereby maintaining the current distribution of nine ministries. Naturally, parliament could also further amend the Law on the Council of Ministers to revise the current requirement regarding the equal distribution of ministries. The distribution of ministries among the constituent peoples of Bosnia and Herzegovina is a matter for the parliament to decide among the various options available.

## ***Defence Law of Bosnia and Herzegovina***

### ***Article-by-Article Analysis***

#### ***Preamble***

*In accordance with Articles III.1.a, III.2.b III.5.a and Article IV.4 of the Constitution of Bosnia and Herzegovina the Parliamentary Assembly of Bosnia and Herzegovina at the session of the House of Representatives held on \_\_\_\_\_ and at the session of the House of Peoples held on \_\_\_\_\_ adopted the*

### ***Defence Law of Bosnia and Herzegovina***

#### ***I. Armed Forces of Bosnia and Herzegovina***

**Article 1**

*This Law shall regulate the rights, responsibilities and activities of the institutions of Bosnia and Herzegovina, entity bodies and Armed Forces of Bosnia and Herzegovina, for defence of sovereignty and territorial integrity, political independence and international personality of Bosnia and Herzegovina and provision of assistance to civilian authorities.*

**Article 2**

*This Law shall regulate the common defence system of Bosnia and Herzegovina, establish and define the chain of command and role of all elements in order for Bosnia and Herzegovina to have full capacity in civilian oversight and protection of the sovereignty and territorial integrity of Bosnia and Herzegovina.*

**Article 3**

*The Armed Forces of Bosnia and Herzegovina means all military forces in Bosnia and Herzegovina, whether organised by state or entity institutions. The Armed Forces of Bosnia and Herzegovina include the Army of the Republika Srpska and the Army of the Federation of Bosnia and Herzegovina. The Army of the Federation of Bosnia and Herzegovina was established by law in 1996 from units of the Army of the Republic of Bosnia and Herzegovina and the Croat Defence Council.*

**Article 4**

*Military forces means all formations and units, both combat and support, of the land, naval, air and air defence forces organised by state or entity institutions of Bosnia and Herzegovina. No military forces shall be organised, trained, equipped, or mobilised upon the territory of Bosnia and Herzegovina except pursuant to this Law.*

Articles 1, 2, 3 and 4 provide basic definitions and define the Armed Forces of Bosnia and Herzegovina. The purpose of these provisions is to reinforce the supremacy of the State over all military forces in Bosnia and Herzegovina, by explicitly providing that all forces, units and formations, whether organised by the State or entities, constitute the Armed Forces of Bosnia and Herzegovina.

These provisions make clear that the law would apply to all currently existing armed forces and prohibits the existence and operation of military forces inconsistent with, or unless established by, the provisions of this law.

On 8 July 2002 the Bosniak and Croat members of the Presidency of Bosnia and Herzegovina, representing the Federation of Bosnia and Herzegovina, issued a Decision on the Overall Size and Organization of the Army of the Federation of Bosnia and Herzegovina. This decision sets out the ratio between

the Bosniak and Croat components of the Army of the Federation of Bosnia and Herzegovina, and stipulates the peacetime formation of the army (comprising of 13,200 professional soldiers and 8,400 conscripts) and that the balance between the Bosniak and Croat professional components shall be set at 2.3:1.

The proposed Defence Law of Bosnia and Herzegovina envisages that the competency of the Presidency of Bosnia and Herzegovina to approve force structure will continue. The Presidency, through a collective decision, would determine, and be able to alter as necessary, the size and organization of the Armed Forces of Bosnia and Herzegovina, of which the Army of the Federation of Bosnia and Herzegovina is an integral part.

#### **Article 5**

*The missions of the Armed Forces of Bosnia and Herzegovina shall be as follows:*

- a) To carry out military training for combat and other forms of military defence;*
- b) To assure combat readiness;*
- c) To provide military defence of the state in the event of an attack;*
- d) To assist civil protection authorities in responding to natural disasters and accidents; and*
- e) To fulfil the international obligations of Bosnia and Herzegovina.*

#### **Article 6**

*The Armed Forces of Bosnia and Herzegovina shall not be used for political purposes or political party-related activities.*

These Articles define the variety of situations and purposes for which the Armed Forces of Bosnia and Herzegovina would be used. It recognises that all armies, units and formations constituting the Armed Forces of Bosnia and Herzegovina, under the command and control of the State, would act in the pursuit of these missions and tasks.

Article 5(e) states that the Armed Forces would be used to fulfil the “international obligations” of Bosnia and Herzegovina. This provision envisages use of the Armed Forces for external operations, such as peace support operations, to fulfil obligations undertaken by the State, for example within the frame-

work of PfP or NATO membership. Authority for engaging troops abroad in this manner can be found in the Constitution of Bosnia and Herzegovina, whereby State institutions and the Presidency are given responsibility for foreign policy matters under Articles III.1(a) and V.3(a).

The Defence Reform Commission, from its deliberations, recognises that the three most likely missions for which the State would exercise operational control over the armed forces are: in the protection of the sovereignty and territorial integrity of the State; peace support missions abroad; and, large-scale natural disasters. However, the law recognises that the missions for which the State would exercise operational control over the armed forces would not be limited to these cases, and that the State has command and control over the Armed Forces at all times.

## **II. State Institutions and Competencies**

### **A. State Competencies**

#### **Article 7**

*The State of Bosnia and Herzegovina shall organise, develop and maintain the military capability and preparedness of the Armed Forces of Bosnia and Herzegovina in order to:*

- a) Ensure its sovereignty, territorial integrity, political independence, and international personality;*
- b) Promote its foreign policy objectives;*
- c) Fulfil the international obligations of Bosnia and Herzegovina; and*
- d) Protect the citizens of Bosnia and Herzegovina.*

#### **Article 8**

*The State of Bosnia and Herzegovina shall ensure transparent, democratic, civilian control over the Armed Forces of Bosnia and Herzegovina.*

#### **Article 9**

*The State of Bosnia and Herzegovina shall exercise operational and administrative command and control over the Armed Forces of Bosnia and Herzegovina.*

#### **Article 10**

*Operational command and control means the authority to assign military missions or tasks to subordinate commanders, to deploy units, to reassign forces, and to retain or delegate operational or tactical control.*

*The operational chain of command begins with the Presidency of Bosnia and Herzegovina, goes to the Minister of Defence of Bosnia and Herzegovina, to the Chief of Staff of the Joint Staff of Bosnia and Herzegovina, to the Commander of the Operational Command, and then to commanders of operational units.*

**Article 11**

*Administrative command and control means the direction or exercise of authority for administrative matters such as organising, manning, equipping, and training the Armed Forces of Bosnia and Herzegovina.*

*The administrative chain of command begins with the Presidency of Bosnia and Herzegovina and goes to the Minister of Defence. For military forces organised at the entity level, the administrative chain of command then goes to the entity Ministers of Defence and then through the entity army chains of command. For military forces organised at the State level, the administrative chain of command goes to the Chief of Staff of the Joint Staff and then to subordinate administrative commands.*

**Article 12**

*Planning and oversight of all military intelligence and the conduct of all strategic and operational intelligence shall be a competency of the State.*

Article 7 stipulates that Bosnia and Herzegovina must fulfil its constitutional obligations through this law. It contains the requirement for armed forces that correspond to the defence and security needs of Bosnia and Herzegovina. The armed forces must be capable and prepared to act to comply with the needs of the State, and must reinforce the objectives and international obligations of the State.

Article 8 specifies that the State would have the responsibility for ensuring democratic, transparent and civilian control over the Armed Forces of Bosnia and Herzegovina. This is consistent with the establishment of the supremacy of the State for defence matters.

Article 9 prescribes command and control authority over the Armed Forces of Bosnia and Herzegovina to the State at all times. This is a fundamental prerequisite to reinforce the supremacy of the State in defence matters and the fulfilment of a guideline for Partnership for Peace candidacy. This Article delineates command and control into operational and administrative chains of command.

Articles 10 and 11 identify two chains of command, both emanating from the Presidency of Bosnia and Herzegovina and the Minister of Defence. The two chains of command would be but two aspects of a single system designed to furnish trained and ready troops for missions as determined by State-level authorities. The two chains would come together with the State Minister of Defence who would be responsible for ensuring the functional integration and efficient operation of the two chains in order to accomplish all missions. The two chains of command cannot function in isolation. The key to the functional integration of the two chains of command is communication and co-ordination. Communication must be top down, bottom up, and laterally between organisations. The State authorities would set the standards for organising, manning, training and maintaining the armed forces. Those standards must be in accordance with State-level priorities, but also must be realistic in terms of actual execution by the administrative chain of command. State-level authorities must therefore take care to ensure they have a complete understanding of the overall military situation in both entities and for the country as a whole as they are developing standards. Similarly, State-level authorities should send proposed standards to the entity Ministries of Defence for comment prior to requiring compliance with the standards. Ministries of Defence should co-ordinate with each other to ensure that defence institutions and structures receive the best possible advice on the consequences of State-level requirements. A feedback loop is also required to ensure that State-level guidance is being followed within the entity armies. Periodic in-process reviews, co-ordination meetings, and inspections conducted by State defence institutions and structures are all ways of verifying the degree to which State-level guidance is being executed.

Under Article 12, the State would have competency for the planning and oversight of all military intelligence, and the conduct of strategic and operational intelligence.

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

#### ***Article 13***

*The Presidency of Bosnia and Herzegovina (Presidency), acting by consensus, shall exercise supreme operational and administrative command and control of the Armed Forces of Bosnia and Herzegovina.*

**Article 14**

*The Presidency, deciding by consensus, shall have the authority to:*

- a) Request a declaration of war from the Parliamentary Assembly of Bosnia and Herzegovina;*
- b) Request a declaration of a State emergency from the Parliamentary Assembly of Bosnia and Herzegovina;*
- c) Commit the Armed Forces of Bosnia and Herzegovina to operations during time of war, State emergency or to peace support operations abroad pursuant to international agreement;*
- d) Authorise the Minister of Defence to direct that Armed Forces of Bosnia and Herzegovina be employed or deployed in support of any military or humanitarian operation;*
- e) Commit military forces to assist civil protection authorities in responding to natural disasters or accidents;*
- f) Approve and alter the structure of the Armed Forces of Bosnia and Herzegovina;*
- g) Authorise the organisation of military forces for tasks and missions;*
- h) Appoint the Chief of Staff and deputy Chiefs of Staff of the Joint Staff of Bosnia and Herzegovina, and the Commander and Deputy Commanders of the Operational Command of Bosnia and Herzegovina, upon confirmation by the Parliamentary Assembly of Bosnia and Herzegovina;*
- i) Appoint and remove General officers in the Armed Forces of Bosnia and Herzegovina;*
- j) Remove the Chief of Staff or Deputy Chiefs of Staff of the Joint Staff, or the Commander or Deputy Commanders of the Operational Command, upon the recommendation of the Minister of Defence;*
- k) Appoint military attaches and liaison officers in Diplomatic Missions and Consular Offices;*
- l) Ensure that the Parliamentary Assembly of Bosnia and Herzegovina is informed of strategic security and defence matters; and*
- m) Adopt common security and defence policies for the State of Bosnia and Herzegovina to provide strategic guidance in foreign affairs and defence matters.*

This section assigns supreme operational and administrative command and control of the Armed Forces of Bosnia and Herzegovina to the Presidency of Bosnia and Herzegovina.

The three members of the Presidency would exercise collective operational and administrative command and control.

To reinforce the chain of command and both unity and clarity in the exercise of command and control over the Armed Forces of Bosnia and Herzegovina, the Presidency shall act by consensus. This would avoid division in the issuance of operational and administrative commands and would ensure that decisions taken enjoy the support and are representative of the three members of the Presidency of Bosnia and Herzegovina.

Any orders to deploy or mobilise the Armed Forces of Bosnia and Herzegovina would come through the operational chain of command. The operational chain of command contains the authority to organise and employ commands and forces, assign tasks, designate objectives, and give authoritative direction over all aspects of military operations, specifying readiness, multi-unit training, and logistics necessary to accomplish missions assigned by the Presidency of Bosnia and Herzegovina.

The administrative chain of command would have authority over subordinate organisations for administration and support, including the organisation of units, control of resources and equipment, personnel management, unit logistics, individual and unit training, mobilisation, demobilisation, and discipline.

These provisions would authorise the Presidency of Bosnia and Herzegovina to request a declaration of war and a State emergency from the State Parliamentary Assembly.

The State's power to declare war flows from the obligation to protect its sovereignty, territorial integrity, political independence, and international personality. It follows that the State must be able to respond to any emergency that could be constituted as a threat to its existence or a threat to the normal functioning of constitutional institutions.

Only the Presidency can determine whether a threat exists warranting a State emergency or declaration of war. However, to ensure full democratic accountability, transparency and oversight, the Presidency would request the Parliamentary Assembly of Bosnia and Herzegovina to declare a State emergency or declaration of war.

The supremacy of the State dictates that only the Presidency can decide that the Armed Forces of Bosnia and Herzegovina should engage in military opera-

tions of any kind. Once decided, the Presidency would authorise the Minister of Defence to carry out its command for the use of the Armed Forces.

Military assistance to civil protection authorities must be narrower in scope and duration and limited to cases of natural disaster or accidents.

Common security and defence policies for Bosnia and Herzegovina, adopted by the Presidency, are executive documents, which determine the organisation, structure, composition and other aspects of the Armed Forces of Bosnia and Herzegovina. These documents envision the defence and foreign policy of Bosnia and Herzegovina and act as strategic guidance to institutions at all levels.

It is inherent in the Presidency's powers to organise the Armed Forces of Bosnia and Herzegovina in any way necessary to defend the State or carry out its foreign policy obligations. These articles reflect that the Presidency has the authority to organise and deploy units for special tasks or missions. For a successful candidacy for Partnership for Peace, Bosnia and Herzegovina will need to be able to demonstrate that, in law and practice, the Presidency has the authority to commit the Armed Forces of Bosnia and Herzegovina to participate in training exercises with other countries or send units to peace support operations. These provisions reflect the Presidency's authority to do so.

### **C. Minister of Defence of Bosnia and Herzegovina**

#### **Article 15**

*The Minister of Defence of Bosnia and Herzegovina (Minister) shall have the following organisational and administrative competencies subject to the supreme command and control authority of the Presidency:*

- a) Issue directives, regulations and orders governing the organisation, administration, training, equipping, deployment and employment of the Armed Forces of Bosnia and Herzegovina, to ensure maximum interoperability within the Armed Forces of Bosnia and Herzegovina and with NATO forces;*
- b) Develop a budget for the defence of Bosnia and Herzegovina pursuant to Articles 46 and 47 of this Law and issue authorisation for expenditures from the State defence budget;*
- c) Act as the international representative for Bosnia and Herzegovina in defence matters at the ministerial level;*
- d) Make recommendations to the Presidency regarding the structure of the Armed Forces of Bosnia and Herzegovina;*

- e) *Make recommendations to the Presidency regarding the organisation of military forces for tasks and missions;*
- f) *Establish strategic planning for armed conflict, peace support operations, and response to natural disasters and accidents;*
- g) *Recommend the appointment, promotion and removal of General officers pursuant to the provisions of this Law;*
- h) *Draft a common defence policy for approval by the Presidency;*
- i) *Plan and oversee the implementation of all military intelligence activity for the Armed Forces of Bosnia and Herzegovina;*
- j) *Make recommendations to the Presidency regarding the appointment of military attaches and liaison officers in Diplomatic Missions and Consular Offices;*
- k) *Regulate and approve procurement negotiations, contracts, or transactions for the Armed Forces of Bosnia and Herzegovina at the State and entity levels.*

These provisions define the role of the Minister of Defence. His main task would be to oversee the defence institutions of Bosnia and Herzegovina and to provide the defence capabilities needed to support the Presidency and Council of Ministers, to ensure security and defence and to support the foreign policy objectives of the State.

Most fundamentally, the Minister of Defence would be responsible for the formulation and conduct of the defence policy of the State, and for ensuring the capability and capacity by which it is conducted.

These provisions define the organisational and administrative authorities of the Minister of Defence, subject to the supreme command and control authority of the Presidency of Bosnia and Herzegovina. The Minister of Defence is the linchpin of State-level command and control, and the key to a single defence establishment.

The Minister of Defence would provide day-to-day civilian control, adding to the legitimacy of the defence establishment, and acting as an important democratic control and oversight functionary.

The Minister of Defence would be an integral part of the chain of command between the supreme commanders and other branches of defence. The Minister of Defence, in accordance with this law, policies, direction and guidance received from the Presidency, the Parliamentary Assembly and the Chairman

of the Council of Ministers, would be responsible for providing the military forces needed to protect the State and execute mission tasks.

The Minister of Defence would have responsibility for ensuring that the Armed Forces of Bosnia and Herzegovina have the capability to carry out the missions assigned in Article 5 of this law, and this Article gives the Minister of Defence the authorities needed for that. In addition, the Minister of Defence would have responsibilities regarding the appointment of General officers and military attaches. The Minister is responsible for developing defence policy, which sets forth the structure and composition of the armed forces for the Presidency's approval. The Minister would make recommendations to the Presidency regarding the force structure of the armed forces and organisation of forces for tasks and missions. Finally, this official would be responsible for the control of weapons and military procurement at both the State and entity levels.

In addition, the Minister of Defence would enable the relay of information and communication within the chain of command back from subordinate defence institutions and the Armed Forces to the executive branches of the State, institutions and to the supreme commanders of the State.

Administrative commands emanate from the Presidency of Bosnia and Herzegovina. For military forces organised at the entity level, the Minister of Defence would relay commands to the entity Minister of Defence, which would then go through the entity army chain of command. For military forces organised at the State level, the Minister would relay these commands to the Chief of Staff of the Joint Staff of Bosnia and Herzegovina, which would then go through to the Commander of the Operational Command.

#### **Article 16**

*The Minister of Defence shall have the following command competencies subject to the supreme command and control authority of the Presidency:*

- a) Issue binding directions to the Chief of Staff of the Joint Staff of Bosnia and Herzegovina to deploy or employ any unit of the Armed Forces of Bosnia and Herzegovina at home or abroad, to give effect to decisions of the Presidency of Bosnia and Herzegovina;*
- b) Issue binding directions instructing the Chief of Staff of the Joint Staff of Bosnia and Herzegovina to activate reserve units and*

*categories of reservists, in accordance with this Law, for other than routine or planned training undertaken in fulfilment of their terms of service;*

- c) Direct the deployment or employment of any portion of the Armed Forces of Bosnia and Herzegovina for the purpose of assisting civil protection authorities in responding to a natural disaster or accident pursuant to Article 63 of this Law; and*
- d) Exercise command and control over all strategic and operational military intelligence functions conducted by the Armed Forces of Bosnia and Herzegovina.*

This Article defines the command authorities of the Minister of Defence. This official has responsibility for issuing orders through the military chain of command for operations and for all military intelligence.

The Minister of Defence would be responsible for the implementation and dissemination of operational commands, emanating from the Presidency of Bosnia and Herzegovina.

Operational commands would run through the chain of command, from the Minister of Defence to the Chief of Staff of the Joint Staff of Bosnia and Herzegovina, and from him to the Commander of the Operational Command to commanders of operational units at either the State or entity levels.

#### **Article 17**

*The Minister of Defence has the authority to oversee, monitor and inspect the Armed Forces of Bosnia and Herzegovina at all levels of authority in order to ensure compliance with this Law and with his orders, instructions and directives. The Minister of Defence may hire or appoint inspectors or auditors to verify such compliance and ensure transparency.*

*The Minister of Defence shall be accountable to the Parliamentary Assembly of Bosnia and Herzegovina and its commissions on defence, and upon their request shall appear and make reports on matters under the jurisdiction of the Ministry. The Minister shall ensure such participation and assistance of Ministry personnel as may be requested to support parliamentary processes.*

To reinforce the supremacy of the State and its capacity to oversee the Armed Forces of Bosnia and Herzegovina, oversight of the Armed Forces shall be the responsibility of the Minister of Defence of Bosnia and Herzegovina. In order to reinforce the principle of democratic parliamentary oversight, he in turn

would be accountable to the Parliamentary Assembly of Bosnia and Herzegovina and would be required to appear before the Assembly when requested. In this way, he is held ultimately accountable to the Parliamentary Assembly.

**Article 18**

*A person may not be appointed Minister of Defence or Deputy Minister of Defence within three years after leaving active duty as a commissioned officer in the Armed Forces of Bosnia and Herzegovina.*

In accordance with the principle of civilian control of the military, democratic countries do not, as a matter of practice, have military officers or recently discharged or retired military officers as Minister of Defence. Thus there is a three-year period before former military officers can be appointed to a ministerial level position in the Ministry of Defence.

**Article 19**

*The Minister of Defence shall have two deputies, the Deputy Minister of Defence for Policy and Plans, and the Deputy Minister of Defence for Resource Management.*

*The Deputy Minister of Defence for Policy and Plans shall be responsible for:*

- a) Policy and plans;*
- b) Intelligence and security; and*
- c) Command, control, and communications.*

*The Deputy Minister of Defence for Resource Management shall be responsible for:*

- a) Personnel management;*
- b) Finance and budget; and*
- c) Procurement and logistics;*

**Article 20**

*The Minister of Defence and his two deputies shall not be of the same constituent peoples.*

Although the Commission recommends the establishment of two Deputy Ministers of Defence, it strongly urges that every effort be made to avoid parallel structures in the Ministry of Defence. For this reason, the Commission has specified the duties of the two Deputy Defence Ministers. The Commission

wants to stress that the Deputy Ministers of Defence are principal subordinates of the Minister of Defence and should take no action that undermines the Minister's legal authority. The Commission expects the Minister of Defence to make decisions in consultation with the deputies to ensure that all-important aspects are presented in formulating decisions and advice.

#### **D. Ministry of Defence**

##### **Article 21**

*The Ministry of Defence is composed of a professional, primarily civilian, staff and Joint Staff of Bosnia and Herzegovina.*

*The Ministry Staff assists the Minister in the performance of his/her duties and shall perform such functions as the Minister may direct. The Minister of Defence shall exercise authority, direction, and control over all elements of the Ministry.*

The Ministry of Defence would be the body responsible to assist the Minister of Defence in the implementation of decisions and commands. The Ministry of Defence would provide support to the Minister of Defence in creating and sustaining the defence capacity of Bosnia and Herzegovina in order to ensure the protection of the sovereignty, territorial integrity, and political independence of the State. The Ministry would support the Minister of Defence to ensure and reflect the international personality of the State in contacts with other States.

The Ministry of Defence must provide the technical, strategic, operational and administrative expertise to the Minister of Defence in carrying out administration, developing, reviewing, updating common defence and security policies and all other duties as necessary to ensure the efficacy of the State in defence matters.

The Ministry of Defence would contain the Joint Staff of Bosnia and Herzegovina. This serves as one of the fundamental keys of civilian oversight. The Chief of Staff is placed under the control of the Minister of Defence of Bosnia and Herzegovina within the Ministry, and the Commander of the Operational Command is subordinate to both the Minister of Defence and the Chief of Staff of the Joint Staff.

## **E. Joint Staff of Bosnia and Herzegovina**

### **Article 22**

*The Joint Staff of Bosnia and Herzegovina (Joint Staff) is responsible for:*

- a) Preparing and overseeing the execution of military orders as directed by the Minister of Defence;*
- b) Planning and directing military operations in support of directives and orders issued by the Minister of Defence; and*
- c) Providing military staff support to the Ministry of Defence.*

### **Article 23**

*The Joint Staff consists of the Chief of Staff, a Deputy for Operations, a Deputy for Resources and a military staff comprised of officers drawn from the major elements of the Armed Forces of Bosnia and Herzegovina.*

### **Article 24**

*The Chief of Staff of the Joint Staff proposes the composition, number and membership of the permanent staff, for the approval of the Minister of Defence and according to policies established by the Presidency.*

*Not more than two of the most senior military staff members directly subordinate to the Chief of Staff and Deputy Chiefs of Staff of the Joint Staff shall be from the same constituent peoples. Other personnel shall be selected based on the principles of professional expertise and appropriate representation of constituent peoples and others, according to the most recent census.*

### **Article 25**

*The Chief of Staff of the Joint Staff:*

- a) Acts as the senior military advisor to the Presidency and the Minister of Defence;*
- b) Transmits operational commands from the Minister of Defence to the Commander of the Operational Command;*
- c) Represents Bosnia and Herzegovina to all international organisations and to all other countries in defence matters at the chief of defence level; and*
- d) Directs, oversees, and is responsible for the activities of the permanent staff of the Joint Staff.*

*The Chief of Staff, while serving in that capacity, shall hold the rank of Lieutenant General and shall be the highest-ranking officer in the Armed Forces of Bosnia and Herzegovina.*

### **Article 26**

*Within the Joint Staff, the Deputy Chief of Staff for Operations shall be responsible for:*

- a) *Military intelligence, counter intelligence, and security operations;*
- b) *Developing capability for implementing operational commands and plans, force development, and modernization; and*
- c) *Maintaining relations between the Armed Forces of Bosnia and Herzegovina and civilian authorities.*

*Within the Joint Staff, the Deputy Chief of Staff for Resources shall be responsible for:*

- a) *Human resources;*
- b) *The supply, maintenance, transportation, and services; and*
- c) *Technology based information systems and communications.*

#### **Article 27**

*The Chief of Staff and the Deputy Chiefs of Staff of the Joint Staff are nominated by the Minister of Defence, confirmed by the Parliamentary Assembly of Bosnia and Herzegovina and appointed by the Presidency of Bosnia and Herzegovina with the advice of the Standing Committee on Military Matters.*

*The Chief of Staff or Deputy Chiefs of Staff may be removed from their position by the Presidency of Bosnia and Herzegovina, upon the recommendation of the Minister of Defence.*

#### **Article 28**

*The Chief of Staff and his two deputies shall not be of the same constituent people nor shall the Chief of Staff be of the same constituent people as the Minister of Defence or the Commander of the Operational Command.*

This section establishes a Joint Staff for Bosnia and Herzegovina responsible for planning and developing standards for preparing the Armed Forces of Bosnia and Herzegovina for any mission they may be called upon to execute. It would establish standards and regulations in order to ensure common policies for the entity armies and their interoperability, as well as compatibility with NATO forces. The Joint Staff would be accountable to the Presidency of Bosnia and Herzegovina, through the Minister of Defence, and would be responsible to exercise direct control over the activities of the armed forces.

This section sets out the duties of the Chief of Staff of the Joint Staff, who would receive orders through the operational chain of command from the Minister of Defence, and would then transmit those orders to the Commander of the Operational Command to execute. He would be the senior military advisor to the Presidency and the Minister of Defence.

The Joint Staff would be organised according to NATO standards, with one Deputy responsible for operations (including planning, training, and intelligence) and the other Deputy responsible for resources management, including logistics and personnel. The three positions of Minister of Defence, Chief of Staff of the Joint Staff, and the Commander of the Operational Command may not be from the same constituent people. The vertical distribution of posts assures that operational orders would pass through representatives of the constituent peoples and others and is an important confidence-building measure of the system. The Chief of Staff of the Joint Staff would hold the rank of Lieutenant General and would be the highest-ranking officer in the Armed Forces of Bosnia and Herzegovina. The rank of Lieutenant General would be dependent upon the position of Chief of Staff and would not be permanent. In the case that this officer would be removed as Chief of Staff he would revert back to another rank.

#### ***F. Operational Command of Bosnia and Herzegovina***

##### ***Article 29***

*The Commander of the Operational Command serves as:*

- a) The operational commander for all operational units in the Armed Forces of Bosnia and Herzegovina.*
- b) The commander for any mission requiring the deployment/employment of any operational element of the Armed Forces of Bosnia and Herzegovina.*
- c) The commander for joint training and multinational exercises requiring deployment or employment of any element of the Armed Forces of Bosnia and Herzegovina.*

*The Commander of the Operational Command is subordinate to the Chief of Staff of the Joint Staff of Bosnia and Herzegovina in the operational chain of command.*

*The Commander of the Operational Command shall be assisted by two deputy commanders who shall be subordinate to him within the Operational Command.*

##### ***Article 30***

*Subject to the supreme command authority, direction and control of the Presidency, the commander shall have the following competencies within the chain of command:*

- a) Give binding direction to subordinate commands and forces necessary to carry out missions assigned to the command, including authoritative direction over all aspects of military operations, joint training, exercises, and logistics;*

- b) Preparing operational plans based upon guidance from the Chief of Staff.*
- c) Prescribe tactical command and control arrangements for commands and forces within the operational command;*
- d) Organise commands and forces within the command as he considers necessary to carry out missions assigned to the command;*
- e) Employ forces within the command as he considers necessary to carry out missions assigned to the command;*
- f) Assign command functions to subordinate commanders, as needed;*
- g) Coordinate and approve those aspects of administration and support (including control of resources and equipment, internal organisation, and training) and discipline necessary to carry out missions assigned to the command;*
- h) Advise the Minister of Defence and the Chief of Staff on operational requirements and on standards for training, equipping, and supplying of entity armies; and*
- i) Recommend initiatives to improve the interoperability of the entity armies and the interoperability of the Armed Forces of Bosnia and Herzegovina with the armed forces of NATO and Partnership for Peace member states.*

### **Article 31**

*The Commander of the Operational Command shall be proposed by the Minister of Defence, confirmed by the Parliamentary Assembly of Bosnia and Herzegovina and appointed by the Presidency of Bosnia and Herzegovina with the advice of the Standing Committee on Military Matters.*

*The Commander of the Operational Command and his two deputies shall not be of the same constituent people nor shall the Commander be of the same constituent people as the Minister of Defence or the Chief of Staff of the Joint Staff.*

*The Commander of the Operational Command and his two deputies may be removed from their positions by the Presidency of Bosnia and Herzegovina, upon the recommendation of the Minister of Defence.*

This section establishes the position of Commander of the Operational Command and describes the Commander's authorities. The Commander is a key element in the operational chain of command; his commands go directly to the unit commanders of the Armed Forces of Bosnia and Herzegovina. Since the Army of Republika Srpska and Army of the Federation of Bosnia and Herzegovina have not operated together, this official would have much work to

make sure that the armies can successfully operate together. The Commander would have to work closely with the Joint Staff of Bosnia and Herzegovina to ensure co-ordinated planning and with the Ministry of Defence and the entity Ministers of Defence to ensure that the administrative chain of command fully supports the operational chain of command. The Commander would be responsible for the preparedness of all units, and would identify readiness and logistics requirements for the operational units of the Armed Forces of Bosnia and Herzegovina for the Joint Staff to incorporate in their planning. The Commander would be responsible for joint training exercises, interoperability initiatives and, in the event of Bosnia and Herzegovina's membership to Partnership for Peace, exercises within the framework of such Euro-Atlantic partnerships and organisations.

Article 29 allows that two deputy commanders would assist the Commander of the Operational Command, who are subordinate within the Operational Command. Although no duties are specified for each deputy, a standard within the military would be for one deputy to assume responsibilities for manoeuvres and the other for support. However, scope is left for duties to be assigned by the appropriate officials within the chain of command.

A horizontal distribution of posts would apply to the Commander of the Operational Command and his two deputies. These officials cannot be from the same constituent peoples.

The separation of the Deputy Chief of Staff (for operations) of the Joint Staff and the Commander of Operational Command divides and separates staff and operational functions. This has become a standard of the modern military and allows for the optimal functioning of the military in the execution of its tasks. A similar kind of organisation exists in all other PfP/NATO countries and is the key for an effective and efficient military. This position reflects the changing security environment and has direct implications for military effectiveness.

The existence of this position would strengthen Bosnia and Herzegovina's credible candidacy for the Partnership for Peace, as it would add to the efficacy of the Armed Forces of Bosnia and Herzegovina and enhance the effective contribution capacity to the PfP. These articles recognise the need for Bosnia and Herzegovina to accept and employ NATO standards.

## **G. Standing Committee on Military Matters**

### **Article 32**

*Unless otherwise directed by the Presidency, the Standing Committee on Military Matters shall perform the following functions:*

- a) Review and give advice on common security and defence policies for Bosnia and Herzegovina prepared under the direction of the Minister of Defence of Bosnia and Herzegovina.*
- b) Advise the Presidency on the nominations for Chief of Staff and Deputy Chiefs of Staff of the Joint Staff.*
- c) Any voting member of the Standing Committee on Military Matters can request an appeal if the Presidency disapproves an appointment or removes a General officer. Such appeal will be considered by the entire Standing Committee on Military Matters and may be overturned according to its rules of procedure.*

The SCMM is a constitutional body under the authority of the Presidency of Bosnia and Herzegovina. This law envisages the SCMM as an advisory body. It would not be in the chain of command, but would advise the Presidency on security and defence policies and nominations for Chief of Joint Staff and his Deputies. This would allow the SCMM to take on an advisory role on broader security functions, providing information and input, adding to the efficacy of the Presidency's decisions.

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

### **Article 33**

*The Parliamentary Assembly of Bosnia and Herzegovina (Parliamentary Assembly) has the power to declare war upon the request of the Presidency in the event of a direct attack on the State or any part of the State.*

### **Article 34**

*The Parliamentary Assembly has the power to declare a State emergency upon request of the Presidency when there is a threat to the existence of the State, a threat of an attack on the State or any part of the State, or an immediate danger of war.*

### **Article 35**

*The Parliamentary Assembly shall exercise democratic parliamentary control over the Armed Forces of Bosnia and Herzegovina and all State-level defence institutions.*

### **Article 36**

*The Parliamentary Assembly shall have primary authority to legislate all matters related to the organisation, funding, manning, train-*

*ing, equipping, deploying and employing of the Armed Forces of Bosnia and Herzegovina.*

**Article 37**

*The Parliamentary Assembly shall confirm nominees for Chief of Staff, Deputy Chiefs of Staff of the Joint Staff, the Commander and Deputy Commanders of the Operational Command and all General officers in the Armed Forces of Bosnia and Herzegovina.*

**Article 38**

*The Parliamentary Assembly shall have primary authority to investigate all matters related to the organisation, funding, manning, training, equipping, deploying and employing of the Armed Forces of Bosnia and Herzegovina.*

*When a matter requiring investigation is also subject to investigation and oversight by an entity parliament, the Parliamentary Assembly may assert primary jurisdiction over the investigation or it may request the formation of a joint committee with the entity parliament for the purpose of investigating the matter.*

**Article 39**

*The Parliamentary Assembly shall develop appropriate procedures for safeguarding state secrets during its investigations and deliberations.*

This section establishes the legal basis for democratic parliamentary control over the Armed Forces of Bosnia and Herzegovina, and creates the methods of efficient parliamentary oversight in the domain of defence.

These provisions stipulate that the State Parliamentary Assembly would have the exclusive authority to declare war or a State emergency upon the request of the Presidency of Bosnia and Herzegovina.

The Parliamentary Assembly would have the authority to legislate matters relating to the defence and to Armed Forces of Bosnia and Herzegovina.

These provisions confer the authority to assert oversight over all defence matters, at State and entity level, allowing for the capacity to establish investigatory committees with primary jurisdiction over entity parliamentary assemblies, in line with the supremacy of the State for all defence matters in Bosnia and Herzegovina.

### **III. Entity Competencies and Structures**

#### **A. Entity Ministers of Defence**

##### **Article 40**

*The entity Ministers of Defence shall have responsibility for:*

- a) Employing professional military personnel to fill authorised vacancies in the entity armies;*
- b) Regulating conscription and personnel matters in accordance with regulations and directives from the Minister of Defence of Bosnia and Herzegovina;*
- c) Organising, equipping, and supplying units of the entity armies as part of the Armed Forces of Bosnia and Herzegovina, in accordance with instructions from the Minister of Defence of Bosnia and Herzegovina;*
- d) Conducting training of military forces in accordance with the doctrine, tasks, conditions, and standards approved by the Minister of Defence of Bosnia and Herzegovina;*
- e) Consulting with the Minister of Defence on the development of a budget for the Armed Forces of Bosnia and Herzegovina pursuant to Article 46 of this Law;*
- f) Exercising authority to commission and promote military officers below the grade of general officer, in accordance with entity laws;*
- g) Implementing defined policies and guidelines and ensure the implementation of laws, other regulations and general documents in the field of defence;*
- h) Co-ordinating activities on the creation and updating of the Defence Plan as part of the plan for the defence of the sovereignty and territorial integrity of Bosnia and Herzegovina;*
- i) Planning and implementing the mobilisation of military forces in accordance with this Law;*
- j) Performing duties in regard to construction and maintenance of military and other facilities, as well as the facilities of special importance for the defence of Bosnia and Herzegovina;*
- k) Providing communication support for civil protection authorities according to State and entity law;*
- l) Planning and organising scientific research work of importance for defence;*
- m) Recommending the promotion and appointment of Brigadier Generals to the Minister of Defence; and*
- n) Performing rights and obligations within the scope of their work, as prescribed by this Law.*

This Article outlines the responsibilities of the entity Ministers of Defence in the new structure. The entity Minister of Defence would be an integral part of the administrative chain of command, responsible for ensuring that military forces are organised, equipped, supplied and trained in accordance with the law, as well as regulations issued by the Minister of Defence of Bosnia and Herzegovina. In this manner, the entity Ministers of Defence would ensure that the respective entity army is capable of carrying out orders from State authorities for military operations. Furthermore, under these provisions the entity Ministers of Defence would ensure that their respective armies comply with State standards and develop unified policies and procedures to ensure interoperability and compatibility with each other and as part of organisations such as NATO. As specified in provision (i) above, the entity Minister of Defence would have competency to plan and implement the mobilisation of military forces in accordance with this Law. However, this competency is purely an administrative task in respect to the administrative chain of command.

## **B. Entity Parliaments**

### **Article 41**

*Entity parliaments shall exercise democratic parliamentary control over their respective entity armies and defence structures.*

### **Article 42**

*The parliaments of the entities shall have concurrent jurisdiction with the Parliamentary Assembly for investigation and oversight of matters arising from the funding, organising, training, manning, and equipping of military forces at the entity level.*

### **Article 43**

*Entity parliaments shall review and adopt defence budgets for the funding of the entity armies and other components according to the provisions of articles 46 and 47 of this Law.*

### **Article 44**

*Entity parliaments shall review the preparations for defence within the entity and issue a plan of defence development within the entity development plan consistent with this Law and with defence and security policies of Bosnia and Herzegovina.*

### **Article 45**

*Entity parliaments shall form appropriate committees to oversee issues related to entity competencies in the field of defence.*

In keeping with the principle of democratic control of the armed forces and to strengthen current parliamentary oversight arrangements, the entity legislatures would have the same responsibilities relating to the entity Government and military forces as the Parliamentary Assembly of Bosnia and Herzegovina has for the State. In addition, the entity legislative bodies would have the capacity to form committees to oversee and investigate aspects of entity defence-related responsibilities. The Parliamentary Assembly of Bosnia and Herzegovina would oversee entity Governments and military forces as well, so it would have concurrent jurisdiction with the entity legislative bodies on defence issues.

#### **IV. Budgets and Funding**

##### **Article 46**

*The overall defence budget for Bosnia and Herzegovina shall be composed of three parts – a State budget and two entity budgets.*

*The Minister of Defence shall coordinate the development of an overall defence budget with the entity Ministers of Defence.*

##### **Article 47**

*The State and entity parliaments shall adopt their respective parts of the overall defence budget through their normal parliamentary procedures.*

*The Parliamentary Assembly of Bosnia and Herzegovina shall be fully informed of the overall defence budget and shall conduct budgetary and other oversight with entity parliaments according to the provisions of Articles 38 and 42 of this Law.*

These provisions define the overall budget process. In keeping with the fact that oversight of all defence matters rests with the State, it could be expected that financing and budgeting for all defence activities would also be assumed by the State. However, the State currently lacks sufficient resources to exercise this responsibility. This means that there would be three sources of defence financing: the State and two entities. As the defence budget would consist of three parts, there must be centralised co-ordination of defence planning and budgeting in order for effective and efficient use of resources in providing for the defence needs of Bosnia and Herzegovina. The State Minister of Defence would be responsible for (1) ensuring this co-ordination, (2) working closely with the entity Ministers of Defence to develop a realistic and integrated budget, and (3) determining which programmes should be included in

the State budget for defence. These programmes should be for those aspects of defence that are under the competency of the State. New programmes will likely need to be added to the State budget in areas such as joint training, initiatives to improve the interoperability of the entity armies, and Partnership for Peace exercises.

It would be incumbent on the Ministry of Defence and the entity Ministers of Defence to work closely together to develop a realistic budget. The entity portions of the budget would be adopted by the respective entity parliaments, and the Parliamentary Assembly of Bosnia and Herzegovina would adopt the State portion.

The Parliamentary Assembly of Bosnia and Herzegovina shall be fully informed of the overall budget for the Armed Forces, comprising of the three parts. This provision does not grant the Parliamentary Assembly the ability to alter the entity portions of the budget, but is designed to enhance transparency and the State's capacity to effectively oversee the entire defence establishment. The budgetary procedure and funding provisions are addressed in further detail in Section 7.5 of this report.

## **V. Composition of Armed Forces of Bosnia and Herzegovina**

### **A. General Provisions**

#### **Article 48**

*The Armed Forces of Bosnia and Herzegovina are composed of career military personnel, conscripts performing military service, and reserve forces members who have been mobilised into military service.*

This Article defines the composition of the Armed Forces of Bosnia and Herzegovina and helps to ensure that the Armed Forces of Bosnia and Herzegovina are developed commensurate with the security and defence needs of the State.

## **B. Conscription**

### **Article 49**

*The Minister of Defence shall develop a common conscription policy for the Armed Forces of Bosnia and Herzegovina based on common security and defence policies for Bosnia and Herzegovina.*

### **Article 50**

*The entities shall implement the common conscription policy developed by the Minister of Defence.*

### **Article 51**

*The right to conscientious objection shall be secured to all persons who are subject to the common conscription policy. The process of confirming conscientious objector status and the administration of alternative service shall be regulated by a separate law in accordance with Article II of the Constitution of Bosnia and Herzegovina.*

This section provides for the continued practice of conscription, stipulating that there shall be one policy for the Armed Forces of Bosnia and Herzegovina. The Minister of Defence would develop this policy, and the entities would implement it. These provisions provide for the right to conscientious objection, in keeping with European Human Rights Law and international norms and standards.

## **C. Reserves**

### **Article 52**

*Reserve forces are soldiers and officers who have completed their conscription or contractual military service and have no remaining contractual obligation for professional full-time service. Reserve soldiers and officers retain a military obligation to return to military service upon mobilisation pursuant to the provisions of this Law.*

### **Article 53**

*The Presidency of Bosnia and Herzegovina shall establish the appropriate number of reserves and reserve structure for the Armed Forces of Bosnia and Herzegovina. The entity Ministers of Defence shall be responsible for organising, equipping and training the reserve forces according to standards determined by the Minister of Defence of Bosnia and Herzegovina.*

### **Article 54**

*Reserves may be required to complete a period of training each year in fulfilment of legal obligations. Reserves will be considered mobilised while training.*

**Article 55**

*In addition to any special incentive payments that may be granted by the entity authorities to selected categories of reservists, members of the reserve shall be subject to the same requirements and laws as professional members of the armed forces when mobilised.*

**Article 56**

*State authority is not required to call a reservist to duty for routine, scheduled training in accordance with the terms of service.*

This section outlines requirements for reserve forces. The Presidency would determine the number of reserves and the reserve structure, and the Minister of Defence of Bosnia and Herzegovina would establish the standards of training the reserves. The entity Ministers of Defence would have responsibility for ensuring that the actual training met those standards. This procedure would allow for the creation of a rational reserve policy based on a defence plan for the entire State. Additionally, these provisions allow for the regular training of active reserves, which is not a current practice in Bosnia and Herzegovina as neither entity has adopted the active reserve concept and reserves do not currently train.

**VI. Declaration of War or State Emergency**

**Article 57**

*The Presidency of Bosnia and Herzegovina requests a declaration of war from the Parliamentary Assembly when there has been a direct attack upon Bosnia and Herzegovina. A military attack on any part of the State by any military means and in any form shall be considered to be an attack on the entire State.*

**Article 58**

*The Presidency of Bosnia and Herzegovina requests a declaration of a State emergency from the Parliamentary Assembly when there is a threat to the existence of the State, a threat to the normal functioning of constitutional institutions, or an immediate threat of war.*

**Article 59**

*A declaration of war or State emergency shall be considered by the Parliamentary Assembly of Bosnia and Herzegovina upon request of the Presidency if it is in session at the time of the request.*

**Article 60**

*If the Parliamentary Assembly of Bosnia and Herzegovina is not in session at the time of the request for a declaration of war or State emergency, the Presidency may order the full or partial mobilisation*

*of units of the Armed Forces of Bosnia and Herzegovina or their employment.*

**Article 61**

*In case of a direct attack on Bosnia and Herzegovina, the Parliamentary Assembly shall convene a special session as soon as possible in order to consider a request for a declaration of war.*

**Article 62**

*If justified reasons exist for a declaration of a State emergency, or in cases when the Presidency of Bosnia and Herzegovina, due to urgency, ordered mobilisation and employment of the Armed Forces of Bosnia and Herzegovina for elimination of causes for declaration of State emergency, the Parliamentary Assembly of Bosnia and Herzegovina shall convene a special session within 48 hours in order to consider the request for the declaration of State emergency or an order for the employment of the Armed Forces.*

*If the Parliamentary Assembly of Bosnia and Herzegovina does not declare a State emergency within 72 hours from the request by the Presidency of Bosnia and Herzegovina or an order for the mobilisation and employment of the Armed Forces, the request shall be considered rejected and the order void.*

This section makes clear that pursuant to Article 14 of this law, only the Presidency of Bosnia and Herzegovina can determine whether there is a threat to the State and submit a request to the Parliamentary Assembly to declare war or a State emergency.

The Presidency of Bosnia and Herzegovina's power to request a declaration of war or a State emergency flows from the State's obligation and indisputable right to protect its sovereignty, territorial integrity, political independence, and international personality.

The Parliamentary Assembly's competency to declare a State emergency or state of war, upon the request of the Presidency of Bosnia and Herzegovina, acts as a valuable safeguard preventing any abuse of power or the armed forces. This competency is an integral part of the democratic control of the armed forces, as well as a part of democratic oversight over executive authorities. It allows the Parliamentary Assembly to perform a check on this power and its usage in situations when the reasons behind the request may be unclear. Conversely, if the Parliamentary Assembly does not act to declare

a State emergency or war, it would have to bear the consequences of its inaction.

The Minister of Defence, subject to the order by the Presidency of Bosnia and Herzegovina, would have the authority to mobilise forces.

## **VII. Natural Disasters and Accidents**

### **Article 63**

*The Minister of Defence may approve the participation of the Armed Forces of Bosnia and Herzegovina in responding to natural disasters and accidents at the request of the appropriate civil protection authority from the entity.*

### **Article 64**

*Units of the Armed Forces of Bosnia and Herzegovina may be deployed to assist civil authorities in responding to natural disasters or accidents in accordance with instructions issued by the Minister of Defence.*

### **Article 65**

*In extraordinary situations, an entity president may authorise a limited deployment of units from the army of his entity in order to assist civil authorities in responding to a natural disaster or accident in accordance with the instructions referenced in Article 64.*

### **Article 66**

*An order deploying units of the Armed Forces of Bosnia and Herzegovina to assist civil authorities shall state:*

- a) The specific nature of the mission;*
- b) The units and number of personnel deployed;*
- c) To whom the units report; and*
- d) The duration of the mission.*

*The Minister of Defence shall report to the Parliamentary Assembly regarding the mobilisation of any units of the Armed Forces of Bosnia and Herzegovina pursuant to Articles 63 or 65.*

In accordance with European democratic standards, the military forces of a state are not to be used internally within a state except in extraordinary circumstances. This section provides for the use of forces in cases of natural disasters or accidents. The Minister of Defence would have the authority to deploy elements of the Armed Forces of Bosnia and Herzegovina or to mobilise reserves in the event of such an emergency.

In limited extraordinary circumstances, this section also allows the President of an entity to use units of his entity's army to assist civil authorities in the event of a natural disaster or accident, in accordance with the instructions of the Minister of Defence of Bosnia and Herzegovina.

### **VIII. Conflict of Interest and Professionalism**

#### **Article 67**

*Officers in the Armed Forces of Bosnia and Herzegovina shall protect and conserve government property and shall only use it for authorised purposes. Officers have a duty to disclose fraud and corruption to a person in the chain of command.*

#### **Article 68**

*Officers in the Armed Forces of Bosnia and Herzegovina shall not:*

- a) Hold a financial interest that conflicts with the conscientious performance of their duty; or*
- b) Engage in outside employment or any other activities that conflict with official duties and responsibilities.*

#### **Article 69**

*Members of the Armed Forces of Bosnia and Herzegovina, including General officers, shall remain neutral in political matters, shall not engage in partisan political activities of any kind and shall not hold elected or appointed public office.*

*This Article shall not prevent a member of the Armed Forces of Bosnia and Herzegovina from registering to vote, voting, or standing for election pursuant to the provisions of the Election Law of Bosnia and Herzegovina.*

*A member of the reserves who has been elected or appointed to public office shall not be required to resign from his office if mobilised for regular training.*

#### **Article 70**

*Military officers are expected to support the implementation of the General Framework Agreement for Peace. Anti-Dayton Peace Agreement activities and obstructionism shall constitute grounds for removal.*

#### **Article 71**

*Officers of any rank shall not be permitted to serve in the Armed Forces of Bosnia and Herzegovina or be employed in the Ministry of Defence after serving in another nation's armed forces.*

#### **Article 72**

*The Minister of Defence may further develop a code of conduct for members of the Armed Forces of Bosnia and Herzegovina.*

**Article 73**

*The Minister of Defence shall develop common regulations regarding military discipline with the advice of the entity Ministers of Defence. Once developed, the common regulations regarding military discipline shall replace entity regulations regarding military discipline.*

This section defines the responsibilities of the members of the Armed Forces of Bosnia and Herzegovina while they are in service. These provisions state that military personnel should not engage in outside employment that may conflict with official duties and responsibilities. In general, these activities are those that might cause the general public to lose confidence in the military. These also include activities that might contribute to the degradation of good order and discipline in the army. The activities of all personnel in the military should reflect positively on the military as an institution at all times.

These provisions also stipulate that members of the armed forces must remain politically neutral, outside of any partisan political activities. Likewise, they must not engage in activities that could be constituted as deleterious to Bosnia and Herzegovina and are expected to support fully the implementation of the Dayton Peace Agreement.

A citizen of Bosnia and Herzegovina would not be able to serve in the armed forces of another country and then serve in the Armed Forces or civilian defence structures of Bosnia and Herzegovina.

**IX. Oath**

**Article 74**

*A person entering the Armed Forces of Bosnia and Herzegovina for the first time shall take the following oath:*

*"I solemnly pledge to defend the sovereignty, territorial integrity, constitutional order, and political independence of Bosnia and Herzegovina and to carry out, responsibly and conscientiously, all duties necessary for its defence."*

This new requirement will help to facilitate unity. Taking an oath to protect Bosnia and Herzegovina would reiterate that a member of the Armed Forces is expected to defend the entire State of Bosnia and Herzegovina, and not just his/her respective entity.

## **X. Flags, Anthems, and Military Insignia**

### **Article 75**

*Armed Forces of Bosnia and Herzegovina shall have their own flag, anthem and insignia. The flag and anthem shall be the flag and anthem of Bosnia and Herzegovina and the insignia shall be the coat of arms of Bosnia and Herzegovina.*

*The insignia shall be worn by all members of the Armed Forces of Bosnia and Herzegovina. Use of the flag and anthem shall be obligatory for the Armed Forces of Bosnia and Herzegovina.*

### **Article 76**

*Entity armies may also have their own flags, anthems and insignia, which shall be regulated by entity law. Operational units may have their own flags and insignia, which shall be regulated by entity law.*

### **Article 77**

*No person shall be allowed to duplicate or use any insignia used by the Armed Forces of Bosnia and Herzegovina without the written authorisation of the Minister of Defence.*

This section provides for the adoption of a flag, anthem and insignia of the Armed Forces of Bosnia and Herzegovina. Entity armies may also have their own flags, anthems, and insignia. There would be no unauthorised use of the insignia of the Armed Forces of Bosnia and Herzegovina.

## **XI. Transition and Final Provisions**

### **Article 78**

*The Council of Ministers of Bosnia and Herzegovina, and the governments of the two entities, shall initiate action to bring the "Agreement on Sub-Regional Arms Control," the "Agreement on Confidence and Security Building Measures in Bosnia and Herzegovina," and any other international agreement into conformity with the principle of state command and control authority over the Armed Forces of Bosnia and Herzegovina.*

### **Article 79**

*Entity laws and bylaws shall be brought into conformity with the provisions of this law. To the extent that any entity law or bylaw is inconsistent with the provisions of this Law, the provisions of this Law shall take precedence and the inconsistent provisions of the entity law or bylaw shall have no force or effect.*

### **Article 80**

*Within 90 days of the effective date of this Law, the Presidency shall propose, to the Parliamentary Assembly of Bosnia and Herzegovina,*

*a plan for the structure of the General Officer corps of the Armed Forces of Bosnia and Herzegovina to be achieved by a certain date.*

*Officers below the rank of general at the time of the adoption of this law shall retain their rank, pay and privileges according to entity law. All officer appointments or promotions made after the adoption of this law must be made pursuant to the provisions of this Law.*

#### **Article 81**

*The Minister of Defence shall develop a plan for creating a common personnel system for the Armed Forces of Bosnia and Herzegovina within one year of the adoption of this Law.*

*The Minister of Defence shall appoint a joint commission, with the advice and consent of the Presidency, to evaluate personnel management systems and to make recommendations regarding the creation of a common system.*

*The commission shall also consider the pay and benefits received by mobilised reserves for the purpose of harmonizing pay and benefits within the Armed Forces of Bosnia and Herzegovina and rationalising the pay and benefits for mobilised reserves with the pay and benefits of professional members of the Armed Forces of Bosnia and Herzegovina.*

#### **Article 82**

*This Law shall enter into force eight days after its publication in the Official Gazette of Bosnia and Herzegovina.*

This section requires the conformity of other agreements and laws with this law. In particular, this refers to those agreements for which the entities are signatories and that were applicable when the State lacked the institutions to comply. These agreements should now be consistent with the supremacy of the State for defence and security matters, reflecting the international personality of the State of Bosnia and Herzegovina.

It is incumbent upon the Presidency of Bosnia and Herzegovina to deliver to the Parliamentary Assembly of Bosnia and Herzegovina its proposal for the number of General officers, which would have to be decided commensurate with the defence needs of the State. A survey of PfP countries and others with comparably sized militaries (approximately 12,000)<sup>1</sup> reveals that an average ratio of General officers to the total strength of the armed forces is 1:1000. The Commission recommends a similar ratio for Bosnia and Herzego-

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<sup>1</sup> Ireland with a force of 10,600 has nine General officers (1:1,178 – 0.84%); Georgia with a force of 17,400 has sixteen General officers (1:1087 – 0.09%); and, New Zealand with a force of 9,930 has fourteen General officers (1:709 – 0.14%)

vina (i.e., that the ratio of General officers is not to exceed 0.10% of the total force strength).

The Minister of Defence would develop a plan for creating a common personnel system for the Armed Forces of Bosnia and Herzegovina. Personnel policies, regulations and laws related to defence structures would be harmonised in order to promote efficiency and encourage and reinforce the unity of the State command and control structure. A common personnel management system should be compatible with NATO standards, apply equally to the entire Armed Forces of Bosnia and Herzegovina, be easy to understand and administer, and provide for open and transparent management of all military personnel and civilian defence personnel.

### **7.1.2. Revised Decision on Organisation and Functioning of Defence Institutions of Bosnia and Herzegovina**

#### ***Explanation***

The State-level framework for exercising control over defence issues in Bosnia and Herzegovina has been centred on the Standing Committee on Military Matters (SCMM) since the end of the war. The SCMM is a constitutional body under the direct control of the Presidency of Bosnia and Herzegovina. The State Constitution describes the SCMM as a co-ordinating body and a recent constitutional court decision recognised it as such, with virtually no command and control authority over the separate entity armies within Bosnia and Herzegovina. This restrictive constitutional framework has proven inadequate for the purposes of creating the defence structure necessary for the State to defend its sovereignty, conduct foreign policy, and meet its international commitments. Bosnia and Herzegovina would not be a credible candidate for the Partnership for Peace Program with the SCMM as its framework for State-level command and control.

With the assumption of full command and control over the Armed Forces of Bosnia and Herzegovina, it is necessary for the Presidency to redefine the role of the SCMM and its relationship with the Presidency and the new, State-level ministry. A previous decision of the Presidency described the composition of the SCMM, established the SCMM Secretariat as a substitute for a Ministry of Defence, and attempted to establish some level of State authority over autonomous entity armed forces. This new decision would specifically replace the previous decision of the Presidency.

The composition of the SCMM would remain the same as under the previous decision with the addition of the Minister of Defence as a full member. The provision defining military advisors to the Presidency as permanent, non-voting members was also deleted in recognition of the foreseen role of the Chief of the Joint Staff of Bosnia and Herzegovina as the senior military advisor to the Presidency.

The decision would also eliminate the SCMM Secretariat whose competencies would be performed by the State Ministry of Defence. As a result, the personnel, office space, and other assets would be transferred to the new Ministry by this decision. The decision specifies that the SCMM shall rely on the staff of the Ministry of Defence for support and that the SCMM will not have its own staff. These provisions would prevent competition between the SCMM and the new Ministry and prevent the unnecessary overlap of duties.

This decision endorses the full command and control authority of the Presidency, recognises the role of a State Minister within the chain of command, and defines a co-ordinating and advisory role for the SCMM within the new, defence establishment of Bosnia and Herzegovina. By this decision, the Presidency would acknowledge the co-ordinating function of the SCMM as set forth in the Constitution, but within a new, State-level constitutional and legal framework that allows for a defence establishment appropriate for the needs of a modern, European state.

### ***Legal Proposal***

#### **BOSNIA AND HERZEGOVINA**

#### **PRESIDENCY**

*Pursuant to the provision of Article III, Points 1 and 5 (a), and Article V, Point 5 of the Constitution of Bosnia and Herzegovina, the Defence Law of Bosnia and Herzegovina, document "Defence Policy of Bosnia and Herzegovina" and political Statement of the Presidency of Bosnia and Herzegovina on admission to Partnership for Peace Program, the Presidency of Bosnia and Herzegovina, at its \_\_\_\_\_ session held on \_\_\_\_\_ 2003, passed a*

## **REVISED DECISION**

### **ON ORGANISATION AND FUNCTIONING OF DEFENCE**

#### **INSTITUTIONS OF BOSNIA AND HERZEGOVINA**

##### **I. BASIC PROVISIONS**

###### **Article 1**

*This Decision shall replace and supersede the Decision of 4 September 2002 titled, "Decision on Organisation and Functioning of Defence Institutions of Bosnia and Herzegovina" (Official Gazette of Bosnia and Herzegovina 26/02).*

###### **Article 2**

*The Presidency of Bosnia and Herzegovina (Presidency) is committed to fulfilling its responsibility to protect the sovereignty, territorial integrity, political independence and international personality of Bosnia and Herzegovina.*

*In accordance with the Constitution of Bosnia and Herzegovina, the Presidency in spirit of previously expressed commitments, accepts obligations and rights in the family of equal Euro-Atlantic nations and shall actively contribute and participate to collective security.*

*The Presidency has further clearly stated its readiness to work on the reform of the defence system in Bosnia and Herzegovina, in order to promote its integration into European and Euro-Atlantic security and defence structures.*

*This Decision is intended to clarify the future role of the Standing Committee on Military Matters (SCMM) in relation to the Presidency and other State-level defence institutions.*

##### **II. Roles of the Presidency, Ministry and SCMM**

###### **Article 3**

*The Presidency endorses the adoption of a defence law of Bosnia and Herzegovina that consolidates all armed forces in Bosnia and Herzegovina into a single defence establishment under the full command and control of the Presidency.*

*The Presidency shall assume full command and control over the newly consolidated Armed Forces of Bosnia and Herzegovina upon adoption of such a law by the Parliamentary Assembly of Bosnia and Herzegovina.*

**Article 4**

*The Presidency endorses the creation of a new Ministry of Defence of Bosnia and Herzegovina headed by a minister who will be subordinate to the Presidency in the operational and administrative chains of command for the Armed Forces of Bosnia and Herzegovina.*

**Article 5**

*The SCMM shall:*

- a) Co-ordinate and ensure the consolidation of entity armed forces into a single defence establishment according to a defence law of Bosnia and Herzegovina;*
- b) Serve as an advisory body to the Presidency on military matters; and*
- c) Co-ordinate the activities of the Armed Forces of Bosnia and Herzegovina with other State and entity institutions as directed by the Presidency or a defence law of Bosnia and Herzegovina.*

**Article 6**

*By this Decision, the Presidency shall define the composition and method of work of the SCMM.*

**III. THE STANDING COMMITTEE FOR MILITARY MATTERS**

**Article 7**

*The Presidency shall establish the structure and functioning of the SCMM in the following way:*

*The SCMM shall consist of eight members with the right to vote, as follows:*

- a) Three members of the Presidency,*
- b) Chairman of the Council of Ministries,*
- c) Minister of Defence of Bosnia and Herzegovina,*
- d) Minister of Foreign Affairs of Bosnia and Herzegovina,*
- e) President/Vice President of the Republika Srpska, and*
- f) President/Vice President of the Federation of Bosnia and Herzegovina.*

*The representation of two members of one constituent people shall be guaranteed within the composition of the SCMM.*

*With respect to the principle of rotation, the Presidency shall designate the composition of personnel of the SCMM by special decision.*

**Article 8**

*The Presidency may invite members of international community and other persons to the SCMM sessions as necessary.*

**Article 9**

*The SCMM shall make a decision based the simple majority of the total numbers of SCMM members. The Rules of Procedure of the SCMM shall define the issues that are to be resolved by consensus. Each Presidency member shall be entitled to veto any decision.*

**Article 10**

*Sessions of the SCMM shall be chaired by a person designated by the Presidency, who shall have no right to vote.*

**Article 11**

*The SCMM will rely on personnel provided by the Ministry of Defence of Bosnia and Herzegovina to support its work. No other personnel shall be employed by the SCMM.*

**IV. Honorary Unit**

**Article 12**

*For the needs of protocol, the Presidency requests that the Minister of Defence of Bosnia and Herzegovina establish a military Honorary Unit.*

**V. TRANSITIONAL AND FINAL PROVISIONS**

**Article 13**

*Upon the adoption of a defence law of Bosnia and Herzegovina and the establishment of a Ministry of Defence, all personnel, office space, equipment and other assets of the SCMM Secretariat shall be transferred to the new ministry without delay.*

**Article 14**

*This Decision shall become effective upon adoption of a defence law of Bosnia and Herzegovina and then shall repeal the Decision on Organisation and Functioning of Defence Institutions of Bosnia and Herzegovina of the Presidency of BiH No 01-2081-10/02 of 26 August 2002 ("Official Gazette of BiH" No.26-02).*

The Decision shall be published in the Official Gazette of Bosnia and Herzegovina and shall become effective pursuant to the provisions of Article 14.

## **7.2. Republika Srpska Defence Reforms**

This section presents selected amendments to the Constitution, the Defence Law and Law on Army of Republika Srpska. These amendments address those provisions that conflict with the proposed Defence Law of Bosnia and Herzegovina, as well as the Concept Paper and mandate of the Defence Reform Commission. However, the Commission recognises that further analysis and amendments will be required, particularly towards areas where certain provisions conflict with European human rights standards and other State legislation. The Commission recognises that many of these areas were outside the scope and competency of its mandate and encourages further deliberations during the parliamentary phase of the adoption of these amendments.

### **7.2.1. Amendments to the Constitution of Republika Srpska**

The following is an analysis of constitutional provisions of Republika Srpska as they relate to Bosnia and Herzegovina State-level command and control of the Armed Forces of Bosnia and Herzegovina. Constitutional provisions that appear to conflict with the Concept Paper are identified and amendments recommended. The objective is to amend any provision that poses a risk of interfering or inhibiting the State's ability to preserve its sovereignty, territorial integrity, political independence and international personality. This requires the State to assume full competency over defence, including the full implementation of State-level command and control over the Armed Forces at all times, as set out in the Concept Paper.

#### ***Explanation***

The Constitution of Republika Srpska ascribes to the entity many powers of a State and grants the entity President the authority to declare war and com-

mand the Army of Republika Srpska. Such authorities must be modified or assumed by the State of Bosnia and Herzegovina.

### **Section-by-Section Analysis**

#### AUTHORITY OF REPUBLIKA SRPSKA RELATED TO MILITARY AND DEFENCE ISSUES

##### **Article 68.2**

*The Republic shall regulate, in accordance with the Constitution and laws of Bosnia and Herzegovina:*

*...3. Measures in the case of the state of war and the State emergency as declared by the institutions of Bosnia and Herzegovina;*

Article 68.2 currently confers upon the entity alone the right to regulate and enforce defence measures in case of war or state emergency. Defence is not a responsibility of the entity alone. The State of Bosnia and Herzegovina will assume responsibility for defence. The State will take on some responsibilities for functions relating to security, which currently rest with the entity governments. The amendments to Article 68.2 recognise that only the State can declare war or a state emergency.

##### **Article 105**

*Republika Srpska shall have its own Army, consisting of standing units and reserve units, which shall be part of the Armed Forces of Bosnia and Herzegovina.*

*Permanent units shall consist of professional soldiers and soldiers serving in the Army.*

*A separate law shall be passed on the Army of the Republika Srpska.*

*The Army of the Republika Srpska shall be organised according to the laws of Bosnia and Herzegovina and the Republika Srpska.*

Article 105 directs that Republika Srpska shall have its own army, but the amendments make clear that the Army of Republika Srpska would be part of the Armed Forces of Bosnia and Herzegovina, and that the army would be organised according to the laws of the State and the entity.

##### **Article 107**

*Military courts and Army prosecutors shall be established by law.*

~~Military courts shall be independent and shall adjudicate in accordance with the law.~~

Article 107 states that military courts and army prosecutors shall be established by law and shall adjudicate in accordance with the law. Along with the assumption of authority by the State of Bosnia and Herzegovina for the command of the Armed Forces of Bosnia and Herzegovina, including the Army of Republika Srpska, State and entity institutions and laws would determine the system of military justice and courts. Furthermore, although these constitutional provisions foresaw military courts, they currently do not exist. Military justice is served through the civilian, criminal court system.

#### AUTHORITY OF THE NATIONAL ASSEMBLY OF REPUBLIKA SRPSKA

##### **~~Article 70 as amended:~~**

~~The National Assembly, in accordance with the law, shall declare~~

~~1. the state of war in the case of an armed attack of the Republic~~

~~2. imminent threat of war in case of a serious threat of war~~

~~3. state of emergency for the Republic or a part of the Republic if the security, human rights and freedoms and normal functioning of the constitutional institutions re threatened.~~

Article 70, by Amendment XXXV and LXI, currently authorises the National Assembly to declare war and state of emergency. By definition, this is a State function that should be assumed by the State of Bosnia and Herzegovina. These provisions are therefore deleted.

#### AUTHORITY OF THE PRESIDENT OF REPUBLIKA SRPSKA

##### **Article 80**

*The President of the Republic shall:*

*1) perform, in accordance with this Constitution and the Constitution of Bosnia and Herzegovina and law, tasks related to defence, security and relations of the Republic with other countries and international organisations,*

*Sub-item 2 of Item 1 of Amendment XL has been substituted by Amendment L, reading as follows:*

*2) the President of the Republic shall, at the proposal of the Government, by decree appoint and recall heads of missions of Repub-*

*lika Srpska in foreign countries, and shall nominate ambassadors and other international representatives of Bosnia and Herzegovina from Republika Srpska.*

*3) form advisory bodies and expert agencies for performing tasks falling within his competence.*

Article 80, sub-paragraph (1) authorises the President of Republika Srpska to perform tasks related to defence, security and relations of the entity with other countries and international organisations on his own authority, without reference to the Constitution of Bosnia and Herzegovina. Defence is a State competency that will be assumed by the State of Bosnia and Herzegovina. Thus, the competencies of the President of Republika Srpska relating to military and defence issues will be extremely limited and subject to the State Defence Law and the Constitution of Bosnia and Herzegovina. The President of the Republika Srpska still participates in the appointment of the entity Minister of Defence, is currently a member of the SCMM, has limited competency in extraordinary circumstances to authorise the use of units of the entity army to assist civil authorities in the event of a natural disaster or accident, but is not in the chain of command. Sub-paragraphs (2) and (3) of Article 80 remain unchanged.

#### **Article 81**

~~*When the National Assembly, due to a State of emergency, is not able to convene, the President of the Republic shall, upon obtaining the opinion of the Government, establish the existence of the State of emergency and order that measures be taken for their remedy, in accordance with the Constitution and law.*~~

~~*Paragraph 2 of Article 81 has been substituted by Item 2 of Amendment XXXV reading as follows:*~~

~~*If not possible to convene a session of the National Assembly, which is ascertained on the basis of a statement given by the President of the National Assembly, a state of war or imminent threat of war shall be declared by the President of the Republic.*~~

*If the National Assembly cannot convene during a state of war or State emergency as declared by the institutions of Bosnia and Herzegovina, the President of the Republic shall, at the proposal of the Government or at his own initiative after he has heard the opinion of the President of the National Assembly, pass decrees with the force of law regarding the issues falling under the competence of the National Assembly, and appoint and recall officials which are normally appointed and recalled by the National Assembly.*

*The President of the Republic shall submit these decrees or decisions on the appointment and recall for approval to the National Assembly as soon as it is able to convene.*

Article 81 currently allows the entity President to declare war or a state of emergency on his own authority if the National Assembly is not able to convene. Declaring war or a state of emergency is a State function that will be assumed by the State of Bosnia and Herzegovina. Thus, the first two paragraphs of Article 81 are deleted. If the State institutions of Bosnia and Herzegovina have declared war or a state of emergency and the National Assembly cannot convene, the entity President should have the authority, as currently envisaged in paragraph 3 of Article 81, to pass decrees with the force of law regarding the issues falling under the competence of the National Assembly. Thus, paragraph 3 of Article 81 would have only one amendment. The fourth paragraph of Article 81 would remain unchanged.

**Article 106, paragraph 1**

*At war and at peace-time, the Army of Republika Srpska shall be commanded by the ~~President of the Republic~~ Presidency of Bosnia and Herzegovina collectively, according to the ~~Constitution and law~~ subject to the provisions on civilian command in Article V.5 of the of Bosnia and Herzegovina and other laws. [~~Amendment CV (Official Gazette of Republika Srpska, 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 31/02, 69/02)~~]*

Article 106, paragraph 1, gives command of the Army of Republika Srpska to the entity President in war and in peacetime. In keeping with the establishment of single State-level command and control structure over the Armed Forces of Bosnia and Herzegovina, a requirement for Partnership for Peace, the Presidency of Bosnia and Herzegovina would command the Army of Republika Srpska collectively.

**~~Article 106, paragraph 2:~~**

*~~The President of the Republic shall nominate, promote and recall the officers of the Army of Republika Srpska in accordance with law, he shall nominate and recall the president, judges and members of the jury of the military courts as well as the Army prosecutors.~~*

Article 106, paragraph 2 currently directs that the entity President will appoint and recall officers of the Army of Republika Srpska and officials of military courts. In accordance with the transfer of command of the army to the State of Bosnia and Herzegovina, the President of Republika Srpska would no longer have authority for the appointment of army officers. The promotion, appointment and removal of general officers are regulated in the proposed Defence Law of Bosnia and Herzegovina; the appointment of officers below the rank of general will be regulated in entity laws.

#### RIGHTS AND DUTIES OF CITIZENS

##### **Article 104**

*The defence and protection of the territory and constitutional order of the State of Bosnia and Herzegovina and the Republika Srpska is the right and duty of all citizens.*

*The rights and duties regarding defence shall be set out in a separate law.*

Article 104 declares that the defence and protection of Republika Srpska is the right and duty of all citizens. This provision would allow the interpretation that inhabitants of Republika Srpska have the duty only to protect the entity. This is contrary to the fundamental nature of the State wherein all citizens of the State have the right and duty to protect the State as a whole, not just part of the State. The amendments would reaffirm that Republika Srpska is a constituent part of the State of Bosnia and Herzegovina.

### **7.2.2. Amendments to the Law on Defence of Republika Srpska**

#### ***Explanation***

The following is an analysis of the provisions of the Law on Defence of Republika Srpska. Provisions that appear to conflict with the supremacy of the State for defence matters, as well as the Concept Paper, are identified and amendments proposed accordingly. Amendments are suggested for all provisions that pose a risk of interfering or inhibiting full implementation of State level command and control over the Armed Forces of Bosnia and Herzegovina at all times, as set out in the Concept Paper.

As noted in Article 1, the Defence Law defines the defence system of Republika Srpska and the rights and duties of the entity bodies involved in security and defence matters.

The essential purpose of the amendments to this law is to ensure consistency with the supremacy of the State. It follows that the provisions of this law must reflect that the State would assume those responsibilities from Republika Srpska necessary to protect its sovereignty, territorial integrity, political independence and international personality. The Presidency of Bosnia and Herzegovina, as the supreme command of the Armed Forces of Bosnia and Herzegovina, would thus assume the responsibility and authority for the defence of Republika Srpska as a part of the entire territory of the State. The amendments also reflect that Republika Srpska would have a duty and responsibility to defend the sovereignty, territorial integrity, political independence of the State of Bosnia and Herzegovina, and not just that of the entity.

This would enable the State of Bosnia and Herzegovina to exercise full competency for its defence through a clear chain of command, a fundamental prerequisite for consideration as a credible candidate for Partnership for Peace. Republika Srpska would, however, have a specific and integral role within the administrative chain of command, and would thus retain specific responsibilities related to the administration of the Army of Republika Srpska. This authority would also relate to the support of the implementation of operational commands and civil defence.

The amended Law on Defence would make clear that the Army of Republika Srpska is part of the Armed Forces of Bosnia and Herzegovina and, in accordance with the concept of a single command and control, would take operational orders only from State institutions.

Only the important or substantive amendments are addressed in the following Section-by-Section analysis. There are additional amendments throughout the text of the Law on Defence, but they are editorial in nature or simply make remaining provisions consistent with the major changes addressed here.

## Section-by-Section Analysis

### I – Basic Provisions

#### Article 1

*This Law defines the defence system of Republika Srpska (hereinafter: the Republic) and rights and duties of the Republika Srpska bodies, of the Army of Republika Srpska (hereinafter: the Army), citizens, companies, institutions, organisations and other legal subjects (hereinafter: companies and other legal subjects) in defending territory and the constitutional order of Bosnia and Herzegovina in the Republic.*

*The defence system of Republika Srpska shall be organised so as to ensure the protection of the sovereignty and territorial integrity of Bosnia and Herzegovina and so as to ensure that armed forces act under civilian command in accordance with the Constitution of Bosnia and Herzegovina.*

*The defence system of Republika Srpska shall also be organised to ensure that the Army of Republika Srpska is able to support the international commitments and obligations of Bosnia and Herzegovina. This Law establishes the superiority of the civilian authorities of Bosnia and Herzegovina over the Army; realises the Ministry of Defence into a structure of military command consistent with the supreme command and control of the Presidency of Bosnia and Herzegovina; establishes the role of the Ministry of Defence in the administrative chain of command; identifies the authorities and responsibilities for civilian defence officials and military officers; secures the unitary administration of the Army by the full integration of the General Staff into the Ministry of Defence; and reinforces that the Army is a professional apolitical military force that conducts its operations in accordance with the International Law of Armed Conflict. Finally, this Law establishes policies and procedures of administration for Republika Srpska bodies, and implements the Defence Law of Bosnia and Herzegovina in the area of defence to create a military organisation capable of functioning effectively, both in periods of war and peace.*

This article sets out the purpose of the Law and the overall purposes of the defence system of Republika Srpska. The original article recognises that the primary purpose of the defence system is to protect the State of Bosnia and Herzegovina and to ensure civilian command and control of armed forces. The amendments would elaborate on this, in light of the proposed Defence Law of Bosnia and Herzegovina. Another major purpose of the amendments is to conform Republika Srpska bodies to the new operational and administrative chains of command established in the proposed Defence Law of Bosnia and Herzegovina. The amended Law would also reinforce civilian command and

control by stating explicitly that the Minister of Defence exercises authority over the General Staff. Article 1 should also be amended to note that the defence system of Republika Srpska should support the international commitments and obligations of the State of Bosnia and Herzegovina.

### **Article 2**

*The Minister of Defence shall prepare the defence of Bosnia and Herzegovina in the Republic as a member of the administrative chain of command of the Armed Forces of Bosnia and Herzegovina. The Minister of Defence shall have no operational command authority over the army or any part of the Armed Forces of Bosnia and Herzegovina.*

*Preparations for the defence of Bosnia and Herzegovina in the Republic comprise organisation and preparation of ~~putting in order the armed forces~~ the Army under the command and control of the Presidency of Bosnia and Herzegovina, and Preparations for defence also include organisation and preparation of the civil defence, the Republika Srpska bodies and companies and other legal subjects, performing of defensive steps and activities and carrying out of activities and tasks of interest for the defence.*

Article 2 defines the role of the Minister of Defence of Republika Srpska, delineating his position within the new structure. These provisions detail the nature of the defence of Republika Srpska, and who is responsible for that defence. The original text stipulates that the defence of the entity requires organising the army and other defence-related bodies and institutions, and implies that authority for this organisation rests solely with Republika Srpska. The amendments make clear that the Army of Republika Srpska would be under the command and control of the Presidency of Bosnia and Herzegovina and that the entity Minister of Defence would not be in the operational chain of command. The Army of Republika Srpska would be responsible for contributing to the defence of the entire State of Bosnia and Herzegovina, not just the entity.

### **Article 3**

*The defence of Bosnia and Herzegovina in the Republic shall be realized through:*

- 1) organisation and preparation of the ~~armed forces~~ Army for carrying out tasks in the defence of Bosnia and Herzegovina in the Republic, that is for confrontation or dissuading enemy from attacking Bosnia and Herzegovina the Republic;*

- 2) *participation of citizens in the armed combat and other forms of confronting the enemy until the full elimination or end of the danger to Bosnia and Herzegovina for the Republic;*
- 3) *also realization of other activities and tasks of interest for the defence of Bosnia and Herzegovina in the Republic in line with the obligations stipulated by this Law and the Defence Law of Bosnia and Herzegovina.*

*Defence preparations shall be organised, planned and carried out in the peacetime, and the defence shall be realized in the case of the State of emergency, ~~immediate threat of war~~ or the state of war as declared in accordance with the Defence Law of Bosnia and Herzegovina.*

Article 3 also addresses how the defence of Republika Srpska is to be accomplished. Currently, the article implies that the only responsibility of the Army of Republika Srpska is the defence of the entity. The amendments make clear that Republika Srpska would be responsible for assisting in the defence of the entire State of Bosnia and Herzegovina. Currently, this article implies that Republika Srpska alone can determine the need for, or declare a State emergency or state of war. Under the proposed Defence Law of Bosnia and Herzegovina, only the Parliamentary Assembly of Bosnia and Herzegovina would declare a state emergency or state of war at the request of the Presidency of Bosnia and Herzegovina.

#### **Article 4**

*The military forces for the realization of the defence tasks of Bosnia and Herzegovina in the Republic is are: the Army as an integral part of the Armed Forces of Bosnia and Herzegovina. ~~in the peacetime and the armed forces in the period of the state of war and the immediate threat of war.~~*

*~~The armed forces are composed of the Army and the police units;~~*

*~~The police units, during the carrying out of combat activities, are within the Army composition.~~*

Article 4 defines the entity forces available for defence. Currently, the Article refers only to the capacities and military forces of the Republika Srpska, and assumes that the entity has responsibility only for the defence of Republika Srpska. The amendments make clear that the Army of Republika Srpska would be a part of the Armed Forces of Bosnia and Herzegovina and that the

Army of Republika Srpska would be responsible for contributing to the defence of the entire State. The amendments also change the definition of the forces available for the defence of the State and the entity. Using police forces for combat activities is contrary to international law. Therefore, police forces would no longer be part of the military forces used in defence of the State and entity. Police forces of Republika Srpska would be subordinate to the Ministry of Internal Affairs of Republika Srpska.

#### **Article 5**

*State of war or State emergency means the declaration of war or State emergency by the Parliamentary Assembly of Bosnia and Herzegovina pursuant to the Defence Law of Bosnia and Herzegovina.*

~~*When there is agreed existence of any danger or risk to the territory, constitutional order or safety of the Republic, depending on the extent and degree of the danger oncoming or effective, the National Assembly shall announce:*~~

- ~~*1) state of war if the armed attack on the Republic is threatening or has already started;*~~
- ~~*2) immediate threat of war if there is a risk of possible attack or any other form of the outside danger to the Republic;*~~
- ~~*3) the state of emergency if there is a danger to the security of the Republic, human rights and freedoms and normal functioning of the constitutional bodies.*~~

~~*Immediate threat of war and state of war shall be announced for the whole territory of the Republic, while the state of emergency can be announced either for the entire Republic or a part of the Republic territory.*~~

Article 5 defines who may announce a State emergency or state of war. Currently, the Article states that the National Assembly of Republika Srpska has the authority to announce a state of emergency or state of war. It implies that the entity decides when there is a threat or state of war. In accordance with the supremacy of the State, the amendments make clear that only the Parliamentary Assembly of Bosnia and Herzegovina could declare a State emergency or state of war, at the request of the Presidency of Bosnia and Herzegovina.

### **Article 6**

*In the case of the state of war or State emergency ~~and immediate threat of war~~:*

- 1. Republika Srpska bodies, companies and other legal subjects and citizens shall undertake measures and activities in harmony to the obligations stipulated by the Republic Defence Plan;*
- 2. The ~~armed forces~~ Army of the Republic shall act in accordance to the plans of mobilisation and use ~~of armed forces~~ of the Armed Forces of Bosnia and Herzegovina ~~and orders of the President of the Republic~~.*

*The plan on ~~overall~~ mobilisation of the Army and the plan on organisation of the defence preparations will be proposed by the ~~Government~~ Minister of Defence of the Republic ~~and the plan on the mobilisation and use of the armed forces by the General Staff of the Army (hereinafter: General Staff)~~. Both plans must be approved by the Minister of Defence of Bosnia and Herzegovina.*

*The Republic Defence plan and excerpts of that plan shall determine tasks and obligations of performers of that Plan according to the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, and the common security and defence policies of Bosnia and Herzegovina.*

Article 6 defines what happens in a state of war. Currently, it directs the Army of Republika Srpska to carry out entity plans for mobilisation and deployment. It also identifies who prepares the plans for organisation, mobilisation, and use of the army. Currently, the article assumes that Republika Srpska and its army can act on its own authority. The amendments make clear that this would no longer be the case. The Army of Republika Srpska would act in accordance with State laws, decisions and directives, and plans for the organisation and mobilisation of the army would be approved by the Minister of Defence of Bosnia and Herzegovina.

### **Article 8**

*In the case of a State of emergency and immediate threat of war, the Army follows orders of the President Presidency of Bosnia and Herzegovina ~~of the Republic~~ regarding ~~orders~~ measures of alert, mobilisation and use of the Army ~~armed forces~~ and other steps and actions which the Army ~~armed forces~~ undertakes for prevention or dissuading of the danger that can threaten the defence of Bosnia and Herzegovina ~~the Republic~~ and its safety.*

*The alert measures will be implemented by the Republika Srpska bodies, the Army, companies and other legal subjects.*

Article 8 defines who issues orders for preparations in the case of a State emergency. Currently, the article grants this authority to the President of Republika Srpska. This implies that the entity President can decide for himself when a threat exists. The amended text makes clear that only the Presidency of Bosnia and Herzegovina could determine when a threat exists and only the Parliamentary Assembly of Bosnia and Herzegovina can declare a State emergency. The amendments also make clear that Republika Srpska and its army would contribute to the defence of the entire State of Bosnia and Herzegovina, not only that of the entity.

#### **Article 9**

*The mobilisation comprises planning and performing call-ups to persons who are subject to military conscription from the reserve units into military units of the Army, ~~forming of the armed forces of the Republic (hereinafter: the armed forces)~~ and the transition from the peacetime to the war organisation of the Republika Srpska bodies and companies and other legal subjects.*

~~*The mobilisation is in its extent general and partial, and in its method of execution public or secret.*~~

~~*The mobilisation can be ordered also in the case of the danger to peace in the world.*~~

*The mobilisation of the Army ~~armed forces~~ shall be planned and conducted on the basis of regulations passed by the ~~Defence Minister~~ Minister of Defence of Bosnia and Herzegovina.*

*The mobilisation of the Republika Srpska bodies and companies and other legal subjects shall be planned and conducted on the basis of regulations passed by the Government of Republika Srpska (hereinafter: the Government) according to the Defence Law of Bosnia and Herzegovina, the directives, regulations and orders of the Minister of Defence of Bosnia and Herzegovina, and the common security and defence policies of Bosnia and Herzegovina.*

Article 9 identifies who prepares plans for implementing orders to mobilise the Army of Republika Srpska. Currently, the article grants this authority to the entity Minister of Defence. In accordance with the supremacy of the State and its assuming authority for defence matters, the amendments would transfer this authority to the Minister of Defence of Bosnia and Herzegovina, and

would reiterate that mobilisation in the entity must be in accordance with State laws and regulations.

**Article 11**

~~The Supreme HQ (note: should be General Staff) is the highest professional and command body for the preparation and use of the Army in the peacetime, that is of armed forces during the state of war and the immediate threat of war.~~

~~The Supreme HQ [note: should be General Staff] performs inspection activities of the combat readiness of commands and the Army units.~~

Article 11 defines who has highest command authority for the Army of Republika Srpska both in peacetime and in war. Currently, the article assigns this authority to the General Staff of Republika Srpska. In accordance with the supremacy of the State of Bosnia and Herzegovina and the directive to assure a single chain of command authority for the State, this article should be deleted. The entity would not have operational command of the Army of Republika Srpska.

**II. Rights and Obligations of Bodies of RS**

**1. National Assembly**

**Article 16**

*The National Assembly in the field of the defence:*

- 1. organises the defence system and determines the policy in the defence field according to the Defence Law of Bosnia and Herzegovina, the directives regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and common security and defence policies of Bosnia and Herzegovina;*
- 2. considers state of preparations for the defence in the Republic and determines measures for organisation, development and strengthening of the defence; and:*
- 3. passes the defence development plan within the republic Development Plan; and*
- 4. ~~determines the basis for ensuring the material reserves and sources of funding defence during the immediate threat of war and the state of war.~~ conducts oversight of all defence-related matters in Republika Srpska, concurrent with the Parliamentary Assembly of Bosnia and Herzegovina, and conducts other tasks in the defence field under its competency.*

Article 16 seeks to enhance and emphasise the role of the National Assembly of Republika Srpska in overseeing all defence matters in the entity, in order to strengthen democratic control over armed forces. In accordance with the supremacy of the State for defence matters, oversight would be conducted concurrently with the Parliamentary Assembly of Bosnia and Herzegovina.

## **2. President of the Republic**

### **Article 17**

*In the defence field the President of the Republic:*

- ~~1) passes and orders implementation of the Republic Defence Plan;~~
- ~~2) governs defence and commands the army at peace, or the armed forces during the state of war;~~
- ~~3) orders implementation of the alert measures and other measure relevant for the defence and orders general and partial mobilisation;~~
- ~~4) determines military territorial division of the republic, organisation and formation and basis of the development plans, commanding system and basis of arming and equipping the Army, or the armed forces;~~
- ~~5) imposes receivership in municipalities and companies during the immediate threat of war and the state of war, when the conduct of local authorities and achievement of production and services is not in line with the defence aims~~
- ~~6) orders inspection surveys in respect to the implementation of general and individual acts brought in line with the Constitution of the Republic and this Law and the Defence Law of Bosnia and Herzegovina;~~
- ~~7) defines strategy of the armed combat and rules in use of forces for the Republic defence and waging war;~~
- ~~8) determines needs for equipping and arming for the defence of the Republic;~~
- ~~9) defines needs of organizing the territory of the Republic for the defence.~~
- ~~3) participates in the work of the Standing Committee on Military Matters pursuant to a decision of the Presidency of Bosnia and Herzegovina; and~~
- ~~4) authorises the limited use of units of the Army to assist in responding to natural disasters and accidents, consistent with the Defence Law of Bosnia and Herzegovina.~~

Article 17 defines the powers of the President of Republika Srpska in the field of defence. Currently, these powers include full authority for the defence of the entity and full command of the army in peace and war. This is contrary to the imperative of State supremacy in defence matters. In accordance with the directive to ensure a clear chain of command, at all times the Presidency of Bosnia and Herzegovina would exercise command and control of the Army of Republika Srpska as a part of the Armed Forces of Bosnia and Herzegovina. The President of Republika Srpska would therefore have limited authority in the field of defence.

#### **4. Ministry of Defence of Republika Srpska**

##### **Article 21**

*The Ministry of Defence of Republika Srpska (hereinafter: The Ministry) shall perform administrative and professional jobs within the field of defence, according to the Defence Law of Bosnia and Herzegovina, the directives, regulations and orders of the Minister of Defence of Bosnia and Herzegovina and common security and defence policies of Bosnia and Herzegovina, as follows:*

*[add a new item to the list of competencies for the Ministry of Defence]*

*15) shall establish catering and hospitality services to provide for the needs of the Army and, by special regulation of the Minister, regulates work of the service.*

Article 21 makes clear that the Ministry of Defence shall act in accordance with the Defence Law of Bosnia and Herzegovina and the orders of the Minister of Defence of Bosnia and Herzegovina. The addition of provision (15) to Article 21 reflects the obligation of the Ministry of Defence to cater for the needs of the Army of Republika Srpska, and provides for the means to the Minister of Defence to regulate the provision of such services.

##### **Article 23**

*The General Staff of the Army of Republika Srpska (General Staff) is the professional and the highest expert and staff body of the Ministry of Defence and is subordinate to the Minister of Defence. The General Staff assists the Minister of Defence in the performance of duties related to manning, training and equipping of the Army during peace and war.*

The General Staff would be integrated with the Ministry of Defence. This serves as one of the fundamental keys of civilian oversight as the Chief of

Staff and the General Staff headquarters are placed under the control of the Minister of Defence. The General Staff's primary responsibility is to assist the Minister of Defence in the execution of the tasks that fall under his responsibility, such tasks could relate to the preparedness, staffing, manning and training of the Army of Republika Srpska.

The Defence Reform Commission recognises that further amendments will need to be made to this law to reflect recently adopted or pending legislation in relevant areas. For example, the provisions contained in this law relating to the production and export of military weapons and materials will need to be harmonised with the State Law on Import and Export of weapons, and the current development of Bosnia and Herzegovina and entity laws on weapons production.

Amendments to this law may need to be made to reflect the recent adoption of the Civil Protection Law of Republika Srpska and the penalty provisions should reflect the adoption of a State criminal code and corresponding changes to the entity criminal codes.

The Defence Reform Commission recognises the need for further amendment to this law concerning important matters that are outside the mandate of this Commission. The process of amending this law as recommended by the Commission would be an appropriate opportunity for entity authorities to engage in a thorough review of the entire law.

### **7.2.3. Amendments to the Law on the Army of Republika Srpska**

#### ***Explanation***

The following is an analysis of the provisions of the Law on the Army of Republika Srpska as they relate to State-level command and control of the Armed Forces of Bosnia and Herzegovina and the proposed Defence Law of Bosnia and Herzegovina.

Provisions that appear to conflict with the supremacy of the State for defence matters, as well as the Concept Paper, are identified and amendments made accordingly. The intent was to amend any provision that, under a most liberal reading, poses a risk of interfering or inhibiting full implementation of State-

level command and control over the Armed Forces of Bosnia and Herzegovina at all times, as set out in the Concept Paper.

Many of the amendments to this law are intended to bring it into conformity with the establishment of a single State-level defence structure with operational and administrative command and control over the Armed Forces of Bosnia and Herzegovina, a prerequisite for Partnership for Peace candidacy. The basic amendments for this purpose are found in Sections I and II and are examined in the section-by-section analysis below, but tracking amendments are made throughout the law.

A key element is that the Army of Republika Srpska would become an integral part of the Armed Forces of Bosnia and Herzegovina and would be pledged to defend the territory and political independence of the State of Bosnia and Herzegovina, not just the entity.

Most of the remaining amendments clarify the functions of the authorities of Republika Srpska in the administrative chain of command, noting that authorities would act in accordance with State laws, directives or policies. The basic amendments in this regard are examined in the following section.

Other major amendments delete entire Articles that concern activities no longer applicable to the Armed Forces of Bosnia and Herzegovina or are transferred to State authorities. For example, Articles 154-159 concerning liabilities are deleted. Article 136 on military discipline is changed to note that State authorities would develop a new, common system for the Armed Forces of Bosnia and Herzegovina. Most of the technical parts of the law are unchanged.

Finally, new Articles 285-288 are proposed, but are not examined in the following section-by-section analysis. These articles identify actions needed to ensure implementation of the policies reflected in the amendments:

- all other decisions, directives or regulations are to be harmonised with the new provisions of this law;
- the Minister of Defence is to co-operate with the Minister of Defence of Bosnia and Herzegovina in developing a common personnel system;

- the Minister of Defence is to co-operate with the Minister of Defence of Bosnia and Herzegovina in adopting a common policy regarding reserves;
- the Minister of Defence is to co-operate with the Minister of Defence of Bosnia and Herzegovina in adopting common policies regarding military discipline and military justice.

### **Section-by-Section Analysis**

#### **I – GENERAL PROVISIONS**

##### **Article 2**

*The Army is a professional armed force that protects the territorial integrity and constitutional order of Bosnia and Herzegovina and the Republika Srpska (hereinafter: the Republika).*

*The army forms an integral part of the Armed Forces of Bosnia and Herzegovina.*

These amendments make clear that the primary mission of the Army of Republika Srpska would be to protect the State of Bosnia and Herzegovina, not just the entity, and that the Army of Republika Srpska would be a part of the Armed Forces of Bosnia and Herzegovina.

#### **II – ORGANISATION AND RECRUITING OF THE ARMY**

##### **1. Organisation of the Army**

##### **Article 4**

*The Army shall be organised in peace-time and war-time units according to the Defence Law of Bosnia and Herzegovina, the directives, regulations and orders of the Minister of Defence of Bosnia and Herzegovina, and the common security and defence policies of Bosnia and Herzegovina.*

*The Army consists of types, types consist of branches and services and branches consist of services and specialties.*

*Types of the Army are land forces, military air forces and anti-aircraft defence.*

*~~The President of the Republika shall determine branches and services and Defence Minister shall determine specialties.~~*

These amendments make clear that the Army of Republika Srpska would be organised according to State laws and authorities, reflecting the supremacy of the State of Bosnia and Herzegovina for all defence matters.

### **Article 7**

~~The President of the Republika Presidency of Bosnia and Herzegovina shall command is the supreme commander of the army during both peacetime and war.~~

~~In commanding of the Army the President of the Republika:~~

- ~~1) shall determine organisation and formation, and fundamentals of development plans of the Army~~
- ~~2) shall determine a system of commanding of the Army and shall follow its implementation~~
- ~~3) shall determine a Plan of the use of the Army and shall decide on the use of the Army~~
- ~~4) shall prescribe and order alert measures for the Army in the case of war and immediate war threat~~
- ~~5) shall determine basis for armament and providing of the equipment to the Army~~
- ~~6) shall determine military and territorial classification of the Republika~~
- ~~7) shall give guidance for undertaking of measures for preparation and mobilisation of the Army~~
- ~~8) shall pass regulations and other acts pertaining to the use of the Army~~
- ~~9) shall pass regulations that shall determine internal work and relations in carrying out of the military service~~
- ~~10) shall also perform other works of Army command in according to the Law.~~

~~In carrying out of works referred to in paragraph 2 of this Article, the President of the Republika shall pass guidelines, directives, decisions and orders.~~

In its original form, the article gave command of the Army of Republika Srpska to the entity President. The amendment makes clear that, in accordance with the concept of a single chain of operational command and the supremacy of the State for defence matters, the command of the Army of Republika Srpska would be assumed by the Presidency of Bosnia and Herzegovina. The specific functions of command are not needed in this law; they can be found in the appropriate State laws.

### **Article 8**

*In the system of commanding of the Army in peace and war, the Defence Minister, according to the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, and the common security and defence policies of Bosnia and Herzegovina:*

- 1. shall determine basis for the education and criteria of staff policy within the Army in the aim to provide unity in the commanding and recruiting of the Army;*
- 2. shall order recruiting and sending of soldiers for the military service and shall decide upon garrisons and units for training of soldiers in the military service;*
- ~~3. shall prepare analyses on expert level, attitudes and proposals on the issues within the responsibility of the President of the Republika and the Supreme Defence Council;~~*
- 4.3 shall approve plans and studies on performing of exercises and shall assess military readiness of the Army units as a whole; and*
- 5.4 shall pass rules, instructions and book of rules that shall arrange issues and relations in carrying out of the military service.*

Operational command of the Army of Republika Srpska would be assumed by the State. However, the Minister of Defence would retain important administrative functions for managing the Army of Republika Srpska. These amendments make clear that the Defence Minister would act in accordance with State laws, regulations and orders in performing these administrative functions.

### **Article 9**

*General Staff of the army is a ~~supreme professional and HQ organ for the manning, training and equipping preparation and the use of the Army during the peace and war.~~*

*Chief of Staff of the General Staff, in accordance with the orders and directives ~~of basis of the organisation, forming and development of the Army and acts of the President of the Republika and of the Defence Minister:~~*

- 1. shall determine organisation, development plan and forming of the commands and units of the Army;*
- 2. shall propose recruiting plan and recruiting of the Army and military schedule of the soldiers in the army;*
- 3. shall pass programs and instructions on training of the Army;*

4. *shall determine plans of education and additional training of professional officers and officers in reserve;*
5. *shall prepare expert analysis, viewpoints and proposals to the Defence Minister; and*
6. *shall also perform other jobs stipulated by the Law.*

~~*The General Staff of the Army shall carry out an inspection of the military readiness of the Army.*~~

*In peace, the General Staff of the Army shall have its seat in the location of the seat of the Ministry of Defence.*

Operational command of the Army of Republika Srpska would be assumed by the State. These amendments aim to clarify that the General Staff of the entity Army would be responsible for overseeing the administrative preparations of the army in accordance with the directives of the entity Defence Minister. The responsibility for inspecting military readiness would also be assumed by the State.

#### **Article 10**

*The Chief of Staff of the General Staff shall pass regulations, orders, instructions and other acts related to the implementation of the acts passed by the Presidency of Bosnia and Herzegovina, the Minister of Defence of Bosnia and Herzegovina, ~~the President of the Republika and the Ministry of Defence in the administrative commanding~~ of the Army.*

*Commanding officers of the army units shall command those units according to the Defence Law of Bosnia and Herzegovina, this Law and commanding acts of superior officers.*

These amendments aim to clarify that the entity Chief of the General Staff would not be in the operational chain of command. The Chief would, however, have an important role in the administrative chain of command, acting in accordance with the laws of the State and directives of State authorities. Commanding officers of the Army of Republika Srpska would obey the chain of command set out in the proposed Defence Law of Bosnia and Herzegovina.

#### **Article 15**

*In the occasion of joining the Army members of the military force shall take the oath of the Armed Forces of Bosnia and Herzegovina an oath that reads: "I (name and surname) swear in by my honour and life to defend the territorial integrity and the Constitutional order of my homeland, Republika Srpska, and to loyally serve to the interests of its people. So help me God."*

Members of entity armies would no longer defend only their entity; they would be members of the Armed Forces of Bosnia and Herzegovina and would therefore commit themselves to defending the State. All members of the Armed Forces of Bosnia and Herzegovina would take the same oath.

## **2. Recruitment to the Army**

### **Article 19**

~~Upon a proposal of~~ *The Defence Minister, shall propose to the Minister of Defence of Bosnia and Herzegovina* ~~President of the Republika Srpska shall~~ *the nomination of Brigadier Generals and officers on duty that have a rank of General by a formation.*

*Other officers, non-commissioned officers and soldiers in the Army and the Ministry of Defence shall be appointed by the Defence Minister or an officer authorised by him.*

*Filling in of the units by persons who have the military obligation according to the received scheduled for persons with military obligation and of material means from the list shall be done by the Ministry of Defence according to determined criteria and priorities of recruiting* ~~established that shall be determined by the Minister of Defence of Bosnia and Herzegovina Government of the Republika Srpska (hereinafter: the Government).~~

The amendments allow for the State assumption of command authority from the entity, and for the fact that the administrative functions of the Ministry of Defence would be carried out in accordance with State priorities and regulations. In accordance with Article 15 of the proposed Defence Law of Bosnia and Herzegovina, the Minister of Defence would have competency to appoint General officers in the Armed Forces of Bosnia and Herzegovina; thus, the entity Minister of Defence would propose Brigadier Generals and officers with the rank of General to the Minister of Defence of Bosnia and Herzegovina. The entity Minister of Defence would nominate other officers and non-commissioned officers.

## **3. Mobilisation**

### **Article 21**

*The mobilisation of the Army shall be organised according to the plan of the mobilisation* ~~developed by the Minister of Defence of Bosnia and Herzegovina development and shall be carried out in accordance to the mobilisation plans of war units.~~

*The mobilisation of the Army may be general and partial and by a manner of announcement it may be public and secret.*

~~General mobilisation covers all war units and partial mobilisation covers only specific military units.~~

These amendments make clear that State authorities would be responsible for developing mobilisation plans, and any mobilisation, including that for reserve training, must be conducted in accordance with State regulations.

**~~Article 28~~**

~~The President of the Republika may take a person who is not a citizen of the Republika Srpska into the reserve service. It can be done for a person who has acquired a rank of the military officer during the war or immediate war threat. Such person shall be kept in the record books as an officer with an honorary rank.~~

The deletion of this provision reflects that only citizens of the State of Bosnia and Herzegovina would be able to serve in the Armed Forces of Bosnia and Herzegovina.

**~~Article 31~~**

~~The rights and duties of authorised official persons of internal affairs bodies in the Army shall be exercised by authorised persons of security bodies and military police.~~

~~In performing security jobs or military police jobs, authorised persons serving in security bodies and military police may use arms and other means of force under the conditions stipulated by the law for authorised official persons of internal affairs bodies.~~

~~The Defence Minister shall determine which persons are considered authorised persons of security bodies and military police and the manner of issuance of a special official identity card to those persons.~~

The current Law on Defence of Republika Srpska defines military forces as including police forces. As reflected in the amendments to that law, police forces would be deleted from the definition of armed forces. There would no longer be “persons of internal affairs bodies” in the entity Army or in the Armed Forces of Bosnia and Herzegovina. Persons concerned with internal affairs are under the authority of the Ministry of Internal Affairs. Therefore, this article should be deleted.

**Article 44**

~~The President of the Republika may promote officers to the rank of General in an extraordinary procedure upon a proposal by the Defence Minister.~~

~~The Defence Minister may promote a non-commissioned officer and an officer to an immediately higher rank, up to the rank of Colonel, in an extraordinary procedure, upon a proposal by the Chief of General Staff.~~

~~The conditions and methods for the extraordinary promotion of the persons from paragraph 1 of this Article shall be regulated by regulations issued by the Minister of Defence of Bosnia and Herzegovina.~~

Under the Defence Law of Bosnia and Herzegovina, State authorities would establish standards for promotion applicable to all members of the Armed Forces of Bosnia and Herzegovina, and General officers would be promoted, appointed, and removed by the Presidency of Bosnia and Herzegovina. Therefore this article should be deleted.

**Article 136**

~~The Rules on military discipline passed by the President of the Republika shall regulate the procedure and competence for debate on disciplinary offence, pronouncing disciplinary measures and actions, their enforcement and records-keeping, as well as an organisation, composition and work of military disciplinary courts and bodies competent for debating the offences committed by reserve officers and reserve non-commissioned officers outside of service.~~

Rules on military discipline in force at the time of the adoption of this amendment shall remain in force until the adoption of new rules by the Minister of Defence of Bosnia and Herzegovina.

The rules on military discipline adopted by the Minister of Defence of Bosnia and Herzegovina shall supersede all previous rules on military discipline and as well as any provisions of this law that are inconsistent with the new rules.

The proposed Defence Law of Bosnia and Herzegovina provides that State authorities would establish rules on military discipline, so that a uniform system is established and used for all members of the Armed Forces of Bosnia and Herzegovina.

**Article 223**

~~The Minister of Defence shall decide on drafting of the recruits permanently residing abroad, recruits who have foreign citizenship in addition to the citizenship of Republika Srpska, and recruits who~~

~~have served military service abroad but require to serve the military service in the Army.~~

International agreements and State laws should determine military service obligations of dual citizens and Bosnia and Herzegovina citizens living abroad. Moreover, the proposed Defence Law of Bosnia and Herzegovina states that anyone who has served in another state's armed forces cannot serve in the Armed Forces of Bosnia and Herzegovina. Therefore, this article should be deleted.

### **3. Army Reserve forces**

#### **Article 234**

*Commitments of the persons in the Army reserve forces (hereinafter: Reserve forces) shall commence on the day of their release from the military service, i.e. the date on which the commitment of serving the military service was regulated in some other manner, and shall last by the end of the calendar year in which a conscript – male shall reach the age of 55 years.*

*Commitments of the female conscripts in the Reserve forces shall commence at the beginning of the calendar year in which they shall reach the age of 19 years and shall last by end of the calendar year in which they shall reach the age of 45 years.*

~~*In the case of immediate war danger and during the state of war, the President of Republika may prolong the commitments of the persons within the reserve forces, for the reserve non-commissioned officer and reserve officers, after expiration of the terms specified in paragraph 1 and 2 of this Article.*~~

~~*In the case of immediate war danger and during the state of war, the President of the Republika may order that the soldiers whom the military service under this Law has expired are kept in the Army as the persons in the Reserve forces, immediately after finishing their military service.*~~

In accordance with the supremacy of the State for defence matters, the final two paragraphs of the original article should be deleted because, in war or a State emergency, only State authorities would be able to prolong commitments for reserve forces.

## **VII. DISPOSAL AND MANAGEMENT OF RESOURCES AND MATERIAL AND FINANCIAL DEALINGS IN THE ARMY**

**Article 255**

*The resources of the Republic which are used for the needs of the Army within the Ministry of Defence and the Army, in accordance with this Law shall be at the disposal of and managed by the Government, Minister of Defence and the persons and commanders in the Defence Ministry authorised by the Defence Minister.*

*The resources for the needs of the Army in the sense of this Law shall be the financial assets, mobile and immobile property and the property rights.*

*The resources for the needs of the Army shall be transparent and the management of those resources shall be subject to democratic oversight by the National Assembly.*

The last paragraph is proposed in order to meet the imperative to establish full democratic control and transparency of the Armed Forces of Bosnia and Herzegovina.

**Article 261**

*Military land and residential fund objects of the Army shall be enrolled into official books in according to the general regulations.*

*The Defence Minister shall keep a complete and accurate inventory of all real estate owned by the army and a complete and accurate record of all real estate transactions involving real estate owned by the army.*

In accordance with the principles of democratic control and transparency, a provision to keep complete and accurate inventories is proposed. This would add to the efficacy of resource management and control.

**Article 268**

*The expropriation or the transfer of the real estate temporary utilization right can be carried out in order to construct or renovate the existing facilities that are in the special interest of the country's defence, in accordance with general conditions provided for by the Law.*

*The existence of the interest from the paragraph 1 of this Article is established by the Minister of Defence of Bosnia and Herzegovina Government, upon the proposal of the Minister of Defence.*

~~*During the war or the imminent war danger, the Government can decide to expropriate the real estate or attribute the temporary utilisation right even before the effectiveness of the Act on expropriation, i.e., transfer.*~~

In accordance with the supremacy of the State for defence matters, the amendments to this article make clear that Republika Srpska would not be able to act alone with regard to the transfer or expropriation of real estate even in time of war. In peacetime, the Minister of Defence would approve a proposal from the Minister of Defence of Republika Srpska.

**Article 272**

*The import and export of weapons and equipment is performed in accordance with the State and entity Laws.*

~~*In accordance with the Law from the paragraph 1 of this Article, the execution of certain tasks related to the export and import of weapons can be transferred to the Minister of Defence.*~~

These amendments clarify that the import and export of weapons and equipment would be governed by State as well as by entity laws.

### **7.3. Federation of Bosnia and Herzegovina Defence Reforms**

This section presents selected amendments to the Constitution and the Defence Law of the Federation of Bosnia and Herzegovina. These amendments address those provisions that conflict with the proposed Defence Law of Bosnia and Herzegovina, as well as the Concept Paper and mandate of the Defence Reform Commission. However, the Commission recognises that further analysis and amendments will be required, particularly towards areas where certain provisions conflict with European human rights standards and other State legislation. The Commission recognises that many of these areas were outside the scope and competency of its mandate and encourages further deliberations during the parliamentary phase of the adoption of these amendments.

#### **7.3.1. Amendments to the Constitution of the Federation of Bosnia and Herzegovina**

The following is an analysis of constitutional provisions of the Federation of Bosnia and Herzegovina as they relate to Bosnia and Herzegovina State-level command and control of the Armed Forces of Bosnia and Herzegovina. The constitutional provisions that appear to conflict with the Concept Paper are identified and amendments recommended. The objective was to amend any provision that posed a risk of interfering or inhibiting the State's ability to preserve the sovereignty, territorial integrity, political independence and international personality of the State. This includes the full implementation of State-level command and control over all the Armed Forces of Bosnia and Herzegovina at all times, as set out in the Concept Paper.

### ***Explanation***

According to the Constitution of Bosnia and Herzegovina, the State has competency to preserve its sovereignty, territorial integrity, political independence, and international personality. This requires that the State have the full command and control of the Armed Forces of Bosnia and Herzegovina, of which the Army of the Federation of Bosnia and Herzegovina is part.

Article III.5 of the Constitution of Bosnia and Herzegovina stipulates that the State shall assume those competencies from the entities in order for it to exercise full command and control of the Armed Forces of Bosnia and Herzegovina. Amendments made to this Constitution are to this effect.

Furthermore, these amendments codify the "Transition" amendments contained in this Constitution, relating to the need to transfer the power of the entity President for command and control of the Army of the Federation of Bosnia and Herzegovina to the Bosniak and Croat members of the Presidency of Bosnia and Herzegovina.

The Parliamentary Conclusion PF No. 01/02-03-442/02, 27 June 2002, delegated all defence matters to the institutions of the Presidency, the Parliament and the Council of Ministers of Bosnia and Herzegovina. Amendments made to this Constitution additionally reflect this fact.

The intent of the constitutional transitional provisions and the Parliamentary Conclusion was to assert some degree of State-level command and control over the Army of the Federation of Bosnia and Herzegovina. However, this created confusion regarding supreme command authority, since it has never been clarified how the Bosniak and Croat members of the Presidency of Bosnia and Herzegovina exercise command authority over the entity Army. The amendments made here will clear up this confusion.

### ***Section-by-Section Analysis***

#### AUTHORITY OF THE FBIH RELATED TO MILITARY AND DEFENCE ISSUES

##### ***Article III.1:***

*The Federation shall have exclusive responsibility for:*

~~...(a) Organizing and conducting the defence of the Federation and protecting its territory...including establishing a joint command of all military forces in the Federation, controlling military production, signing military agreements according to the Constitution of Bosnia and Herzegovina; and cooperating with the Standing Commission on Military Matters and the Council of Ministers, and other State level institutions responsible for military and defence issues.~~

Article III.1 grants responsibility to Federation of Bosnia and Herzegovina for organising and conducting the defence of its territory. To ensure a single State-level command and control of the Armed Forces, a prerequisite for PFP membership, the State must assume this responsibility. Therefore, the conflicting provisions of Article III.1 should be deleted. Authority over control of military production should also be deleted; other state and entity laws will regulate military production. The remaining sentence of Article III.1 currently authorises the entity to sign military agreements according to the Constitution of Bosnia and Herzegovina; this authority should remain. Finally, Article III.1 directs the Federation to co-operate with the SCMM and Council of Ministers. For clarification, the amendment recognises the creation of other State level institutions with responsibilities relating to military and defence issues.

#### AUTHORITY OF THE FBiH PRESIDENT RELATED TO MILITARY AND DEFENCE ISSUES

##### **Article IV.B.3.7(a)(ii)**

*The President shall be responsible for:...*

*(i)...*

~~*(ii) "serving as commander in chief of the military of the Federation, subject to the provisions on civilian command in Article V.5(a) of the Constitution of Bosnia and Herzegovina." [Amendment LXXXVIII Amending the Constitution of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH, 1/94, 13/96, 16/02, 22/02, 52/02)]*~~

*(rename subsequent paragraphs seriatim)*

Article IV.B.3.7(a) (ii) currently confers authority of command and control of the military to the entity President. This provision was superseded by the Transitional Provision contained in Section IX, Art 11(2), as amended, and the

Parliamentary Conclusion, PF No. 01/02-03-442/02, 27 June 2002. Moreover, pursuant to Article III.5.a, of the Constitution of Bosnia and Herzegovina, the State will assume responsibility for defence. The Constitution of the Federation of Bosnia and Herzegovina should be amended accordingly.

**Article IV.B.3.8**

*The President, with the concurrence of the Vice-President, shall nominate officers of the armed forces. Nominations shall require the approval of a majority of each House of the Legislature, provided that approval of nominations for the members of the Joint Command of Military Forces shall require in the House of Peoples a majority of the Bosniak and Croat Delegates. This provision also deals with nomination of diplomats to missions — a State prerogative. Nominations shall require the approval of a majority of each House of the Legislature.*

Article IV.B.3.8 authorises the entity President, with the concurrence of the Vice-President, to nominate officers of the Armed Forces. With command and control of the Armed Forces now being assumed by the State, it follows that State bodies should regulate nominations. The entity President would no longer have an independent role in military and defence matters.

The amendment also reflects the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case No. 5/98 being Constitutional Court Decision of 28, 29 and 30 January 2000 (Official Gazette of Bosnia and Herzegovina, No. 11/00 of 17 April 2000), of 18 and 19 February 2000 (Official Gazette of Bosnia and Herzegovina, No. 17/00 of 30 June 2000), of 30 June and 1 July 2000 (Official Gazette of Bosnia and Herzegovina No. 23/00 of 14 September 2000) and of 18 and 19 August 2000 (Official Gazette of Bosnia and Herzegovina, No. 36/00 of 31 December 2000); and the Decision on Constitutional Amendments in the Federation of Bosnia and Herzegovina of 19 April 2002 of the High Representative, establishing two Vice-Presidents.

The adoption procedure of nominations of diplomats to missions by the Parliamentary Assembly also reflects the Constituent Peoples' Decisions of the Constitutional Court.

AUTHORITY REGARDING THE INTERNATIONAL RELATIONS OF THE FEDERATION

**Article VII.1**

*The international relations of the Federation have to be in accordance with the international personality, territorial integrity and continuity of Bosnia and Herzegovina, subject to and consistent with Article III of the Constitution of Bosnia and Herzegovina.*

Article VII.1 currently directs that the international relations of the Federation of Bosnia and Herzegovina must be conducted in accordance with the international personality, territorial integrity and continuity of the State. However, it does not directly relate these powers to the Constitution of Bosnia and Herzegovina, leaving an element of possible ambiguity and allowing subjective interpretation of the words "international personality, territorial integrity and continuity of Bosnia and Herzegovina." It is recommended that this ambiguity be eliminated by referencing Article III of the Constitution of Bosnia and Herzegovina.

**Article VII.4(1)**

*(1) International treaties and agreements with international organisations shall be signed and ratified in the name of the Federation by the Federation President. They shall only enter into force for the Federation only if approved by the Federation Assembly, with the prior approval of the Parliamentary Assembly of Bosnia and Herzegovina, except to the extent ~~that the Federation Assembly or the~~ that the Parliamentary Assembly of Bosnia and Herzegovina provide by law that these types of international treaties and agreements do not require such approval.*

Article VII.4(1) currently allows the entity President to sign and ratify international treaties and agreements with international organisations. Such agreements will enter into force only if approved by the entity Parliamentary Assembly, with the prior approval of the State-level Parliamentary Assembly, unless the entity Assembly or State Parliamentary Assembly provide that these types of agreements do not require such approval. This power of the entity Parliamentary Assembly to determine whether these international treaties and amendments require approval by the Parliamentary Assembly of Bosnia and Herzegovina gives the entity power over the State. Such power

should be removed. Therefore, this reference to the Parliamentary Assembly of the Federation of Bosnia and Herzegovina should be deleted.

#### AUTHORITY OF THE LEGISLATURE RELATED TO MILITARY AND DEFENCE ISSUES

##### **Article IV.A.20(1)(e)**

*(1) In addition to other powers specified in the Constitution, the Legislature shall have responsibility for:*

~~*(e) authorising the use of military force by the Federation, which must be in accordance with international law;*~~

Article IV.A.20(1)(e) currently directs that the Legislature may authorise the use of military forces by the Federation of Bosnia and Herzegovina. This authority will be assumed by the State and therefore this section should be deleted accordingly.

### **7.3.2. Amendments to the Law on Defence of the Federation of Bosnia and Herzegovina**

#### ***Explanation***

The following is an analysis of the provisions of the Law on Defence of the Federation of Bosnia and Herzegovina. Provisions that appear to conflict with the supremacy of the State for defence matters, as well as the Concept Paper, are identified and amendments proposed accordingly. Amendments are proposed to all provisions that pose a risk of interfering with or inhibiting the full implementation of State-level command and control over the Armed Forces of Bosnia and Herzegovina at all times, as set out in the Concept Paper.

As noted in Article 1, this law defines the defence system of the Federation of Bosnia and Herzegovina and the rights and duties of the entity bodies involved in security and defence matters.

The essential purpose of the amendments to this law is to ensure consistency with the supremacy of the State. It follows that the provisions of this law must reflect that the State will assume those responsibilities from the Federation of Bosnia and Herzegovina necessary to protect its sovereignty, territorial

integrity, political independence and international personality. The State of Bosnia and Herzegovina, through the Presidency as the supreme commanders of the Armed Forces of Bosnia and Herzegovina, will thus assume the responsibility and authority for the defence of the Federation of Bosnia and Herzegovina as a part of the entire territory of the State. The amendments also reflect that the Federation of Bosnia and Herzegovina will have a duty and responsibility to defend the sovereignty, territorial integrity, political independence of the State of Bosnia and Herzegovina, and not just that of the entity.

This would enable the State to exercise full competency for its defence through a single chain of command, a fundamental prerequisite for consideration as a credible candidate for the Partnership for Peace. The Federation of Bosnia and Herzegovina would, however, have a specific and integral role within the administrative chain of command, and would thus retain specific responsibilities related to the administration of the Army of the Federation of Bosnia and Herzegovina.

The amended Law on Defence would make clear that the Army of the Federation of Bosnia and Herzegovina would be part of the Armed Forces of Bosnia and Herzegovina and, in accordance with the concept of a single command and control, would take operational orders only from State institutions.

The following Section-by-Section analysis highlights only the most important or substantive amendments. There are additional amendments throughout the text of the Law but they are editorial in nature or simply make remaining provisions consistent with the major changes addressed here.

Finally, Articles 226-228 have been added noting that the Minister of Defence of the Federation of Bosnia and Herzegovina would co-operate with the State Minister of Defence to develop a common personnel system for the Armed Forces of Bosnia and Herzegovina, and common policy for reserve forces and military discipline and justice.

### ***Section-by-Section Analysis***

#### ***I – Basic Provisions***

##### ***Article 2***

*Preparation of the army is done by the minister of defence as part of the administrative chain of command of the Armed Forces of Bosnia and Herzegovina. The Minister of Defence shall have no op-*

erational command authority over the army or any part of the Armed Forces of Bosnia and Herzegovina.

*The defence system of the Federation is a unique way to form and prepare the Army of the Federation, Federal Ministries and other bodies of Federal administration (in further text: Federation bodies) and other corporate bodies, in order to secure the immediate and organised prevention and dissuasion of possible disintegration and other dangers for ~~the Federation~~-Bosnia and Herzegovina.*

*The Army of the Federation is an integral part of the Armed Forces of Bosnia and Herzegovina, and is the fundamental bearer of the armed form of resistance.*

*Armed resistance works in co-ordination with unarmed forms of resistance.*

Article 2 defines the purpose of the defence system of the Federation of Bosnia and Herzegovina. Originally, this article defined the army as the body with the primary responsibility for the defence of the entity. The amendments make clear that the Army of the Federation of Bosnia and Herzegovina would become an integral part of the Armed Forces of Bosnia and Herzegovina, acting to defend the entire State, under the command and control of the Presidency of Bosnia and Herzegovina. The amendments also make clear that the entity Minister of Defence would not be in the operational chain of command of the Army.

### **Article 3**

State of war or State emergency means the declaration of war or State emergency pursuant to the Defence Law of Bosnia and Herzegovina.

*The Army of Federation, Federation bodies and corporate bodies in periods of peace prepare the human forces and material means for the defence of Bosnia and Herzegovina in the Federation in periods of war, natural disaster, or a State emergency, during times of direct danger of war or in extraordinary circumstances, and for participation in external activities for the fulfilment of international agreements and obligations, such as peace support operations.*

*~~An extraordinary circumstance is an activity, caused by a great, natural, technical technological and ecological disaster, that questions the state's freedom, borders, and legal system, or the general safety of the population and material goods.~~*

Article 3 continues the description of the purpose of the defence system of the Federation of Bosnia and Herzegovina. Originally, it referred only to the defence of the entity and implied that that the army had sole authority and re-

sponsibility for that defence. The amendments reflect that it would be the duty of the Federation of Bosnia and Herzegovina to defend the entire territory of the State and not just the entity.

#### **Article 4**

In accordance with the Defence Law of Bosnia and Herzegovina, and pursuant to instructions issued by the Minister of Defence of Bosnia and Herzegovina, the President of the Federation may have the authority to authorise the short-term use of military units to assist civil authorities in responding to natural disasters and accidents on entity territory.

In case of ~~direct danger of war~~ a State emergency, the Army of the Federation, Federation bodies, Cantons and Municipalities and corporate bodies, in accordance with their authority, should undertake regulated measures.

In case of an armed attack ~~of the Federation~~ on the State of Bosnia and Herzegovina or its part, the Army of the Federation, Federation bodies, Cantons and Municipalities and corporate bodies have the right and duty to ~~immediately start an armed fight and other forms of resistance against the attacker~~ respond appropriately, in accordance with ~~the decrees of this Law~~ the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and the common security and defence policies of Bosnia and Herzegovina.

All training, mobilisation, deployment or employment of the Army of the Federation shall be done in accordance with the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and the common security and defence policies of Bosnia and Herzegovina.

The deployment or employment of any element of the Federation army for any operation or training event abroad shall be authorised by the Minister of Defence of Bosnia and Herzegovina.

The armed fight and other forms of resistance ~~continue in all parts of Federation territory, temporarily occupied by the aggressor.~~

Set defence procedures and activities should be implemented in accordance with this Law, ~~also~~ in a state of war and a State emergency.

Article 4 describes authorities in the time of war or State emergency. Originally, the Article stated that all entity bodies had the authority and duty to respond to a State emergency and that the army had the authority and duty to defend the entity against an armed attack. The article implied that entity authorities would decide for themselves when there was a threat to the entity.

The amendments make clear that the Army of the Federation of Bosnia and Herzegovina would have the duty to defend the entire State, not just the entity. In carrying out this duty, the Army would be under the operational command of the Presidency of Bosnia and Herzegovina. All entity actions in a state of war or state emergency would be pursuant to instructions from State authorities, as set forth in the proposed Defence Law of Bosnia and Herzegovina. The amendments also add to this Article the new authority of the entity President to authorise the short-term use of military units to support civil authorities in responding to natural disasters or accidents.

### **III - RIGHTS AND DUTIES OF FEDERATION BODIES**

#### **I – Federation**

##### **Article 20**

*The Federation, acting according to the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and the common security and defence policies of Bosnia and Herzegovina, in the area of Defence:*

- *organises the system of defence,*
- *~~leads the resistance~~ supports operational commands in periods of war,*
- *plans the preparations for defence and adopts the a plan for the defence of the Federation, which forms part of the Bosnia and Herzegovina defence plan,*
- *organises and prepares ~~and leads~~ the ~~armed forces~~ the Army of the Federation,*
- *establishes the joint command (Headquarters) of the Army of the Federation,*
- *~~supervises military production,~~*
- *makes military agreements and contracts,*
- *organises and executes military service business, as well as the affairs of recruitment and mobilisation of the ~~armed forces~~ Army of the Federation, enterprises and other corporate bodies,*
- *organises the system of protection, rescue, respectively, Civil Protection,*
- *organises and prepares the Observation and Information service,*
- *organises and prepares communications and the cryptic protection of bodies of the Federation, cantons and Municipalities,*

- *ensures the fulfilment of rights and duties of citizens,*
- *organises and ensures the preparations of state Federation bodies, enterprises and other corporate bodies for work and functioning in periods of war,*
- *organises training for defence,*
- *organises and implements inspection supervision in the area of defence,*
- *handles the insurance of material reserves for needs of defence,*
- *handles the organisation of territories for the needs of defence,*
- *handles the organisation of production, transport of ammunition and military equipment and other objects and equipment of importance of defence,*
- *handles the organizing and insuring of material and financial means for the needs of defence,*
- *organises the creation of basic geodetic and photogramatic surveys, survey and avio-photographing of land, creation of the map of the Federation and geographic materials of importance to the defence,*
- *organises and implements intelligence services in the area of defence,*
- *organises the implementation of security measures in the area of defence,*
- *performs other rights and obligations in the area of defence, regulated by federal Law.*

Article 20 identifies the responsibilities and authorities of the Federation of Bosnia and Herzegovina in the field of defence. The original article gave full responsibility and authority to the entity. In accordance with the supremacy of the State for defence matters, the amendments make clear that the entity would be subordinate to the State and that all entity acts in the field of defence would be done in accordance with the laws and regulations of the State and its institutions.

#### **Article 22**

*~~This law accepts the regulations of the Constitution of Bosnia and Herzegovina agreed upon in Dayton which state that: "Every member of the Presidency will, in accordance with his/her function, have the authority to have civil command over the armed forces... All~~*

~~armed forces in Bosnia Herzegovina shall act in accordance with the sovereignty and territorial integrity of Bosnia Herzegovina."~~

~~Until the election of members of the B-H Presidency from Federation territory, the President of the Presidency of the Republic of Bosnia Herzegovina (from the ranks of the Bosnian people) and the President of the B-H Federation (from the ranks of the Croat people) shall have the following rights and obligations:~~

~~The Army of the Federation shall be under the command and control of the Presidency of Bosnia and Herzegovina.~~

~~All bodies and institutions of the Federation will respect, when acting in matters related to defence, provisions of the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and the common security and defence policies of Bosnia and Herzegovina:~~

~~to make decisions on the use of the armed forces of the Federation, i.e., its components;~~

~~to adopt conceptual doctrinal documents for the development of the defence system in the Federation, as per the Federation Government proposals of the,~~

~~to order the declaration of a state of emergency on the territory of the Federation or some of its parts;~~

~~to order the application of the readiness measures and other necessary measures for removing the causes and consequences of a state of emergency;~~

~~to order the mobilisation of the army of Federation;~~

~~to appoint persons to positions in military diplomatic missions, as per the Constitution of the Federation;~~

~~to ensure the unity and efficiency of the system of defence of the Federation;~~

~~to determine the main points of the contents and manner of creating a plan for the defence of the Federation, cantons and municipalities;~~

~~to determine the plan of organizing, developing and equipping the Army of the Federation;~~

~~as per the advice of the Prime Minister, they may annual international treaties or agreements provided this does not contradict international law, and they are obliged to do so when the Parliament of the Federation requests this;~~

~~to make decisions in regard to organizing and conducting mobilisation and other exercises of the Army of the Federation, civil protection, surveillance and intelligence service, communication units and crypt protection of the bodies of the Federation, Cantons and Municipalities and other authorised persons;~~

~~to determine and present citations from the domain of defence,~~

~~to execute other duties from the domain of defence that are under its jurisdiction.~~

~~The rights and obligations under the Article hereof shall be executed with a consensus.~~

~~After the election of Presidency members, the authority and responsibilities of members of the B-H Presidency and the President and Vice-President of the Federation from the domain of defence shall be regulated through a specific law.~~

~~The law under the above stated Paragraph shall be adopted within not more than three months from the day the Law hereof enters into force.~~

Article 22 continues the description of responsibilities and authorities of the Federation of Bosnia and Herzegovina in the field of defence. The original article was a transitional one, pending the establishment and election of the Presidency of Bosnia and Herzegovina as envisaged by Annexes III and IV of the Dayton Peace Agreement. In the meantime, the article granted all command and control over the entity Army in time of peace and war to the Chairman of the Presidency of the Republic of Bosnia and Herzegovina (from the Bosniak peoples) and to the President of the Federation of Bosnia and Herzegovina (from the Croat peoples). The amendments would update, simplify and clarify entity responsibilities and authorities in order to comply with the supremacy of the State for defence matters and the principles set forth in the Defence Reform Commission Concept Paper. All the specific responsibilities and authorities are deleted for the purpose of this article. These functions would become the responsibility of the Presidency of Bosnia and Herzegovina as supreme commanders of the Armed Forces of Bosnia and Herzegovina. Inserted instead are provisions specifying that the Army of the Federation of Bosnia and Herzegovina would be under the command and control of the Presidency of Bosnia and Herzegovina and that all bodies and institutions of the Federation would act in accordance with State laws and directives.

## **6. Federation Bodies**

### **a) Ministry of Defence**

#### **Article 29**

A Joint Command of the Army of the Federation is established (henceforth: the Joint Command) to fulfil staff duties in the Ministry of Defence.

~~The organisation, office competence and criteria for supplementing staffing the Joint Command, proposed by the Defence Minister, are regulated by officials mentioned in Article 22 Presidency of Bosnia and Herzegovina according to the Defence Law of Bosnia and Herzegovina and the common security and defence policies of Bosnia and Herzegovina, which lists all officers in the Joint Command in accordance with the provision of Article V, section b/8, of the Constitution of the Federation.~~

The Joint Command is run and commanded by the Commander, who has a Deputy Commander and cannot be from the same constituent people.

~~The organisation of the Army of the Federation is determined by officials mentioned in Article 22 the Presidency of Bosnia and Herzegovina at the Defence Minister's proposal in accordance with the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, the common security and defence policies of Bosnia and Herzegovina.~~

Article 29 establishes the Joint Command of the Army of the Federation of Bosnia and Herzegovina. Originally, the Joint Command was to be organised and staffed either under its own authority or entity authority. The amendments reflect the supremacy of the State in that the regulation of the Joint Command would be conducted by the Minister of Defence of Bosnia and Herzegovina.

#### **IV THE ARMED FORCES ARMY OF THE FEDERATION**

##### **1. Joint provisions**

##### **Article 36**

~~The Armed Forces Army of the Federation are is a means of organizing and preparing all citizens for defence. The Armed forces Army of the Federation can, in conditions stipulated in the Defence Law of Bosnia and Herzegovina, pursuant to instructions issued by the Minister of Defence of Bosnia and Herzegovina, the common security and defence policies of Bosnia and Herzegovina and this Law, undertake certain duties in emergency circumstances, in cases of natural and other disasters.~~

~~A member of the Armed Forces army of the Federation is every citizen who joins the resistance against the enemy, under arms or in some other way, in an organised manner and according to international obligations.~~

Article 36 defines the Army of the Federation of Bosnia and Herzegovina. The amendments reflect the supremacy of the State and conform to the principles as set forth in the Defence Reform Commission Concept Paper. It follows that the "certain duties" undertaken in emergencies by the Army of the Federation of Bosnia and Herzegovina will now comply with the law and directives of the State.

### **Article 37**

~~The Armed Forces Army of the Federation consists of: the Army of the Federation, and in case of war also the police (active and reserve services) units in the territory of the Federation, which in accordance with this Law comes under the command of the Army of the Federation. The Army of the Federation consists of: includes units of the Army of the Republic of Bosnia and Herzegovina and the Croatian Defence Council, up to corps and operational zone level, and is comprised of the peace and war complement.~~

~~The peace complement is comprised of persons in service in the Army of the Federation, conscripts and professional units.~~

~~The war complement of the Army of the Federation, along with the persons mentioned in Paragraph 3 of this Article, is also comprised of persons deployed in military formations, which are formed on territorial and productive principals. The officials mentioned in Article 22 Minister of Defence issues special regulations which determine their duties and the way they are formed.~~

Article 37 continues the definition of the army. It originally defined the police as part of the army during war. It also identified the Bosniak and Croat components of the army according to their wartime titles, which have since changed. The amendments make clear that the police would no longer be part of the army even in war; they would remain under the control of the Ministry of Internal Affairs of Bosnia and Herzegovina, and that the army would be under the supervision of the Minister of Defence, subject to the supreme authority of the State.

### **Article 38**

~~Members of the Armed Forces army, always and in all circumstances, respect the regulations of international military humanitarian Law, when carrying out military actions, in accordance with the Federation's legal regulations and international obligations of Bosnia and Herzegovina.~~

Article 38 explains the duties of members of the Army of the Federation of Bosnia and Herzegovina. It originally stated that the members of the army had to obey the regulations of the entity. The amendments make it clear that members of the Army of the Federation of Bosnia and Herzegovina would obey the regulations and obligations of the State, not just laws of the entity.

#### **Article 39**

*The Army of the Federation is organised and prepared in peace time as the ~~unique strike and~~ defence force of Bosnia and Herzegovina in the Federation, capable of timely repulsion of every unexpected enemy, or the removal of any other threat to ~~the Federation~~ Bosnia and Herzegovina, of successfully opposing the first strike of the aggressor in case of an attack, thus enabling its mobilisation and activation, as well as successfully participating in Armed combat against the enemy, under command and control of the Presidency of Bosnia and Herzegovina.*

*The Army of the Federation is prepared and trained to perform all forms of combat activity.*

*The Army of the Federation is comprised of Headquarters, commands, formations and institutions.*

Article 39 addresses the organisation and preparation of the Army of the Federation of Bosnia and Herzegovina for defence. It originally noted that the army had the responsibility to defend the entity alone and had its own authority to act in defence. In concordance with the supremacy of the State, the amendments make clear that the Army of the Federation of Bosnia and Herzegovina would be responsible for the defence of the entire State and not just the entity. Likewise, the amendments also make clear that the army would be under the command and control of the Presidency of Bosnia and Herzegovina.

#### **Article 43**

*The overall size and the number of personnel in the Army of the Federation is determined by ~~officials from Article 22~~. the Minister of Defence, in accordance with the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and the common security and defence policies of Bosnia and Herzegovina. ~~The plan for the development of mobilisation includes the mobilisation of the armed forces.~~*

*~~During wartime, officials from Article 22 can order the use of police forces to perform certain combat activities.~~*

~~During the performance of activities from Paragraph 3 2 of this Article, the Army of the Federation is in command of the police forces. The number and type of posts and formations, tasks which will be carried out by posts and formations, the period in which these posts and formations will be engaged, and other issues important for effective performance of these tasks are determined by act by officials from Article 22.~~

Article 43 describes who has authority for determining the composition of the army. Originally, the article referred to entity authorities generally. The amendments make clear who would have this authority – the Minister of Defence in accordance with State-level laws and orders. The amendments also make clear that police forces would no longer be part of the army, in peace or in war.

#### **Article 46**

~~Officials from Article 22, in carrying out the rights and obligations determined by the Constitution of the Federation, by this and by other Federal laws:~~

The Minister of Defence, in accordance with the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, and the common security and defence policies of Bosnia and Herzegovina, issues directives, regulations, and orders to:

- *determine the basic principles of Army of the Federation development plans,*
- *restructure and reform in order to conform to the new defence structures of Bosnia and Herzegovina,*
- *ensure support in the implementation of operational commands,*
- *determine the basic principles of Army of the Federation organisation, and the leadership and command systems in the Army of the Federation, as well as monitoring the implementation of the confirmed Army of the Federation leadership and command policies,-*
- *issue the engagement plan and prescribe engagement of the Army of the Federation, in accordance with ~~the federation Constitution~~ the principle of command and control of the Presidency of Bosnia and Herzegovina,*
- *create guidelines for undertaking alert measures and mobilisation of the Army of the Federation,*
- *determine the basic principles of personnel policies in the Army of the Federation,*

- *determine arms and equipment procurement policies in the Army of the Federation,*
- *determine the military-territorial division of the Federation,*
- *prescribe general and basic rules for the Army of the Federation, issue regulations on schooling, training and education within the Army of the Federation, military discipline, and other regulations provided for by this Law,*
- ~~*Represent the Army of the Federation within the Federation and abroad,*~~
- ~~*Exercise command over the Army of the Federation, in accordance with the Federation Constitution, by this and other federal laws,*~~
- *issue decrees on promotion into the ranks of the Army of the Federation, into lower and higher ranks of officers,*
- *nominate Brigadier General officers of the Federation Army for appointment or promotion.*
- ~~*Appoint and dismiss commanders in accordance with the special federal law.*~~

~~*Officials from Article 22 can transfer certain leadership and command duties, they within their jurisdiction in the Army of the Federation, to the Defence.*~~

Article 46 outlines the responsibilities of the Minister of Defence of the Federation of Bosnia and Herzegovina, in accordance with the law and policies of the State of Bosnia and Herzegovina. This article originally gave all functions, responsibilities and authorities for defence to entity authorities. The amendments clarify the authorities and functions that would remain with the entity, and those that would be assumed by the State authorities in accordance with the supremacy of the State for defence matters and in accordance with the Concept Paper. Where the original article gave these defence functions to the leadership of the entity, the amendments make clear that the primary responsibility would be with the Minister of Defence, acting, of course, in accordance with the chain of command and State laws and policies. The amendments delete from this law functions related to the operational command and control of the Army of the Federation of Bosnia and Herzegovina. In accordance with the proposed Law on Defence of Bosnia and Herzegovina, the amendments to this article specify that the Minister of Defence would nominate Brigadier General officers of the entity for appointment or promotion.

#### **4. Mobilisation of the Federal Army**

##### **Article 52**

All mobilisation of the Army of the Federation shall be done in accordance with the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and the common security and defence policies of Bosnia and Herzegovina.

~~The mobilisation of the Army of the Federation or some of its parts is carried out in the event of an armed attack, in the imminent danger of war, or under extraordinary circumstances.~~

~~Experimental mobilisation is carried out in peacetime to test mobilisation and combat readiness.~~

The Army of the Federation is modified through mobilisation from peacetime organisation and conditions into war organisation and state of readiness for combat activities according to the engagement plan.

Mobilisation is implemented according to plans issued in accordance with a unified mobilisation system, determined by ~~officials from Article 22.~~ the Minister of Defence of Bosnia and Herzegovina.

The mobilisation of Army of the Federation soldiers, with regard to its size, may be general or partial, and public or secret in manner.

General mobilisation includes all Army of the Federation war formations, and partial mobilisation, certain Army of the Federation war formations.

Article 52 addresses mobilisation of the army. Originally, it gave all responsibility and authorities for mobilisation to the army itself or the entity authorities. As noted elsewhere, only the Presidency of Bosnia and Herzegovina would be able to order mobilisation for other than routine training purposes and for limited assistance to civilian authorities in cases of natural disasters and accidents. Execution of orders to mobilise would remain with the entity, but the amendments make clear that mobilisation could only be implemented in accordance with the Law on Defence of Bosnia and Herzegovina and regulations from the Minister of Defence.

#### **5. Army of the Federation readiness**

##### **Article 57**

Army of the Federation readiness includes taking measures for increased combat readiness, mobilisation, organisational, security, political and other measures and procedures, which are necessary for the obstruction and removal of direct threat of attack, and of

*other threats, as well as the duty to increase the readiness of commands, headquarters, formations and law institutions to carry out combat tasks, in accordance with Article 4 of this law.*

*~~Officials from Article 22 order~~ Readiness of the Federation Army and its parts, in case of direct threat of war, and in a state of emergency shall be ordered by the Presidency of Bosnia and Herzegovina and the competent bodies and institutions under the Defence Law of Bosnia and Herzegovina.*

Article 57 addresses readiness and mobilisation of the army. Originally, it gave all responsibility and authorities for readiness and mobilisation to the army itself or the entity authorities. Entity authorities will remain responsible for maintaining the readiness of the army to be able to respond to missions tasked by the Presidency or Minister of Defence of Bosnia and Herzegovina in peace or war. But, as noted elsewhere, only the Presidency of Bosnia and Herzegovina would be able to determine there is a threat to the State and instruct the armed forces to respond to war or state emergency. Execution of orders to transform the peacetime army into a wartime army would remain with the entity, but the amendments make clear that the initial orders for mobilisation would come through the operational chain of command and could only be implemented in accordance with the Law on Defence of Bosnia and Herzegovina and regulations from the Minister of Defence.

#### **6. Engagement of the Army of the Federation in cases of natural and other disasters.**

##### **Article 58**

*~~The Defence Minister~~ Federation President may issues the command to engage Army of the Federation commands, headquarters, formations and institutions to areas afflicted by natural or other disaster, which can only be remedied with the assistance of the Army of the Federation.*

*In accordance with the State Defence Law, and pursuant to instructions issued by the Minister of Defence, the Federation President may authorise the short-term use of military units to assist civil authorities in responding to natural or other disasters which can only be regulated with the assistance of the Army. The engagement of the Federation Army for protection and rescue from natural and other disasters, is ordered when civil protection formations and other forces are not able to remove the danger which threatens the population and material goods, i.e. remove the consequences of these disasters.*

Commands to engage Army of the Federation commands, headquarters, formations and institutions pursuant to paragraphs 1 and 2 shall be in accordance with the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, and the common security and defence policies of Bosnia and Herzegovina.

Article 58 discusses the use of the Army to assist civilian authorities in case of a natural or other disaster. Originally, it gave the Minister of Defence of the Federation of Bosnia and Herzegovina that authority, but the Defence Reform Commission now recommends granting this authority to the entity President. However, the amendments make clear that the entity President would execute this authority in accordance with the Defence Law of Bosnia and Herzegovina and the orders of the Minister of Defence.

The Defence Reform Commission recognises that further amendments will need to be made to this law to reflect recently adopted or pending legislation in relevant areas. For example, the provisions contained in this law relating to the production and export of military weapons and materials will need to be harmonised with the State-level Law on Import and Export of Weapons, and the current development of State and entity laws on weapons production.

Amendments to this law may need to be made to reflect the recent adoption of the Civil Protection Law of the Federation of Bosnia and Herzegovina and the penalty provisions should reflect the adoption of a State criminal code and corresponding changes to the entity criminal codes.

The Defence Reform Commission recognises the need for further amendment to this law concerning important matters that are outside the mandate of this Commission. The process of amending this law as recommended by the Commission would be an appropriate opportunity for entity authorities to engage in a thorough review of the entire law.

### **7.3.3. Law on the Army of the Federation of Bosnia and Herzegovina**

There is no common Law on the Army of the Federation of Bosnia and Herzegovina. As discussed in Section 5 of this report, the Bosniak and Croat components of the Army of the Federation of Bosnia and Herzegovina use two

pieces of legislation that pre-date the Washington Agreement. The Bosniak component uses the Law on the Service in the Army of the Republic of Bosnia and Herzegovina and the Croat component uses the Law on the Service in the Croatian Defence Council.

The Defence Reform Commission has endeavoured to facilitate the development of a common law. This process has prompted intensive negotiations and only a few issues need to be resolved. The Commission hopes to develop a final draft of the Law on the Army for presentation to parliaments, but it has not been completed in time for inclusion in this report.

## **7.4 Parliamentary Democratic Control of Armed Forces**

### **7.4.1 Principles and Methods of Parliamentary Control and Oversight**

Civilian democratic control and oversight of the military is a central organising principle in states with methods of governance consistent with Euro-Atlantic practices. Civilian officials within both the executive *and* legislative spheres participate in directing and overseeing military establishments. These officials, whether elected or appointed, perform their respective functions through transparent, democratic processes with public accountability.

Euro-Atlantic parliaments have important responsibilities in the processes of civilian democratic oversight, including the authority to declare war, approve or modify defence laws, oversee the size and structure of the armed forces, approve key personnel appointments and removals, set levels of spending and approve defence budgets. Effective democratic parliamentary control and oversight of defence in Bosnia and Herzegovina, however, has been lacking in several important respects, even though the three parliaments operating within Bosnia and Herzegovina (the State Parliamentary Assembly, Parliament of the Federation of Bosnia and Herzegovina, and the Republika Srpska National Assembly) share many of these identical responsibilities.

Several issues related to democratic parliamentary oversight must be addressed as Bosnia and Herzegovina prepares its candidacy for NATO's PFP programme. For example, the State Parliamentary Assembly has had almost no oversight authority in the field of defence because this area has primarily been an entity responsibility. This means that defence laws written by the entity parliaments reflect the policies, standards and procedures of different governments and are not consistent. It also means that no single defence budget exists for Bosnia and Herzegovina; and appointments of senior civilian and military officials have been approved, and oversight has been conducted, through different parliaments.

Limited authority and responsibility for defence matters at the State level is not the only area of parliamentary oversight in need of reform. Difficulties in securing information or the participation of government officials in parliamentary hearings, the lack of effective budget controls and oversight of defence expenditures, and underdeveloped relationships between defence institutions and parliamentary committees are issues of common concern across both State and entity parliaments. Taken together, these conditions raise core questions concerning the adequacy of democratic parliamentary control and oversight, transparency in budgeting, and public accountability for defence matters.

Establishing democratic control of its armed forces is one of the key obligations of Bosnia and Herzegovina as an OSCE participating State under the OSCE Code of Conduct on Politico-Military Matters. It is also a requirement for membership in NATO's PfP programme and an element of the OHR mandate to the Defence Reform Commission. Changes in certain parliamentary authorities and practices at both State and entity levels are therefore required if Bosnia and Herzegovina is to fulfil its OSCE obligations and present itself as a credible candidate for PfP.

### ***Parliamentary Roles in Defence Reform***

Defence reform has important implications for the three parliaments operating within Bosnia and Herzegovina.

- Defence Reform Commission recommendations for defence reform would in several respects alter the existing constitutional, legal, budgetary, and oversight activities in which State and entity parliaments participate;
- As noted, strengthening the capabilities of State and entity parliaments for democratic oversight of defence matters, including at the committee level, is itself an important element of defence reform;
- Parliaments will share responsibility for review and approval of the Defence Reform Commission's proposals for defence reform, and will participate in approving plans and programs for implementation of defence reforms and in future oversight of a changing military establishment; and

- As representatives of the people, parliaments provide a place where the public can be informed concerning the importance of defence reform, improve their understanding of defence issues facing political leaders, and express their opinions on defence matters.

### ***Principles for Parliamentary Reform in the Field of Defence***

Defence Reform Commission recommendations for parliamentary reforms are guided by the principles of democratic civilian control of the armed forces, transparency in defence planning and budgeting, and the need for fiscal limits for defence to be established by political authorities in a democratic manner. In addition, the Commission applied three other principles in developing its recommendations for responsibilities among parliamentary bodies:

- In order to achieve State control over the armed forces at a level consistent with PfP membership, defence laws and regulations passed by the State Parliamentary Assembly should be supreme in the field of defence and existing entity laws in areas of new State competency should be amended to conform to State laws.
- As both State and entity governments have competencies in defence, general oversight of defence structures and activities should be shared and co-ordinated between the State and entity-level parliaments. At the same time, because State laws will be supreme in the field of defence, the State Parliamentary Assembly should have authority for oversight of all defence activities in Bosnia and Herzegovina.
- State and entity parliamentary responsibilities must be harmonised and parliaments must function within the boundaries their respective government authorities, especially with respect to specific competencies on which parliaments are required to vote, such as approval of nominations and budgets. Redundancy and parallelism should be avoided. In order to promote both clarity and efficiency in democratic processes, parliaments should not approve or duplicate each other's work.

### ***Democratic Methods of Parliamentary Oversight***

The need to establish democratic civilian control of the Armed Forces of Bosnia and Herzegovina at the State and entity levels requires the presence and use of basic methods of efficient parliamentary control. These methods include public hearings conducted by parliamentary commissions responsible for oversight of defence matters and the participation of government officials in such hearings, submission of written or verbal questions by Members of Parliament to defence officials, investigations, and drafting and modification of proposed defence laws and budgets. Such methods are universal to democratic parliamentary oversight and should be applied to State and entity parliaments, even though these parliaments will have different responsibilities based on the Defence Reform Commission's recommended changes in State and entity competencies for defence.

Parliaments should also provide their commissions (or boards) on defence with authorities consistent with effective oversight, such as the authority to request public or closed session hearings. Hearings would normally be conducted in open, public session unless the commission determines that the protection of confidential information requires the session to be closed. Commissions should also be authorised to require the attendance of any civilian or military officials necessary to support such hearings, and to request the assistance of public auditors or non-governmental experts.

No information should be withheld from parliamentary commissions on the basis of confidentiality. Members of Parliament and expert staffs should have all necessary security clearances and access to confidential documents and have an obligation to respect confidentiality. All decisions, views and recommendations of the commission not subject to security protection should be publicly available.

The sections below outline recommendations that would define parliamentary responsibilities for defence at the State and entity levels and identify the competencies and capabilities necessary for parliamentary committees that oversee defence matters. Section 7.5 of this report describes a revised process through which State and entity parliaments would develop and approve their respective parts of the overall defence budget of Bosnia and Herzegovina.

## **7.4.2. The Parliamentary Assembly of Bosnia and Herzegovina**

### ***Defence Reform Commission Findings and Recommendations***

Consistent with the increase in State competencies for defence necessary to achieve State-level command and control over the armed forces, as outlined in previous chapters, the Defence Reform Commission recommends the following provisions for the proposed Defence Law of Bosnia and Herzegovina such that the State Parliamentary Assembly would have:

- Exclusive power to declare a state of war, and ratify a State emergency, at the request of the Presidency of Bosnia and Herzegovina;
- Legal oversight authority over the Armed Forces of Bosnia and Herzegovina and all State-level institutions;
- Primary authority to make and approve laws governing the organisation, funding, manning, training, equipping, deploying and employing the Armed Forces of Bosnia and Herzegovina;
- Authority to confirm the nomination of the Minister of Defence and his or her deputy, the Chief and Deputies of the Joint Staff, and General officers of the Armed Forces of Bosnia and Herzegovina;
- Authority to review, investigate and report on any defence or military matter, and to co-ordinate oversight and investigations with entity parliaments; and
- Develop procedures necessary to safeguard State secrets during its investigations.

Statutory language and further analysis supporting these responsibilities were previously discussed in reference to the proposed Defence Law of Bosnia and Herzegovina. In addition to these new responsibilities, the State Parliamentary Assembly would continue to exercise its existing responsibilities for approving the budget for defence institutions and activities within its competency, including supplemental budgets for unanticipated military operations; and ratifying treaties, including international defence agreements.

### ***A New Defence Committee for the Parliamentary Assembly of Bosnia and Herzegovina***

The Rules of Procedure of both parliamentary chambers currently include no permanent committee that would examine issues exclusively within the field of defence. However, *ad hoc* committees currently looking to draft proposals on modifications and amendments to the Rules of Procedures within each chamber are considering the issue of the formation of permanent defence committees.

The *ad hoc* committees of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina, within a draft decision, have recommended the establishment of a Joint Committee for Security Policy and Oversight and Control over the Agency for Information and Protection.

In addition, under Article 3.1.26 of its Rules of Procedure, the House of Representatives may also establish *ad hoc* or investigatory committees, with the capacity to engage temporary professional experts to address a wide array of subjects, including issues relating to defence and security.

### ***Defence Reform Commission Findings and Recommendations***

The additional defence competencies proposed for the State of Bosnia and Herzegovina and its Parliamentary Assembly require a permanent parliamentary committee to advise the parliament and conduct its work in the field of defence. Based on the size of the Parliamentary Assembly, the Commission recommends a Joint Committee on Defence and Security composed of members from both the House of Peoples and House of Representatives. Rules of Procedures of both Houses of the State Parliamentary Assembly should be amended as follows to establish and charter the Joint Committee:

#### **Proposed Amendments to Rules of Procedure:**

[At the appropriate place in the Rules, insert the following]

Article x

1. *The Defence and Security Committee provides the Houses with its opinions, submits proposals and reports and performs other legislative tasks as prescribed by the Rules of procedures of both Houses. The Committee also makes decisions on issues ceded to its jurisdiction by the Houses.*
2. *The Committee counts 6 (12) members, out of that ½ is elected from the House of Representatives and ½ from the House of Peoples, where 2/3 are elected from the BiH Federation territory, and 1/3 from the Republika Srpska.*
3. *The Speakers of both Houses shall convene the first session of the Committee.*
4. *The Committee shall elect the Chairman, first and second Deputy Chairman amongst its members, being elected from all three constituent peoples, however the Chairman and first deputy cannot be members of the same house.*
5. *The Committee may demand a provisional assistance of an expert, who would be engaged through the BiH Parliamentary Assembly Secretariat.*
6. *The quorum for work of the Committee shall consist of a simple majority (1/2+1), including at least ½ of the members of the committee from each House.*
7. *The Committee decides with a simple majority with a condition that the majority covers at least one third of members from each house.*
8. *The Committee shall submit such reports as may be required on its work to both Houses, and at least once a year.*
9. *In its work, the Committee shall apply the general provisions of the Houses' Rules of Procedures on work of committees.*
10. *The Joint Committee shall have the following competencies and responsibilities in the field of defence and security:*
  - a. *Structure and personnel strength of the Armed Forces of Bosnia and Herzegovina;*
  - b. *Personnel policies, including the conscription and recruiting, pay and allowances, education, and training of military forces;*
  - c. *Equipping of the military, procurement and work of military industry, materiel support, contracts and activities with foreign companies which provide services to defence institutions on a commercial basis, and import and export of arms;*
  - d. *Combat readiness, military exercises and operations, including the realisation of international obligations and international peace support operations;*

- e. *Professional conduct and ethical standards for civilian and military personnel;*
- f. *Review and report at least annually on the work of BiH Executive Bodies in the field of defence;*
- g. *Provide opinions, evaluations and recommendations to the House of Peoples and House of Representatives on review of the report and information from the field of defence;*
- h. *Review and propose laws within the Committee's area of responsibility;*
- i. *Review and provide opinions and recommendations and amendments to draft and proposed budgets for defence;*
- j. *Review of financial and budget implementation reports by auditors;*
- k. *Submit opinion to BiH Parliamentary Assembly on approval for ratification of international agreements in the field of defence and review of reports on implementation of international agreements;*
- l. *Provide an opinion on the confirmation of civilian and military officials proposed by the BiH Presidency for appointment to senior positions as outlined in defence law;*
- m. *Co-operation with Parliamentary Committees of the entities, other states, as well as international organisations and their defence bodies.*

### **7.4.3. Entity Parliamentary Responsibilities**

As noted in previous chapters, increases in State-level competencies for defence should also be reflected in changes to entity constitutions and laws on defence. The responsibilities of entity parliaments would necessarily change in three broad areas: international matters such as declaration of war and use of force; preparation and oversight of defence laws, regulations, and budgets; and approval of the appointment of certain officials.

As responsibilities for the declaration of war and use of the armed forces moves from the entity to the State level, the entity parliament would no longer be required to provide parliamentary consent and oversight in this area. In addition, while the entity parliaments would continue to have legislative responsibilities for drafting defence law and budgets, and overseeing defence matters within the scope of entity competencies for defence, these ac-

tivities would now be required to conform to the defence policies, laws, regulations and standards established at the State level.

These changes are reflected in descriptions of entity responsibilities previously proposed for the Defence Law of Bosnia and Herzegovina in Section 7.1 of this report.

#### **7.4.4. Parliamentary Assembly of the Federation of Bosnia and Herzegovina**

The following sections outline proposed amendments to the Constitution, the Law on Defence Law, and parliamentary Rules of Procedure affecting parliamentary oversight of defence in the Federation of Bosnia and Herzegovina.

#### ***Amendments to the Constitution of the Federation of Bosnia and Herzegovina***

Proposed constitutional amendments would change parliamentary responsibilities concerning authorisation for the use of force, approval of international treaties and agreements, and approval of nominations for military officers and diplomatic personnel.

##### ***Authorisation for the Use of Force***

Article IV.A.20(1)(e) currently provides that the legislature will have responsibility for authorising the use of force by the entity. The proposed amendment would strike this provision and relieve the entity Parliament of its function to authorise the use of armed forces. This is consistent with other proposed amendments to remove the entity President from the chain of command, and transfer operational command and control of the armed forces to the State level. This amendment is necessary to satisfy the NATO PfP requirement, and the OHR mandate, for Bosnia and Herzegovina to establish State-level operational control over the armed forces.

##### **Proposed Amendment:**

*Article IV.A.20(1)(e) is deleted.*

~~(1) In addition to other powers specified in the Constitution, the Legislature shall have responsibility for:~~

~~(c) authorising the use of military force by the Federation, which must be in accordance with international law;~~

### **International Treaties and Agreements**

Article VII.4 (1) currently provides that either “the Federation Assembly or the Parliamentary Assembly of BiH” could provide in law that certain types of international treaties and agreements do not require parliamentary approval to enter into force. As written, current language allowing for such a decision by either parliament would be inconsistent with the OHR mandate that State-level institutions decide issues relating to the representation and participation of the State in international activities. The proposed amendment would stipulate that waivers of the need for parliamentary approval for international treaties or agreements are the sole prerogative of the Parliamentary Assembly of Bosnia and Herzegovina.

#### **Proposed Amendment:**

##### **Article VII.4**

*(1) International treaties and agreements with international organizations shall be signed and ratified in the name of the Federation by the Federation President. They shall enter into force for the Federation only if approved by the Federation Assembly, with the prior approval of the Parliamentary Assembly of Bosnia and Herzegovina, except to the extent that the ~~Federation Assembly or the Parliamentary Assembly of Bosnia and Herzegovina~~ provide by law that these types of international treaties and agreements do not require such approval.*

### **Parliamentary Approval of Military and Related Nominations**

Article IV.B.3.8 describes the process by which officers of entity armed forces and members of the Joint Command are nominated by the executive and approved by the parliament. This section is one of several constitutional provisions supporting entity control over its army. Retaining this process within the Federation of Bosnia and Herzegovina would be inconsistent with the NATO PfP requirement and OHR mandate that State-level institutions assume democratic parliamentary oversight and control over the Armed Forces of Bosnia

and Herzegovina. It would also be inconsistent with the broader policy objective of moving toward a single, State-established military personnel system. The proposed amendment would delete references to the entity parliamentary responsibility for approving nominations of military officers and members of the Joint Command, and make conforming changes to the remaining language referring to diplomats.

**Proposed Amendment:**

**Article IV.B.3.8**

*~~The President, with the concurrence of the Vice President, shall nominate officers of the armed forces. Nominations shall require the approval of a majority of each House of the Legislature, provided that approval of nominations for the members of the Joint Command of Military Forces shall require in the House of Peoples a majority of the Bosniak and of the Croat Delegates. This provision also deals with nomination of diplomats to missions—a State prerogative. The President, with the concurrence of the Vice-Presidents, shall nominate diplomats to missions. Nominations shall require the approval of a majority of each House of the Legislature.~~*

**Amendments to the Law on Defence of the Federation of Bosnia and Herzegovina**

The Law on Defence (Article 21) prescribes the responsibilities of the entity Parliamentary Assembly in the area of defence, including a restatement of constitutionally derived responsibilities for approving the use of force and appointments to the Joint Command.

**Analysis of Proposed Amendments**

Amendments are necessary to the parliamentary responsibilities outlined in Article 21 in order to conform to NATO PfP requirements and OHR mandate that State-level institutions exercise democratic parliamentary control and oversight of the armed forces and defence structures within Bosnia and Herzegovina, and that the State represents itself in international agreements and organisations concerning defence. Proposed amendments would make clear that defence activities within the entity overseen by the entity Parliamentary Assembly are subject to the proposed defence law of Bosnia and Herzegovina.

Parliamentary oversight of defence in the entity would therefore support the organisational and material needs of the Armed Forces of Bosnia and Herzegovina according to the common security and defence policy; and the State Parliamentary Assembly would share oversight.

In addition, proposed changes to Article 21 would delete references to entity parliamentary responsibilities for approval of the use of force, the appointment of members to the Joint Command, and approval of agreements with states and international organisations. As discussed above, these changes are necessary to meet the NATO PfP requirement and OHR mandate that State-level institutions assume operational command and control of the Armed Forces of Bosnia and Herzegovina.

### **Proposed Amendments:**

#### **Article 21**

*The Parliament of the Federation, on the basis of the Constitution of Bosnia and Herzegovina, the Defence Law of Bosnia and Herzegovina, the common security and defence policies of Bosnia and Herzegovina, the Constitution of the Federation, of this and other Federal Law, in the area of defence:*

- *regulates the defence system in the Federation,*
- *considers the state of the Federation's security and defence preparations, and adopts measures for organising the development and strengthening of the defence system of Bosnia and Herzegovina in the Federation,*
- *determines the manner of organising material reserves during a state of war in ~~the federation~~ Bosnia and Herzegovina.*
- *issues its defence plan*
- *~~gives consent for every use of military force by the Federation, which must be in accordance with international law and this Law,~~*
- *~~approves the appointment of members to the joint command,~~*
- *~~approves agreements with States and international organisations in accordance with the provisions of the Constitutions of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina,~~*
- *oversees all matters in the field of defence in the Federation, concurrent with the Parliamentary Assembly of Bosnia and Her-*

*zegovina, and also performs other tasks in the area of defence that are within its jurisdiction.*

## **Proposed Amendments to Rules of Procedure for FBiH Parliamentary Commissions on Defence**

### ***House of Peoples' Commission for Defence, Security and Control of Legality of Work of the Services for the Protection of the Constitutional Order of the Federation***

Under Article 67 of the House of Peoples' Rules of Procedure, this commission has responsibility for the chamber's activities in the field of defence, such as approval of requirements for the entity Army, conclusion of military agreements, and proposal of laws and bylaws regulating entity defence. In the course of this work, Article 67 also requires entity officials responsible for protecting constitutional order, and other entity authorities, to make all relevant data and information available to the Commission.

### ***Analysis of Proposed Amendments***

Proposed amendments to the commission's responsibilities reflect the constitutional and legal changes to Federation parliamentary responsibilities for defence outlined above. Consistent with the NATO PfP requirement and OHR mandate to establish State-level command and control and parliamentary oversight for the Armed Forces of Bosnia and Herzegovina, the proposed State Defence Law (as described in Section 7.1 of this report) will be supreme in the area of defence. Legislative and oversight functions conducted by the House of Peoples and its commission on defence must therefore be in conformance with the defence policies, laws, standards, and procedures established by the State. The proposed amendment would insert a general, covering provision to reflect this change.

In addition, the commission's function of concluding or approving military agreements would no longer be necessary, consistent with the transfer of this responsibility to State institutions. The proposed amendment would delete this provision.

## **Proposed Amendments:**

### **Article 67**

*The Commission for Defence, Security and Control of Legality of Work of the Services for the Federation Constitutional Order Protection shall consider the issues of policy system in the field of defence and security within the rights and responsibilities of the House, and to that end it shall provide opinions and proposals to the House and propose measures organizations and development of defence and security of the Federation, protection of its territory, financing the Federation Army, state of preparations for defence and providing of material requirements for such preparations, provide its approval for each requirement of the Federation Army, ~~conclusion of military agreements~~, and in accordance with the Constitution of Bosnia and Herzegovina the issues of suppressing the terrorism, inter-cantonal crime, unauthorised drug trafficking, organised crime, drafts and proposals of the laws and other general bylaws regulating the Federation defence and security issues and give opinions and proposals to the House.*

*Approval of requirements for the organising, manning, training, equipping and financing of the Federation Army, and the proposal of laws and bylaws regulating defence shall be according to the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, and the Common Security and Defence Policies of Bosnia and Herzegovina.*

*The Commission shall control legality of work of the services for the Federation constitutional order protection from the aspect of respecting the human and citizen's rights established by the Constitution and the Law.*

*An official who manages a Federal administrative body, which scope of activities includes the activities of the Federation constitutional order protection, shall be bound to make all relevant data and information available to the Commission.*

*Federation authorities shall be bound to make all data available to the Commission, so as information of importance for the protection of the Federation constitutional system.*

*Once the House decides on conducting investigation of a certain issue the Commission shall make preparations to that end.*

### **House of Representatives' Commission for Defence and Security**

Under Article 58 of the House of Representatives' Rules of Procedure, the Commission for Defence and Security is responsible to the House for considering the policy and system for entity defence and security. Responsibilities in

the area of defence include; providing opinions and proposals on defence organisation and development; the protection of entity territory; financing; readiness and material requirements; and proposing laws and bylaws regulating defence. In addition, the Commission advises the House on approval for the use of the entity armed forces and making military agreements in accordance with the Constitution of Bosnia and Herzegovina

In support of the Commission, Article 58 also requires entity officials responsible for protecting constitutional order, as well as other entity authorities, to make available all relevant data and information. The Commission is also authorised to organise investigations and request testimony and documentation.

### ***Analysis of Proposed Amendments***

Proposed amendments to the commission's responsibilities reflect the constitutional and legal changes to entity parliamentary responsibilities for defence outlined above, and are similar to those proposed for the House of Peoples. Consistent with the NATO PfP requirement and OHR mandate to establish State-level command and control and parliamentary oversight for the Armed Forces of Bosnia and Herzegovina, the proposed State Defence Law (as described in Section 7.1 of this report) will be supreme in the area of defence. Legislative and oversight functions conducted by the House of Representatives and its commission on defence must therefore be in conformance with the defence policies, laws, standards, and procedures established by the State. The proposed amendment would insert general, covering language to reflect this change.

In addition, the commission's functions of advising the House of Representatives on approval for the use of the armed forces, and concluding or approving military agreements, would no longer be necessary, consistent with the proposed transfer of these responsibilities to State institutions. The proposed amendment would delete these provisions from Article 58.

### **Proposed Amendments:**

### **Article 58**

*The Commission for defence and security takes in consideration the following questions: system and policy in the domain of defence and security within rights and duties of the House of Representatives, and related to this, gives the opinion and suggestions to House of Representatives; proposes measures for organising, performing and development of defence and security of the Federation, for protection of its territory, financing of the Army of Federation; discusses preparations for defence and providing of material requirements for these preparations; ~~discusses giving approval for every possible use of armed force by the Federation; making military agreements in accordance with the Constitution of Bosnia and Herzegovina;~~ takes in consideration questions of fighting against terrorism, criminal activities between cantons, unauthorised drug trade and organised crime; discusses drafts and propositions for laws and other general acts that regulate the field of defence and security of the Federation and give the opinion and suggestions to the House of Representatives.*

*Approval of requirements for the organising, manning, training, equipping and financing of the Federation Army, and the proposal of laws and bylaws regulating defence shall be according to the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, and the Common Security and Defence Policies of Bosnia and Herzegovina.*

*The Commission provides control of legality of services for protection of constitutional order of the Federation in respect to performing of human and civil rights as defined by Constitution and Law.*

*A functionary who is a head of a federal administrative organ with competencies from the domain of protection of constitutional order of the Federation is to enable to the Commission insight in all data and to give all information of importance to its work. The Commission can organise investigation and for this purpose ask for testifying, proofs, and documents.*

#### **7.4.5. National Assembly of Republika Srpska**

As previously noted, increasing State-level competencies in defence will change the responsibilities of entity parliaments in three broad areas: international matters such as declaration of war and use of force; preparation and oversight of defence laws, regulations, and budgets; and approval of the appointment of certain officials.

As responsibilities for the declaration of war and use of the Armed Forces of Bosnia and Herzegovina move to the State level, the National Assembly would

no longer be required to provide parliamentary consent and oversight in this area. In addition, while the National Assembly would continue to have legislative responsibilities for drafting defence law and budgets, and overseeing defence matters within the scope of Republika Srpska competencies for defence, these activities would now be required to conform to the defence policies, laws, regulations and standards established at the State level.

The following sections outline proposed amendments to the Constitution, the Law on Defence, and National Assembly Rules of Procedure affecting parliamentary oversight of defence in Republika Srpska.

### **Proposed Amendments to the Republika Srpska Constitution**

Based on Article 70 of the Constitution of Republika Srpska, the National Assembly has the authority to declare: a state of war in the case of armed attack on the entity; imminent threat of war in case of a serious threat; or state of emergency. These provisions are inconsistent with the NATO PFP requirement and the OHR mandate for the State to assume authority for protecting its sovereignty and territorial integrity, and to establish command and control over the Armed Forces of Bosnia and Herzegovina. The proposed amendment would delete Article 70.

**Proposed Amendment:** Delete Article 70.

#### *Article 70 as amended*

*The National Assembly, in accordance with the law, shall declare*

~~1. — the state of war in the case of an armed attack of the Republic~~

~~2. — imminent threat of war in case of a serious threat of war~~

~~3. — state of emergency for the Republic or a part of the Republic if the security, human rights and freedoms and normal functioning of the constitutional institutions are threatened.~~

### **Proposed Amendments to the Republika Srpska Law on Defence**

Article 16 of the Law on Defence of Republika Srpska prescribes the responsibilities of the National Assembly for defence matters. These responsibilities

include: organising the defence system and determining policy; considering the state of preparations for defence and determining its organisation, development and strengthening; adopting the defence development plans within the entity development plan; and determining the provision of material reserves and sources of funding for defence during a time of war.

### ***Analysis of Proposed Amendments***

Changes to Article 16 are necessary to conform to NATO's PfP requirement and the OHR mandate that State authority and laws be supreme in the field of defence. A proposed amendment to Section (1) would add general, covering language making clear that defence activities of the National Assembly are conducted according to the defence law, directives, regulations, and the common security and defence policies of Bosnia and Herzegovina. In addition, the proposed amendment notes that the State-level Parliamentary Assembly also shares oversight of defence.

In assuming competencies for the overall defence of Bosnia and Herzegovina, State institutions will become responsible for determining requirements for the mobilisation of reserves; therefore, the proposed amendment also would delete section (4).

### **Proposed Amendments:**

#### **Article 16**

*The National Assembly in the field of defence:*

- 1. organises the defence system and determines the policy in the defence field according to the Defence Law of Bosnia and Herzegovina, the directives regulations, and orders of the Minister of Defence of Bosnia and Herzegovina and common security and defence policies of Bosnia and Herzegovina;*
- 2. considers the state of preparations for the defence of the Republic and determines measures for organization, development, and strengthening of defence;*
- 3. passes the defence development plan within the republic Development Plan;-and*
- 4. ~~determines the basis for ensuring the material reserves and sources of funding defence during the immediate threat of war and the state of war.~~ conducts oversight of all defence-related matters in Republika Srpska, concurrent with the Parliamentary Assembly of*

*Bosnia and Herzegovina, and conducts other tasks in the defence field under its competency.*

### **Proposed Amendments to Rules of Procedure for the National Assembly Board on Defence**

The National Assembly Rules of Procedure provides for a Board for Supervision and Control of the Work of the Bodies and Institutions Working in the Field of Defence and Internal Affairs. Under Article 67, the Board is tasked, *inter alia*, to: follow the operation and development of the defence systems; preparedness of entity defence; suggest measures for defence policy and strengthening defence; and ensure control over the legitimacy of work performed by defence bodies and institutions.

#### ***Analysis of Proposed Amendments***

Consistent with changes proposed for the entity defence law and the National Assembly, the Board's charter requires general, covering amendment to make clear that its framework for oversight of defence will conform with the defence laws, directions, regulations, and policies established by State-level institutions. In addition, based the State-level assumption of responsibility for protection of its sovereignty and territorial integrity, the proposed amendment would delete the specific reference to preparedness "of the RS defence..."

#### **Proposed Amendments:**

##### ***Article 67***

*Board for Supervision and Control of the Work of the Bodies and Institutions Working in the Field of Defence and Internal affairs shall:*

- *follow the situation, operation and development of defence systems and systems of internal affairs;*
- *discuss the situation of preparedness ~~of the RS defence~~ and suggest measures for establishing of policy in the field of defence;*
- *suggest measures related to the organization, development and strengthening of defence;*

- *discuss the situation and implementation of policy in the sphere of internal affairs and suggest measures to determine a system of internal affairs and determine policy in that field;*
- *discuss matters of production, turnover and transportation of arms, toxic, inflammable, explosive, radioactive and other dangerous materials;*
- *follow a regime of border crossing and control of passenger traffic across the border;*
- *ensure control over the legitimacy of the work of bodies and institutions in the field of defence and internal affairs;*
- *inform the National Assembly on conditions and problems in the sphere of defence and internal affairs and suggest corresponding measures.*
- *Approval of requirements for the organising, manning, training, equipping and financing of the RS Army, and the proposal of laws and bylaws regulating defence shall be according to the Defence Law of Bosnia and Herzegovina, the directives, regulations, and orders of the Minister of Defence of Bosnia and Herzegovina, and the Common Security and Defence Policies of Bosnia and Herzegovina.*

## **7.5 Interim Procedures for Defence Budgeting and Financing**

Control over spending levels for defence and approval of defence budgets are important tools of civilian, democratic and parliamentary control over defence matters.

Under current arrangements, entity governments and parliaments control these decisions. Taxes are locally raised, entity Ministries of Defence assess requirements and submit budget requests, entity governments set spending levels for defence in the context of total entity needs, and these budgets are then adopted by entity parliaments. State-level institutions have almost no role in this process. The few State-level activities in defence (such as the SCMM and its Secretariat) are funded through procedures resulting from the Dayton Agreement and Article VIII of the Constitution of Bosnia and Herzegovina by which State requests for funding are forwarded to entities which share these costs, and transfer funding to the State.

NATO's PfP guidelines and the OHR mandate to the Defence Reform Commission require State-level democratic parliamentary oversight and control of the armed forces, State oversight of defence structures throughout Bosnia and Herzegovina, and funding for defence structures to be established by political authorities through democratic processes. OSCE commitments also require Bosnia and Herzegovina to exercise restraint in military expenditures. Consistent with these requirements, the Defence Reform Commission has proposed enactment of the new Defence Law of Bosnia and Herzegovina, amendments to entity constitutions and laws, and parliamentary responsibilities, that would make the State-level Defence Law, in concert with State orders and the common security and State Defence Policy, supreme in the field of defence.

Although it could be expected that financing and budgeting for all defence activities in Bosnia and Herzegovina would be transferred to the State, the Defence Reform Commission had to confront the reality that the State currently lacks sufficient resources to meet this responsibility.<sup>2</sup> The Defence Reform Commission's task has thus been to develop a defence budgeting process sufficient for PfP membership in which State-level supremacy in the field of defence is harmonised with the reality of entity-level financing.

In addition, the revised budget process should strengthen parliamentary oversight of defence expenditures. Commissions and boards should receive notification of the defence portion of the budget draft, and explanations of necessary changes, before the budget is delivered to parliaments. Defence budget estimates provided to parliaments should detail planned expenses in order to promote full disclosure and transparency. Commissions and boards should exercise their authority to make amendments to the budget during the budget adoption phase, and consider the need for additional funds during the budget rebalance if necessary for unforeseen military operations. Parliamentary commissions should also receive regular budget reports from Ministries of Defence and auditors to aid in oversight and accountability. Liaison offices should be established between parliaments and Ministries of Defence to affect close co-ordination.

The Defence Reform Commission has developed an approach that combines both existing and new procedures to accomplish these objectives.

### ***Analysis of Proposed Budget Process/Amendments***

The proposed approach defines the overall defence budget of Bosnia and Herzegovina as composed of three parts – a State budget and two entity budgets. Preparation and oversight of the overall defence budget would be closely co-ordinated by State and entity institutions. State and entity parliaments would adopt their respective parts of the overall defence budget through their normal parliamentary procedures. This approach is outlined in Articles 46 and 47 of the proposed State Defence Law.

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<sup>2</sup> According to the IMF, State-generated revenues in 2003 total KM 51 million, accounting for only 10 percent of total State expenditures.

### **State Responsibilities**

As the military establishment of Bosnia and Herzegovina is composed of more than one constituent army and financed by separate entity governments, centralised co-ordination of defence planning and budgeting is necessary to ensure State-level command and control over the armed forces. The Minister of Defence would co-ordinate the development of an overall budget for the Armed Forces of Bosnia and Herzegovina with the entity Ministers of Defence, and also in co-ordination with Ministers of Finance. The result of this co-ordination should be a consolidated State defence program and total levels of defence spending that are agreed to by State and entity governments at the political level.

To support this process, the Defence Reform Commission recommends the following guidelines for defence planning and budgeting in Bosnia and Herzegovina:

- Financial planning should include budget estimates for the current year plus three years in the future, and provide for stable funding.
- The appropriate level of defence spending for Bosnia and Herzegovina is a political decision outside the Defence Reform Commission's mandate. In principle, however, the percentage of defence spending in relation to GDP should be similar to other European countries of comparable size, and proportionate to the economic capabilities of Bosnia and Herzegovina.
- Budgets should provide for the regular pay of members of the armed forces;
- Meet benchmarks for specific force reductions; and
- Be sufficient to fund new State-level competencies.

The Parliamentary Assembly of Bosnia and Herzegovina would be fully informed on the overall defence budget and adopt that part of the overall budget supporting State defence institutions and activities.

### ***Entity Responsibilities***

Entities would be responsible for financing, implementing and overseeing the overall defence plans and budgets for the Armed Forces of Bosnia and Herzegovina as co-ordinated and agreed to at the political level. Entity parliaments would review and adopt entity defence budgets through their normal parliamentary procedures, with strengthened oversight procedures as outlined above.

Given the current situation in Bosnia and Herzegovina, this process balances the need for supremacy of State institutions in defence with the reality of entity-level financing. Highly centralised co-ordination at the State level, combined with effective entity implementation of agreed defence plans and budgets are essential to demonstrating State-level command and control over the armed forces. Strengthened parliamentary procedures are also necessary to ensure that levels of defence spending are established through democratic processes and to improve transparency and oversight of defence expenditures.

These changes are required to fulfil the OHR mandate and meet NATO guidelines for PfP. Language to affect budget related responsibilities is proposed for the new Defence Law of Bosnia and Herzegovina in Section 7.1 of this report.

### ***Implementation***

The recommended strengthening of parliamentary oversight of defence and changes to defence budget processes in Bosnia and Herzegovina will require the introduction of new or revised procedures, common information systems, training of personnel, and other specific initiatives. Ministry of Defence and Parliamentary staffs at both State and entity levels will need to participate in these initiatives, many of which will require support from the international community. A more detailed plan and schedule for this work is outlined in Section 9 of this report.

## **8. Other Defence Reform Issues**

This section addresses two sets of defence reform issues: reducing defence expenditures and improving and harmonising personnel policy.

There is complete agreement that defence expenditures are excessive. One of Bosnia and Herzegovina's defence and security pledges promised "to ensure professional, modern, and affordable Armed Forces." Fulfilling the affordable part of this pledge will require significant reductions in defence spending. The High Representative's mandate to the Defence Reform Commission also addressed this subject. He instructed the Commission to formulate reforms "to enable defence funding to be within fiscal limits established by political authorities in a democratic manner."

To become affordable, Bosnia and Herzegovina's defence establishment will need to downsize in a number of major areas. The Commission considered six areas for downsizing: active force, reserve force, conscription, Ministry of Defence headquarters and field staffs, weapon storage sites, and excess property, including business holdings. Issues in many of these areas have or are being addressed by processes that preceded the Commission's establishment. The Commission has sought to build upon this prior or on-going work. Given limitations on the availability and accuracy of fiscal data, the cost analyses on which the Commission's downsizing recommendations are based are not as refined or reliable as desired.

### **8.1 Active-Force Reductions**

In 2002, the Armed Forces of Bosnia and Herzegovina were reduced by about 33 percent and around 13,000 professional soldiers were discharged. At the time this was viewed as the first stage in a series of demobilisation stages.

The Defence Reform Commission recognises that demobilisation will be a central element of future defence reforms, and the Commission recommends further downsizing of the Armed Forces to 12,000 professional soldiers. This number would serve as a ceiling for all professional soldiers regardless of assignment, including those in State and entity civilian and military headquarters. However, the process of demobilisation and the funding schemes that may be required to facilitate this must be continued beyond this report. This was envisaged by the High Representative in his April 2, 2003 Decision; COMSFOR and the Joint Military Commission were tasked with “ensuring that far-reaching reforms to the structures of the armed forces are adopted by 1 January 2004, to allow them to operate within their budget allocations.”

These 12,000 military personnel would be divided between the Federation of Bosnia and Herzegovina and Republika Srpska in accordance with the 2:1 ratio set out in the Defence Policy. The Commission recommends that the Entity Ministries of Defence undertake these force reductions as soon as possible. The Defence Reform Commission, however, recognises that the reduction in military personnel will require severance payments and other forms of assistance. Both local and international funding will be necessary to meet these needs. The Commission urges the international community to provide assistance and to give high priority to determining the levels of international assistance for displaced soldiers.

## **8.2 Reserve-Force Reductions**

Bosnia and Herzegovina currently maintains a reserve force of 240,000 personnel. By European standards, this is a huge force. It is larger than the reserve force of Poland, which has a population ten times that of Bosnia and Herzegovina. Approximately 7 percent of the population of Bosnia and Herzegovina is registered in the reserve force, compared to less than 1 percent for other countries such as Sweden, Denmark and Slovenia.

Likewise, the ratio of the active professional force in Bosnia and Herzegovina to its total armed force size is small in comparison to the ratio in other European countries: the active professional force is approximately 5 percent of to-

tal size, compared to approximately 20 percent for countries such as Sweden, Denmark and Slovenia.

The reserve force, however, is only a paper force because it does not organise or train for mobilisation responsibilities. The expense of reserve forces is related to maintaining weapons and ammunition for reserves to use when mobilised, and performing administration and record-keeping. However, it is apparent that administration costs are mostly due to the high number of field office staff. Centralisation can reduce the cost related to reserves.

The Defence Reform Commission believes that Bosnia and Herzegovina lacks a military requirement for a reserve force of the current dimensions and recommends a reserve force of not more than 60,000 personnel, taking into account other regional force structures.

### **8.3. Conscription**

As explained in Section 5.5, the current size of the Armed Forces of Bosnia and Herzegovina is too large for the country to sustain economically. Theoretically, conscription costs KM 56 million in the Federation of Bosnia and Herzegovina or 21 percent of entity defence budget, and KM 15,3 million in Republika Srpska or 17 percent of the entity defence budget. These costs are theoretical because the allocated payments comprising total conscription costs are not being paid to the extent that the budget foresees. (As noted in Section 5.5, Bosnia and Herzegovina lacks the financial and budgeting systems and processes necessary to produce adequate, reliable and transparent summaries of defence expenditures. Accurate figures for conscription are, therefore, difficult to assess.)

The entity Ministries of Defence cannot afford their current conscription programmes. Moreover, given the proposed 75 percent reduction in reserves, the need for trained conscripts to fill the reserve ranks is reduced. The Commission recommends that the conscription intake be reduced by 50 percent and the conscript training period be shortened from six to four months.

Preliminary investigations indicate that modernisation could produce a more efficient registration process. It could also be possible to centralise most of the administration. Centralisation of the conscription program would generate

significant savings because a large percentage of the current Ministry of Defence strength in the entities is devoted to maintaining the conscription system and reserve forces records. The following section describes headquarters and field staff reductions in further detail.

#### 8.4. Headquarters and Field Staff Reductions

Although force reductions have taken place in Bosnia and Herzegovina, comparable reductions in Ministry of Defence staff have yet to be confronted. Civilian personnel in the entity Ministries of Defence must also be reduced to bring about an effective and balanced defence establishment. Three basic principles must be applied to future defence structures: they must be NATO compatible, promote efficiency, and minimise institutional redundancy. According to NATO standards, a headquarters should not exceed two percent of the total strength of the soldiers reporting to that headquarters.

The situation is especially out-of-balance in Bosnia and Herzegovina. By comparing the Ministry of Defence staffs of other countries have on average a ratio of soldiers to ministry staff of approximately 30:1. By comparison, the ratio is 11:1 in the Republika Srpska and 10:1 in the Federation of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina, 379 personnel are in the Ministry of Defence headquarters and 949 personnel are employed in field offices. Many of these work on conscription related duties such as keeping manual databases of conscript, and on reserve force information. In Republika Srpska, there are 466 staff working in field offices and 122 in the headquarters. Many of these also work on conscription and reserve force related tasks. The Ministry of Defence of the Federation of Bosnia and Herzegovina has eighty-nine field locations, and the Republika Srpska maintains seventy-one field locations. These are shown in the table below:

	MoD Total	MoD - HQ	MoD - Field	Field locations
RS	588	122	466	71
VFBiH	1328	379	949	89

The Defence Reform Commission believes that a complete rationalisation of the field staff in both Ministries would produce considerable personnel savings.

The Slovak Republic model, used as part of the Slovak NATO Membership Action Plan, allows for a Ministry of Defence (including supporting agencies) of up to 9,8 percent of total military strength during the transition period to a standard NATO model. For the Republika Srpska, this would mean a total Ministry of Defence staff of 393 personnel. This would be a 33 percent reduction from the current personnel levels. In the Ministry of Defence of the Federation of Bosnia and Herzegovina, the personnel number under the Slovak Republic model would be 786 personnel or a 41 percent reduction.

The Commission recommends that each entity Ministry of Defence should undertake an initial reduction of personnel of 25 percent. This reduction should be achieved by the end of 2003 or as soon as possible, but not later than June 30, 2004. The Commission believes that further reductions will be possible, but the determination of such possibilities will require consideration of the full implications of the approved defence reforms.

Particular attention should be accorded to determining the workload of the Legal Affairs offices in the various institutions and structures in such a manner as to provide sufficient legal capacity to meet near-term legal challenges. This will require workforce over and above that normally envisioned.

The Defence Reform Commission believes that the State-level Ministry of Defence should initially be manned by not more than 100 professionals (individuals not in the professional civil service such as cleaning people, physical security, and café workers should be in addition to this number). Approximately 70 percent of assigned professionals should be civilians.

The Joint Staff of Bosnia and Herzegovina and Operational Command initially should be manned at not more than 50 percent of the level of the Secretariat. The VRS General Staff and VFBiH Joint Command should be not larger than the NATO standard of two percent of the active force structure under the headquarters.

## **8.5. Consolidation of Weapons Storage Sites**

Weapons Storage Sites (WSS) are military sites that contain weapons and weapons-related equipment. They are subdivided into combat and resource sites and include, but are not limited to, barracks, airfields, ammunition storage sites, maintenance facilities, communications sites, military schools, etc. Ammunition storage sites (ASS) are of most immediate concern because much of the current ammunition is deteriorating and excessive amounts are being stored too close to the civilian population.

The 540 WSS in Bosnia and Herzegovina in 1999 were reduced to 130 by the end of 2002. As the number of sites decreased, however, the amount of weapons and ammunition held at remaining sites increased. This led to poor, hazardous storage conditions. In 2003, SFOR specified acceptable safety standards for storage. Meeting these standards led to an increase in the number of WSS from 130 to 166. The resulting situation is untenable as the number of sites must be decreased to reduce costs and standards must be improved to reduce the risk to the public and military personnel.

A further consideration is that there are not enough forces to guard this large number of sites. Because the entity armies lack sophisticated surveillance equipment, a large number of personnel must be used to guard these storage sites. Currently, many conscripts fulfil these duties.

Efforts have been made by SFOR and the entities to reduce holdings, initially by destroying obsolete weapons and ammunition. In April 2003, the Office of the High Representative (OHR) directed the reduction of WSS in the entire country to less than ten. In June 2003, the explosion in Rabic, Derventa, highlighted the extremely dangerous nature of ammunition storage sites.

In furtherance of the OHR's directive, SFOR has been working with State and entity officials on a plan to reduce the number of WSS by the end of 2003. Based on the assessment of SFOR, these sites could possibly consist of:

- WSS containing all weapons and equipment to be used by reserves in case of mobilisation.
- Ammunition storage sites containing the ammunition needed for training and operational purposes.

- Ammunition storage sites containing war-reserve ammunition could also be charged to re-supply other ammunition storage facilities servicing training and operational purposes.

It is also possible to consider the usage of a combination of ammunition storage site functions to overcome problems relating to logistics, distribution of units, and other specific circumstances and details.

In the Army of Republika Srpska (VRS), most of the ammunition, mines and explosive ordnance are distributed in nineteen ammunition storage sites. The plan is to close eleven of these by the end of the year, but the remaining eight are still too many. The VRS has not yet presented any plan yet to reduce the number of weapons storage sites, but has asked SFOR for assistance.

The Army of the Federation of Bosnia and Herzegovina (VFBiH) is planning to close nine sites by April 2004, which means that some fifteen WSS will remain active. There are plans to close a further nine sites by June 2005. The VFBiH envisage that four ammunition storage sites and two weapons storage sites would remain. This would mean that the VRS would be allowed only three WSS if the OHR directive is followed. However, it should be noted that the 2:1 FBiH – RS force ratio applies to the amount of forces and equipment, not necessarily to the number of storage sites, although clearly there is a relationship.

The entity plans described above remain only draft plans at the time of this writing. The entities are submitting plans to SFOR, and SFOR will then inspect all of the ammunition storage sites to ascertain whether these plans are practicable and realistic. SFOR intends to issue its report on the inspection of Republika Srpska in October, and the report on sites in the Federation of Bosnia and Herzegovina by January 2004. Destruction of ammunition will probably have to precede reduction of sites.

It is difficult to ascertain how long it would take to reach the desired single digit figure of WSS/ASS. No current ammunition storage site meets NATO standards and many do not meet minimum safety standards. Funds will be needed to build new facilities or to improve existing storage conditions. It may well be that reduction of ASS will proceed more slowly than expected because

of the great quantity of excess ammunition and the limited capacities of existing sites. Therefore, it may be necessary to fund the upgrading of a few sites to full safety standards during the reduction transition period in order to prevent further accidents.

Costs involved in upgrading a site, either to safety standards or to full NATO standards, depend upon each individual site, and it is not yet known which sites will require upgrading. Upgrading each site may well prove expensive; costs associated with security and infrastructure development would be among the highest. In addition, all ammunition sites should be considered as possibly mined and each site would have to be checked; some sites are known to be heavily mined.

The total quantity of ammunition existing now is 25,200 tonnes for the VFBiH Bosniak component, 46,000 tonnes for the VFBiH Croat component, and 66,500 tonnes for the VRS – a total of 137,760 tonnes.

The closing of many weapons storage sites also raises the issue of disposal of excess heavy weapons. SFOR and the international community will continue to oversee this process to bring the WSS/ASS in compliance.

To facilitate the reduction of ammunition, the entities will need assistance in identifying which ammunition stocks need to be destroyed. Although some of the stocks will be identified once the final structure of the Armed Forces of Bosnia and Herzegovina is known, the remainder will require technical assistance in the form of laboratory equipment and education.

The entities require a means to perform testing of their propellants so as to identify which lots are close to end of life. A failure to identify this can have catastrophic consequences, particularly under current conditions. The costs of a High Performance Liquid Chromatography (HPLC) laboratory, based on a 1999 Albanian armed forces study, is approximately 91,000 Euro, with 11,000 Euro in annual equipment operating costs.

The entities need to know how to manage their ammunition in accordance with NATO standards. They cannot be expected to interpret a series of complicated NATO standards without education. Training entity army personnel will require approximately 180,000 Euros.

The Defence Reform Commission commends the attention given so far on this issue by the entities and SFOR. The Commission recommends an end-state of nine sites and urges an accelerated but safety-oriented process to destroy or dispose of all excess ammunition and equipment.

## **8.6. Divestiture**

Each entity Ministry of Defence has efforts underway to divest business holdings and excess property. Divesting such holdings and property provides assets for use by other government institutions for government functions, as well as reducing the financial burden on the Ministries of Defence.

With regard to military property, the VRS is planning to redistribute army units within thirteen garrisons and two garrison centres by the end of 2003. In this process, twenty-nine sites would close down. All facilities that are not the property of the Ministry of Defence of Republika Srpska will be guarded until a decision is made on their future status. The Federation of Bosnia and Herzegovina has identified thirty-five locations to be closed down, leaving the VFBiH twenty-six sites. The Ministry of Defence will decide the status of the closed infrastructure.

The Defence Reform Commission recommends that efforts to divest excess property and business holdings be accelerated, that ministries and armies increase their efforts to dispose of business holdings, and that this issue be looked at in greater detail by the respective competent authorities.

## **8.7. Personnel Policy Issues**

According to the proposed Defence Law of Bosnia and Herzegovina (Article 81), the Minister of Defence will appoint a joint commission to evaluate personnel management systems and to make recommendations regarding the creation of a common system.

This section presents recommendations addressing personnel issues, specifically for the development of a single personnel management system for defence institutions and structures. These should not be considered as an ex-

haustive list, and the Defence Reform Commission recommends that the future Minister of Defence together with the joint commission examine these and other issues in greater detail.

### **8.7.1 Personnel Management System**

As part of the Train and Equip Program for the VFBiH, MPRI developed a complete military personnel system (modelled on the U.S. Army system). The VFBiH was provided with local language variants of the complete policies and regulations for this system, and the proposed system is similar to that used by the military forces of other NATO countries.

Except for limited use, primarily at the Ministry of Defence level, the VFBiH has not yet implemented the U.S. Army-oriented personnel management system. For a variety of reasons, a common Law on Army/Service has never been approved to reflect the provisions. However, the development of such a system would also require amendment to the existing Defence and Employment Laws.

The VRS's personnel management system was previously organised and based on the personnel system of the Yugoslav Army, but it is now harmonised with the laws and regulations in Republika Srpska. The Law on Defence, Law on Army and VRS service regulations establish the current system.

#### ***Major differences between the personnel management systems of the two entities:***

- a. NCO Corps: Although it has a long way to go, the VFBiH has begun the process of building a corps of professional non-commissioned officers (NCO). The NCO corps in the VRS is based on old Yugoslav Army principles, e.g., a small role for NCOs. As a consequence, the VRS has officers performing many jobs that are assigned to NCOs in the VFBiH. The VRS is interested, however, in developing an NCO corps;
- b. Rank Structure: The structure of military ranks between the VFBiH and the VRS are different. The rank structures should be harmonised;

- c. Rates of Pay, Allowances, and Per Diem: There is a significant pay and benefits differential between the VFBiH and the VRS, with VFBiH personnel receiving substantially more money than those in the VRS;
- d. Other Differences: There are other differences between the two systems currently in use and between each of those systems and the U.S. Army-oriented personnel management system that has yet to be adopted in the Federation of Bosnia and Herzegovina. The Defence Reform Commission recommends the further examination of this issue once a joint commission is established according to Article 81 of the proposed Defence Law of Bosnia and Herzegovina.

In consideration of the deficiencies of the current systems, it is imperative that the future personnel system meets the following criteria:

- applies equally within the Armed Forces of Bosnia and Herzegovina;
- is easy to understand and administer;
- provides for the open and transparent management of all military and civilian personnel employed in support of defence;
- eliminates differences in pay, benefits, and allowances between entity military personnel;
- is based on principles of meritorious performance, evaluation and achievement; and
- is harmonised as to achieve common ranks and NCO Corps functions.

All sides are aware of the benefits derived from having a single personnel management system that applies to all military personnel in the Armed Forces of Bosnia and Herzegovina. The VRS is not opposed to the implementation of the U.S. Army-orientated personnel management system but is not ready to accept it as the optimum system until they have an opportunity to review it in detail.

The Defence Reform Commission recommends that the VFBiH and the VRS examine the U.S. Army-oriented system, evaluate whether or not it meets the

requirements, and (if the evaluation is generally positive) identify which parts of the system need to be modified. A robust implementation plan should be developed and put into effect to ensure that the agreed system is implemented.

### **8.7.2. Situation on Alternative Service**

Legislation that regulates alternative service for conscientious objectors exists in both entities, but it is not fully harmonised. Provisions offering two alternatives to the military service obligation exist: alternative service can be performed in military units without carrying weapons or in a legal body outside the armed forces, as designated by the Ministries of Defence.

The duration of the alternative service is three months longer than conscription in the Federation of Bosnia and Herzegovina, and six months longer than conscription in Republika Srpska. As stated, these and other provisions should be harmonised between the entities in line with the international obligations of Bosnia and Herzegovina, such as Council of Europe Standards and the post-accession commitments, which stipulate that laws on conscientious objection and alternative service should be adopted within three years after its accession.

#### ***Situation in Republika Srpska***

Presently, four legal bodies have signed contracts with the Ministry of Defence to accept individuals serving alternative service in their institutions. The Ministry of Defence is currently negotiating with two more legal bodies and is trying to raise interest within other institutions.

Currently, five individuals are serving alternative service (one in the museum in Prijedor, four in "Caritas" Banja Luka, and two are in the process to start serving in the Institution for Disabled Persons in Banja Luka).

Only one person is serving as a conscientious objector without carrying weapons in the Republika Srpska Army.

The implementation process has just started in Republika Srpska, and the Ministry of Defence believes that they have succeeded in promoting this issue as beneficial for society. The Ministry of Defence expects that more individuals will apply for alternative service in the future.

For the individuals in the alternative service, the Ministry of Defence has to cover expenses related to salary, clothing and footwear. The body in which the service is conducted has the obligation to cover all other expenses (travel, accommodation, and food). The Ministry of Defence covers the cost for administering applications.

### ***Situation in Federation of Bosnia and Herzegovina***

The implementation of alternative service has been slower in the Federation of Bosnia and Herzegovina. Nevertheless, interest for alternative service is much higher than in Republika Srpska.

Currently, there are 600 applications for alternative service, out of which 500 passed through the application procedure. It is estimated that the first contingent will enter service by the end of this year. All applications are for alternative service outside of the armed forces.

The Ministry of Defence is due to sign contracts with forty legal bodies in August and determine units for alternative service. The Ministry has compiled an information sheet for conscripts regarding the possibilities of alternative service.

The Ministry of Defence is obliged to cover the expenses related to salary and health care for the individuals in alternative service outside of the armed forces. The legal body where the service is conducted has the obligation to cover all other expenses (equipment, travel, accommodation, and food). The administration of applications and subsequent administration costs are divided between a commission under the Ministry of Justice and Ministry of Defence.

### **8.7.3. Conflicts of Interest**

#### ***Ethical Conduct***

Preventing conflicts of interests of government employees is a sub-set of the broader issue of ethical conduct of government employees. Standards of ethical conduct, as devised by many governments, contain rules and regulations that govern the ethical issues applicable to government employees and are developed to assure that government employees conduct government business effectively, objectively, and without improper influence.

Most, if not all, NATO nations have laws, directives, regulations, and/or guidelines that address the ethical conduct of military personnel and civilian personnel in defence-related positions. Many of these are quite detailed. For example, the U.S. Department of Defence Joint Ethics Regulation is approximately 130 pages long and deals with both broad guidelines for ethical conduct by Department of Defence personnel and the specific requirements within those guidelines. The German Armed Forces have similar regulations and guidelines.

#### ***Laws Governing Ethical Conduct of State-level Public Employees***

The various laws that govern the ethical conduct of State-level public employees in Bosnia and Herzegovina include conflict of interest provisions. These laws are published in the Official Gazettes of both entities and have been accepted by all parties as delineating the guidelines for avoiding conflicts of interests by public employees. In addition, the *SFOR Commander's Instructions to the Parties* document – the implementation document of his treaty-based authorities – covers conflicts of interest for general officers and other members of the Armed Forces of Bosnia and Herzegovina. This also applies to civilians determined by COMSFOR to be the equivalent of General officers. However, the position of '(Entity) Minister of Defence' is specifically excluded from these provisions.

### **Retired/Separated Personnel**

Although the issue of prevention of conflict of interest for active duty military personnel and civilian employees is more or less straight-forward and covered by existing laws, some issues surrounding conflicts of interests of retired and former military and civilian personnel are not addressed.

- **Post-retirement Influence:** It is evident that an active duty military officer should not use his or her rank or position to benefit from a private business activity in which he or she holds an interest, e.g. sign a contract with a government institution to a business he or she owns. It follows that the same officer, once retired, should not be able to use their former office to secure a contract in similar circumstances.
- **Time Limit on Restrictions:** The Defence Reform Commission recommends the establishment of restrictions on retired personnel, prescribing that they cannot solicit defence-related business until a specific time period has elapsed. The Commission recommends that this issue be considered further by competent authorities.
- **Restrictions on Separated Personnel:** A further question is whether a time limit should apply only to personnel who have retired from military service or should it also apply to those who leave military service before retirement? Restrictions should apply to both but perhaps in different ways, depending whether the individual is a former non-commissioned officer, a common soldier, or an officer.
- **Application to Civilian Personnel:** Should such a time limit apply to civilian personnel? Such restrictions should apply to civilians working in defence-related positions, but the competent authorities should examine to which level of civilians this would apply and whether there should be different restrictions according to the level of these employees.

In view of the options examined, the Defence Reform Commission recommends the following as considerations within any solution:

1. Chapter 14 of the SFOR Commander's Guidance is used as the basis for changes to law so that its provisions, as appropriate, will continue to apply even after SFOR's departure from the country.
2. Laws written or amended dealing with conflicts of interest apply to active duty and retired military personnel and civilian employees in defence-related positions.
3. Such laws, applying to both military and civilian personnel in defence-related positions, should cover at least the following areas:
  - a. **Financial Interests:** No employee, military or civilian, of any defence institution and structure shall use his or her position or rank to influence any decision that results in or *could be perceived* to result in the financial gain for the individual or anyone in his or her family or any organisation in which the individual serves as an official, director, trustee or employee.
  - b. **Outside Compensation:** No employee, military or civilian, of any defence-related institution shall receive compensation from a source other than the Government of Bosnia and Herzegovina or the entities for the performance of his or her official duties.
  - c. **Representational Activities:** No former employee, military or civilian, of any defence institution and structure, whether retired from government service or merely separated, shall represent another person or organisation back to the State Government or the entities, with the intent to influence, on a particular matter involving specific organisations, in which he/she was engaged as part of his/her official duties while employed as government employee. This limitation shall remain in effect for a period of one year following separation of the individual from service within the institution.
  - d. **Use of Official Information:** No employee, military or civilian, of any defence institution and structure shall disclose trade secrets and similar information which the employee obtains in the course of performing official duties or as a result of Government employment, especially in cases where the disclosure of such information could result in

the financial gain or perceived financial gain of the employee or anyone linked to the employee.

### **Issues**

Further investigation is required to verify whether or not Chapter 14 of the *SFOR Commander's Instructions to the Parties* applies also to senior civilian defence officials. It is currently unclear as to which cases Chapter 14 is applicable to.

It is also necessary to determine the length of time after retirement for which conflict of interest prohibitions should apply to military personnel.

Study is also required to determine whether or not the current laws that apply to civilian government employees cover all the provisions contained in Chapter 14 of the *SFOR Commander's Instructions to the Parties*.

### **Full Pay in Second-Career Jobs**

An issue is whether or not a retired military officer or retired civilian official should be able to receive his or her government retired pay and also draw full pay in a second career job.

### **United States' Rules**

Most NATO nations have rules or laws that govern this topic. The United States' rules are:

#### **1. Second Career Job with the Government.**

- a. **Retired Military Personnel:** Formerly there were restrictions on retired military personnel "double-dipping" and receiving both their full retired military pay and a government civilian salary while in a post-retirement government job. In recent years, however, this restriction has been lifted. Now, with some exceptions, most retired military personnel can go to work for the government and receive both their full military retirement pay and their full government civilian pay.

- b. **Retired Civilian Officials:** There are restrictions on U.S. Government civil servants drawing full-retired pay while continuing to work for the government.

## **2. Second Career Job in the Private Sector.**

- a. **Retired Military Personnel:** In the United States, there are no restrictions on retired military personnel, officer or non-commissioned officer, from receiving their full military retirement pay while employed in the private sector.
- b. **Retired Civilian Officials:** There are no restrictions on retired government civilian personnel from receiving their full government retirement pay while employed in the private sector.

### ***Bosnia and Herzegovina Rules:***

In Bosnia and Herzegovina, no former government employee, military or civilian, may draw a government retirement pension and also be a paid employee in either the government or the private sector. This restriction is the result of the current economic situation in the country in which employment is extremely high.

This very important issue will have a profound effect on the professionalisation of the defence establishment of Bosnia and Herzegovina and should be a consideration of the competent authority during the development of a common personnel system.

### ***Issues to be resolved in the future include:***

During the elaboration of a common personnel system, the relationship between the length of time required for military retirement in Bosnia and Herzegovina (currently forty years of service) and the prohibition against further employment should be examined. If the retirement age diminishes substantially, there will be a greater imperative to relax restrictions on post-retirement employment.

Other factors that need further examination include whether the current restrictions in Bosnia and Herzegovina should equally apply to retired non-commissioned officers and soldiers (whose retirement pay is considerably lower than that of retired officers).

### ***Private Activities***

Generally, in most NATO countries, military personnel are free to engage in a variety of activities in their own time, out of uniform, and away from the job. This apparently is not the case in Bosnia and Herzegovina as there are reportedly heavy restrictions on military personnel taking a second job while off duty. Even in NATO countries, however, due to the nature of the military, certain activities are not appropriate for military personnel to engage in whether or not they are on duty and/or in uniform.

1. In general, these are activities that might cause the public to lose confidence in the military as an institution worthy of public respect.
2. Additionally, prohibited activities include those that might contribute to the degradation of good order and discipline in the military.
3. The activities of anyone in the military must reflect positively on the military 24 hours a day, seven days a week.

In Bosnia and Herzegovina, there are restrictions on the types of political activities government employees can engage in. Military personnel are allowed no other political activity than to exercise their right to vote, as does any other citizen. Civilian personnel are covered by the existing Civil Service Law and, in general, cannot participate actively in partisan politics.

The Defence Reform Commission recommends that these issues be further considered with a view to drafting or amending laws to specify that a member of the armed forces on active duty can participate in private activities. This should include activities for which he/she receives payment, as long as those activities are not perceived as being part of his or her normal military duties, and reflect positively on the armed forces as an institution.

## **9. Implementation**

Given the importance of effective implementation to a successful reform programme, this section addresses important implementation processes.

### **9.1. State-Level Defence Reforms**

#### ***Ministry of Defence***

The State-level Ministry of Defence is the linchpin of the new defence establishment of Bosnia and Herzegovina. Its full establishment and 'standing-up' is of paramount importance. The Ministry must be capable of performing its integral role within defence, as envisaged by the proposed Defence Law of Bosnia and Herzegovina.

The build-up of current and future structures should take advantage of as many existing resources as possible. It should take into account existing commitments, obligations and pledges in improvements for State-level defence institutions. These factors were considered during previous restructuring, and some of these functions should re-appear in new structures and should be identified as early as possible during the implementation process.

The build-up of the Ministry should not hamper nor interfere with compliance with existing commitments and obligations. Equally, it should not obstruct nor delay the pledges made by Bosnia and Herzegovina for multilateral and bilateral co-operation.

The Ministry should comprise approximately one hundred personnel. Personnel recruitment must be conducted to ensure the highest levels of professionalism and expertise. Recruitment procedures should comply with existing legislation and regulations, such as the recruitment of civil servants through the

Civil Service Agency and transparent recruitment procedures, including selection boards for military personnel and support staff. Managerial staff should reflect the representation of constituent peoples.

To ensure fairness, equality and consistency, in line with the establishment and necessity for a common personnel system, all State-level personnel should be paid and be entitled for allowances according to State standards from the State budget.

Equally, core skills must be developed in order to meet the missions and tasks outlined in the proposed State Defence Law. Education and training for staff should be provided on missions and tasks in view of U.N., OSCE, PfP/NATO, and European Union commitments.

A high priority is to ensure that the armed forces and defence structures of Bosnia and Herzegovina are interoperable, compatible and function as a whole. Harmonisation in all areas is a primary objective. At the same time, interoperability and compatibility with international standards, particular PfP/NATO, cannot be neglected. To this end, it is important to conduct a detailed functional analysis of the current Entity Ministries of Defence, VRS General Staff and VFBiH Joint Command, using the revised competencies prescribed under the proposed Defence Law of Bosnia and Herzegovina.

A State budget (short-term for current/following year and accepted forecast for four years as decided in the SCMM meeting on 8 May 2003) will be available (also for the new structures) prior to the start of implementation.

In May 2003, the SCMM adopted a set of four Books of Rules. These foresaw the SCMM Secretariat as the professional planning and working staff for the SCMM Secretary General; this should provide the preliminary basis for the staff and formation of the Ministry of Defence of Bosnia and Herzegovina. At least initially, these Books of Rules will be the bases for the new structures.

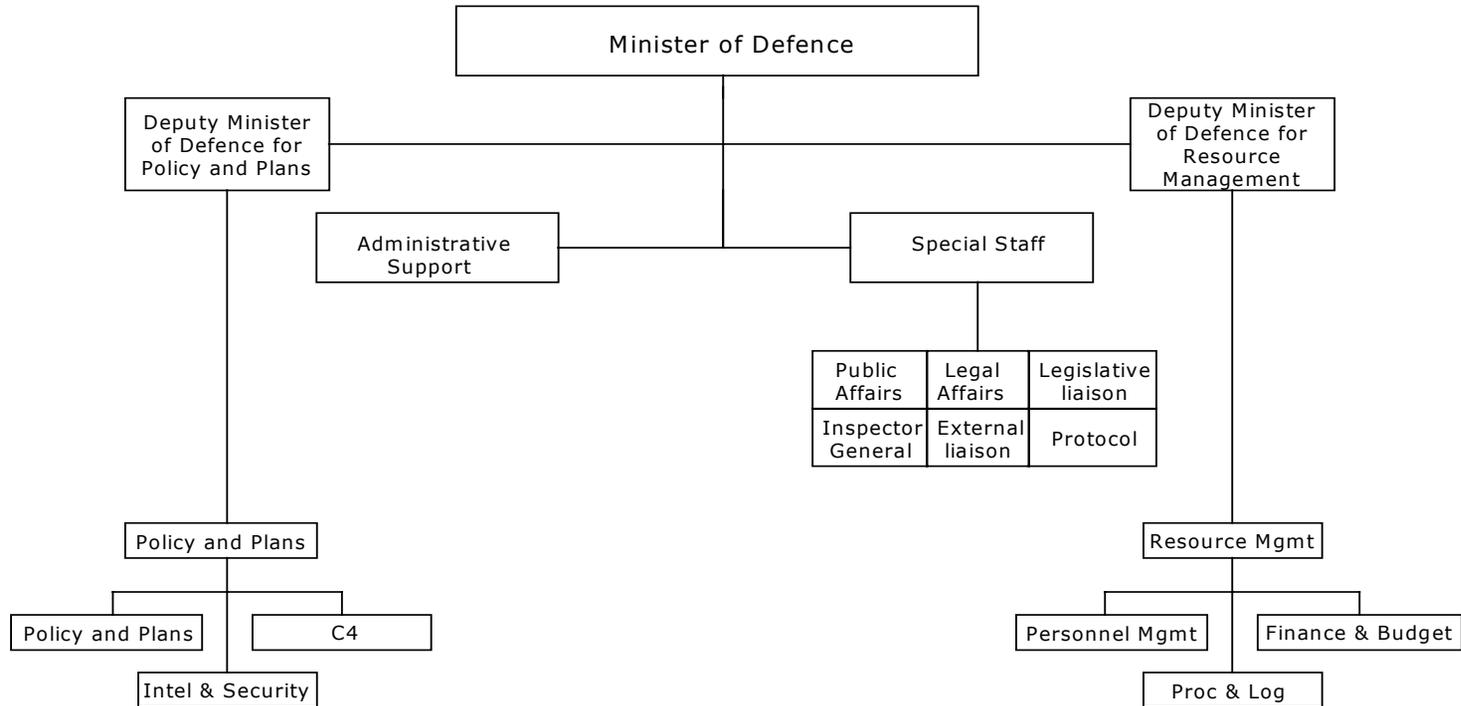
The current envisaged SCMM Secretariat structure with 88 positions is a combination of a mainly civilian working staff (64 positions) plus General Staff functions (24 positions). The currently agreed plans foresee the achievement of 50 percent of the above staff structure by October 2003 and 100 percent achievement of the above staff structure not later than January 2004. The current budget, however, only allows hiring up to 50 percent of the civilian

staff in order to stay within budget ceilings. The SCMM had planned to have the SCMM Secretariat budget re-balanced by July 2003, thus allowing a build-up to 100 percent in 2003. The current plan foresees September 2003 as the earliest to start this process.

The current SCMM Secretariat has only limited operational capability and should be 'stood-up' as quickly as possible to be able to function as a full State-level body. The body must be capable of assisting the Minister of Defence in the execution of tasks as envisaged by the proposed Defence Law of Bosnia and Herzegovina.

A fully functioning Ministry should be able to deal with the majority of typical tasks, and its structure must reflect the defence needs of the State. The Defence Reform Commission suggests the structure illustrated on the following page:

**Proposed structure of the Ministry of Defence of Bosnia and Herzegovina**



The above structure reflects that the Ministry of Defence must have capacities to assist the Minister of Defence in the implementation of decisions and commands, and should provide support functions in the creation and sustenance of the defence capacity of Bosnia and Herzegovina.

The Ministry of Defence must provide the technical, strategic, operational and administrative expertise to the Minister of Defence in carrying out administration, developing, reviewing, updating common defence and security policies and all other duties as necessary to ensure the efficacy of the State of Bosnia and Herzegovina in defence matters.

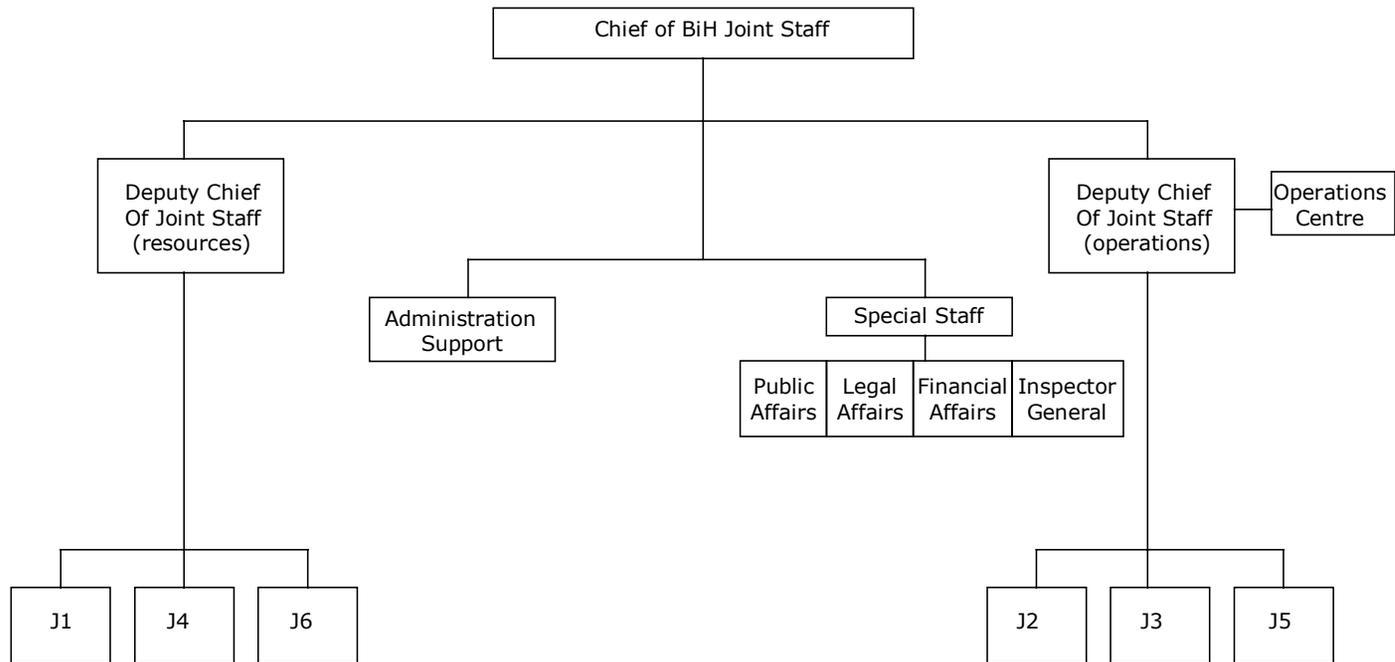
### ***Joint Staff of Bosnia and Herzegovina***

The Ministry of Defence contains an integrated Joint Staff. This serves as one of the fundamental keys of civilian oversight as the Chief of Staff, his deputies and the Commander of Operational Command are placed under the control of the civilian Minister of Defence of Bosnia and Herzegovina.

The plans for the Joint Staff should be ready by the end of 2003. The Commission suggests the establishment of a Joint Staff with some 50 personnel. This figure does not include general service support in terms of staff or facilities for guards, kitchen, cleaning staff or storage.

The Joint Staff should have the capability to execute, oversee and control operations, and its structure must reflect these tasks. It should conform to NATO standards and the Defence Reform Commission suggests the structure illustrated on the following page as an example of the possible options:

**Proposed structure of the Joint Staff of Bosnia and Herzegovina**



The Joint Staff needs competency to implement the command, control and administration of the Armed Forces of Bosnia and Herzegovina, as well as military strategy, plans and requirements. The Joint Staff must have the capacity to implement the decisions of the State-level Minister of Defence and decisions emanating from the Presidency, as the supreme command of the Armed Forces of Bosnia and Herzegovina.

As integral parts of these functions, the Joint Staff must have the capability to deal with all matters concerning human resources (military and civilian), which include personnel readiness, personnel services and headquarters management capacity – J1 (as shown above). It must have the capacity to deal with matters concerning military intelligence, counter-intelligence and security operations – J2. The Joint Staff must be able to implement commands regarding operations and plans, force development, modernisation and training – J3. It should have capabilities to co-ordinate the logistics integration of supply, maintenance, transportation, and services for the command – J4, which is the primary link between the support unit, the Commander and the rest of the Joint Staff. It must have the capability to assess the impact of civil-military operations and to enhance and maintain relations between military forces and civilian authorities – J5. The Joint Staff headquarters must have the capacity to ensure communications, including management of technology-based information systems and communications – J6.

The proposed Joint Staff structure contains an Operations Centre, which is a communications centre and situation room. This would run on a 24-hour basis with minimal staff, e.g., 2 – 3 duty officers in normal times, and be additionally manned from other offices as required for exercises and emergencies. Later, if needed, it could be expanded. This would allow the execution, oversight and control of State-level operations on a 24-hour basis. The Operations Centre should be designed and available for communications among all State and entity-level decision-making bodies, especially for urgent needs and in times of crises. These could, for example, range from bodies in the operational and administrative chains of command, including the Presidency, the Minister of Defence, the Joint Staff, the entity Ministers of Defence, and the entity General Staff/Joint Command.

## **Personnel**

Upon approval of new structures, the preparations for the build-up can commence in two different approaches according to existing laws and regulations:

1. functions and personnel from the existing SCMM Secretariat shall be identified for transfer to new positions.
2. new/additional functions have to be identified and job vacancies announced for the start of recruitment procedures (separate categories for civil servants, and support staff should be taken into consideration).

Upon availability of funds and the decision to start the establishment of the new structure available staff can simply be transferred to new positions, and additional/new staff that should have already gone through the recruitment procedure can be hired.

In cases where insufficient qualified personnel are available, education and training courses should be available in preparation for the recruitment procedures and actual contracting/appointments.

## **Facilities and equipment**

### **Facilities**

The Ministry of Defence and Joint Staff of Bosnia and Herzegovina, including an allocated Operations Centre, should be collocated. Collocation is understood as being in one building/facility, one compound with several buildings or possibly in different buildings in close walking distance. This will facilitate communications, co-ordination and co-operative working relationships.

Although collocation of the civilian secretariat of the Ministry, Joint Staff and Operations Centre is preferred, if a split is required due to space limitations, the Operations Centre should remain with the Joint Staff.

A facility in the capital next to other State-level institutions would be most appropriate. Current facilities occupied by the SCMM Secretariat and the Ministry of Defence of the Federation of Bosnia and Herzegovina are candidates

for co-locating the civilian secretariat of the Ministry, Joint Staff and Operations Centre.

In May 2003, the SCMM decided to provide adequate premises, equipment and staff for the SCMM Secretariat. The adopted plans for the SCMM Secretariat foresee accommodation in the upper two, fully renovated floors of a three floor building plus additional peripherals like cellars and surroundings with garages, etc., at Sarajevo, TRG Austrije, Bistrik. The renovation of the two floors included the installation of a network for modern information technology at costs of several hundred thousand KM. The RS Military Liaison Mission to the FBiH Ministry of Defence under Annex 1B, Article II of the Dayton Agreement, and the Liaison Office of the FBiH Ministry of Defence to the Canton of Sarajevo currently occupy the ground floor. If more space is required, the ground floor offers room for extension. Upon the build-up of the Joint Staff, the entities might decide to refrain from establishing Military Liaison Missions to each other, thus this space would become available. The Operations Centre could be situated in the basement, or in an adjacent building. Other accommodation may be needed, and is advised, for the FBiH Ministry of Defence Liaison Office to the Canton of Sarajevo, which currently fulfils administrative duties relating to conscription and other matters.

### ***Equipment***

Equipment in current structures comprises some high-quality office furniture and stand-alone information technology (IT) for the top management, with additional good standard office and IT equipment for some 15 staff. There is no telephone switchboard system, working Local Area Network (LAN), or Wide Area Network (WAN) due to missing workstations and external connections.

As a result of previous negotiations, the United States had offered to provide new office equipment and modern IT (telephone system and personal computer workstations for network configurations) for about the full size of the staff of some 90 people including some reserve. The equipment will be provided under foreign military sales conditions with delivery expected in three shipments after approval and contracting. The offer comprises costs of several hundred thousand KM.

A number of factors should be taken into account for the build-up of staff, such as providing modern IT, the supply of office equipment, development of basic standard operating procedures and policy documents for the standardisation policies of the Armed Forces of Bosnia and Herzegovina.

### ***Transition Management Office (TMO)***

Efficient management for co-ordinated implementation requires a relatively small, centrally directed and supervised management organisation with appropriate authority. The transition process requires a 'transition management office' (TMO). This TMO must enjoy the total confidence of, and access to, the highest leadership in Bosnia and Herzegovina. At the outset it should report to the Presidency of Bosnia and Herzegovina and have the authority to task major staff agencies dealing with all transition actions at State and entity levels. The TMO's role is to oversee the transition process from start to finish, identify choke points requiring resolution, and keep the leaders of Bosnia and Herzegovina informed on a regular basis. In this regard, the TMO should develop a detailed implementation plan to facilitate its work. Existing management structures should be used where possible. The implementation plan should be consistent with Euro-Atlantic standards, the Defence Reform Commission's Concept Paper, the proposed State-level Defence Law and the end-2003 Chain of Command diagram. When all decisions are taken, the TMO will be able to develop a detailed implementation plan to see the transition process through to completion.

The guiding principle of the implementation process is consistency with Euro-Atlantic standards. The new structures must reflect the competencies prescribed by the State-level Defence Law, particularly the supremacy of the State for matters of defence, the democratic civilian oversight of Armed Forces, and the interoperability and compatibility of defence structures throughout Bosnia and Herzegovina.

Implementation should be supervised using the Defence Reform Commission's consensus approach including State, entity and international community representation.

It is important to remember that full implementation will take several years and require adjustments along the way.

### ***Management Structure and Considerations***

The TMO structure may well be similar to that of the current Defence and Security Steering Group (DSSG). This should be co-chaired by an international community representative and a local personality who is an acknowledged expert of high integrity and expertise, and comprised of representatives from the international community and Bosnia and Herzegovina. The local co-chair should not necessarily be the State-level Minister of Defence as this may well place an undue burden of responsibility on this person and hinder him/her from ministerial duties.

The structure of the TMO could be broken down into task forces as necessary, and should include representatives from all constituent peoples from both State and entity levels.

When in session, the TMO could comprise the co-chairmen and two reporting Task Force representatives (one international, one local) for each of the task forces. The reporting representatives in turn would have their own network of contacts at both State and entity levels. The TMO could total 8-10 personnel. A small number of observers might be invited to attend monthly meetings.

Although a NATO office located in Sarajevo could be a welcome source of advice and assistance, a NATO representative assigned to Sarajevo as an integral part of the implementation effort would appear to be unnecessary. Nonetheless, a NATO representative could be invited to TMO meetings as an observer.

In anticipation of PfP membership, however, the State Government and the Ministry of Defence should plan for an enhanced military attaché presence in Brussels, as well as liaison officers to NATO Headquarters, the PfP cell at SHAPE, and AFSOUTH Headquarters at Naples. For matters more of a political nature, the Ministry of Foreign Affairs should establish its own linkages to NATO Headquarters. PfP membership will require the closest co-ordination possible between the Ministry of Defence and the Ministry of Foreign Affairs. It

is the responsibility of the State Government to ensure that all relevant ministries establish co-ordination procedures among themselves as well as linkages to NATO Headquarters.

Once the TMO is fully functioning, the international community participants should be phased out over time, and at that point, it would become the Transition Management Office of Bosnia and Herzegovina. The TMO would then be an integral part of the Ministry of Defence, reporting to the Minister.

Throughout the transition implementation process, the TMO must ensure that constant attention is paid to interoperability in its broadest sense. Interoperability should not be confined solely to communications systems, hardware and software etc., for a State command and control system between State and entity levels. Interoperability also means: mastery of the English language (NATO's common language); knowledge of Euro-Atlantic defence planning systems for national defence planning; and, knowledge of NATO terminology (acronyms, ranks and unit size) and defence planning systems in order to be prepared for participation in PfP and NATO exercises and peace support operations.

### ***Peace Support Operations***

The Commission recommends that Bosnia and Herzegovina should seek ways to contribute to international security, especially by early deployment of forces for peace support missions. Doing so would demonstrate a commitment to proceed with defence reforms even after membership in PfP, and would facilitate the process of developing common practices for the Armed Forces. One possibility in this regard is the establishment of a State-level Transport Unit for international peace support operations. On May 8, 2003, the SCMM confirmed earlier decisions for the creation of such a unit to participate in peace support operations, to be ready by October 2003. The Commission recommends that it should be established as soon as possible.

### ***Peace Support Operations Training Centre***

In May 2003, the SCMM decided to adopt the U.K. Ministry of Defence proposal for the establishment of a Peace Support Operations Training Centre

(PSOTC). The United Kingdom is also acting as lead nation for a consortium of partners willing to fund the establishment of facilities and to support the project with further funds, personnel and advice.

The Centre will offer three training courses per year on principles, procedures, planning and executing of international peace support operations. The courses will be designed for 40 captains and majors, approximately 30 from Bosnia and Herzegovina and 10 from other interested countries from among UN members. The courses will be taught and supported by an international faculty and staff, provided by partner states, Bosnia and Herzegovina and eventually other countries subject to additional consensus decisions on a case-by-case basis.

The Memorandum of Understanding between the U.K. Ministry of Defence, acting also on behalf of the partners, and Bosnia and Herzegovina is in the process of negotiation. The objective was to start construction of the new facility in summer 2003 with the first course offered in summer 2004. Due to the ongoing negotiations, construction will not start as planned. This will also delay the start of regular courses in the facility. The construction of the facility will take at least a full year.

The use of interim facilities does not offer a suitable environment for the use of the modern teaching/learning methods planned. It would also not be easy to justify or find the additional funds needed for additional interim mobile equipment. However, further delays may endanger the complete project due to legal and fiscal provisions on the side of the sponsors. The Defence Reform Commission therefore proposes:

- 1 Support any option for quick conclusion of the Memorandum of Understanding between Bosnia and Herzegovina and U.K. Ministry of Defence, and agreement on execution of courses so that the construction of the facility can start in early autumn.
- 2 Agree on a first course in an interim facility starting in autumn 2004 (mid-September 04) according to a review of options with OSCE Department of Security-Co-operation and the U.K. Project Co-ordinator.
- 3 Prepare plans to fully use the slots for envisaged Bosnia and Herzegovina course members.

- 4 Initiate decisions on contributions with a mix of academic/training and support staff according to the proposed Memorandum text.
- 5 Develop plans for the hand-over from the partners, about two to three years after the successful establishment of the Centre, to run the Centre under Bosnia and Herzegovina responsibility and leadership, preferably with an international staff.

Following most recent discussions with the new project co-ordinator, the partners are now prepared to start the programme in an interim facility in September 2004 in order not to lose more time. However, one of the prerequisites is that the negotiations will make progress so that construction of the facility can begin in autumn 2003.

### ***Transport Unit for International Peace Support Operations***

In May 2003, the SCMM confirmed the decisions made earlier for the creation of a Transport Unit from Bosnia and Herzegovina to participate in international peace support operations, to be ready in October 2003.

In June, the SCMM noted that a military officer from Bosnia and Herzegovina, rather than a foreign military officer, should be appointed as Commander of the Transport Unit for international peace support operations.

Bosnia and Herzegovina has made an offer to the U.S. Government to provide a Transport Unit, and the U.S. Government is assisting in establishing liaison with U.S. Central Command for deployment in the Polish Sector in Iraq.

The proposal for a PSO Transport Unit was generally supported, but there were concerns about the affordability of a standing, well-equipped and trained unit, funding of employment, and coverage of soldiers in cases of accidents/casualties. The provision of appropriate laws and regulations should be reviewed. Based on the experience of other countries, it is assumed that appropriate training, including language and doctrines of partners to be supported, would take about six months due to existing minimal preparations. Steps to elaborate include:

1. Appoint the Commander/Deputy Commander.

2. Fill the existing (personnel) structure(s).
3. Have a Working Group with Minister of Defence and entity Ministers of Defence/Army members negotiate training opportunities, funding etc.
4. Decide on employment, including logistics.
5. Train and prepare the unit for deployment.
6. Start with entity platoons.
7. Mix personnel after first or second rotation.
8. Decide on permanent peacetime station and command and control.
9. Decide on status of permanent State-level unit with appointments of trained officers, NCO and soldiers from entity Ministries of Defence due to their responsibility in the administrative chain of command.

### ***Demining Unit***

In May 2003, the Armed Forces of Bosnia and Herzegovina agreed to joint training for demining and in August 2003, SFOR proposed the formation of a Demining Unit by combining the existing demining teams from the entities. The combined unit could be ready by the end of 2003.

The existing demining teams provide 25-30 percent of the demining effort in Bosnia and Herzegovina, but are totally dependent on support from the international community. This support is sharply reducing and without a change in the financial status, armed forces demining will be unsustainable beyond the end of 2003. The cessation of armed forces demining could send a negative signal to the international community, thereby adversely affecting international support for other demining efforts. The resulting slowdown in demining would extend the time for rendering Bosnia and Herzegovina mine safe.

SFOR has proposed combining the entity demining units into one organization. This will send an important signal to the international community that the Armed Forces of Bosnia and Herzegovina are willing to work together to solve one of the country's greatest problems. Furthermore, deploying ele-

ments of this organization for peace support operations provides Bosnia and Herzegovina with a unique capability.

The following steps will be needed for the creation of the demining unit:

1. Appoint the Commander and key staff
2. Fill the existing structure.
3. Expand the existing demining Working Group to provide necessary support functions for pay and logistics.
4. Conduct training and develop standard operating procedures.
5. Decide on peacetime stations.

The Defence Reform Commission affirms the proposal that entity army demining units be combined into one unit for improved efficiency and effectiveness, which would provide Bosnia and Herzegovina with a unique capability for international peace support operations. The Commission believes that this provides an ideal opportunity to show to NATO and other organisations that Bosnia and Herzegovina is committed to defence reforms and would be a credible candidate to Partnership for Peace.

### ***Ceremonial Unit***

In May 2003, the SCMM confirmed a decision to establish, equip and train a Ceremonial Unit, to be ready by the end of 2003.

Although there is no specific military need for a Ceremonial Unit, the political value is high in terms of signals ranging from protocol aspects to enhanced tolerance and loyalty demonstrated by a mixed unit with members from all constituent peoples/citizens. Consensus on this sensitive issue would be a most positive step in terms of creating state symbols and ways to enhance tolerance and loyalty to the state. However, the Commission recognises that the Ceremonial Unit must be affordable.

Options should be reviewed to allocate secondary tasks to the unit for support functions in other areas, or to draw members for ceremonial functions from

support staff/units, which would be required to support the State Ministry for Defence and Joint Staff.

The following steps will be needed for the creation of the Ceremonial Unit:

1. Develop Book of Rules (with primary/secondary mission);
2. Decide on barracks/housing;
3. Appoint the Commander/Deputy Commander and Administration Staff;
4. Decide the structure of the unit, considering three options:
  - Decide on a permanent standing unit of mixed platoons/groups with personnel individually provided from Entity Ministries of Defence on request due to their responsibility in the administrative chain of command;
  - Decide on a permanent standing unit of platoons/groups provided as a matter of routine due to their responsibility in the administrative chain of command; or
  - Have the Ceremonial Unit rotate with the Chairman of the Presidency provided by the respective forces of the entities.
5. Decide on Commander/Deputy Commander with either a fixed two-to-three year tour, or rotating with Chairman of the Presidency of Bosnia and Herzegovina;
6. Have the unit equipped and trained, either as the responsibility of the State or at least with basic training and equipped from the entities and fully funded via the State budget;
7. Have the unit ready with first appearance at a prominent event.

### ***Transition Actions***

The following transition actions, as part of an outline plan, are illustrative and not comprehensive. The Defence Reform Commission recommends their development in further detail, i.e. issue sets and timelines, by the TMO, and

converted into a detailed implementation plan. The implementation plan should integrate these transition actions with on-going PfP road-map actions, while ensuring consistency with the Defence Reform Commission Concept Paper, the proposed State Defence Law, and the end-2003 Chain of Command diagram. Periodic updates will be required to maintain currency.

The Defence Reform Commission recommends steps be taken as follows, which are presented in list form without designated order of importance:

### **Suggested Transition Steps**

1. Establish Transition Management Structure
2. Establish BiH Parliamentary Security/Political Committee
3. Formalise BiH State & entity Parliamentary co-ordination
4. Pass state level defence legislation
5. Pass entity level defence legislation in the FBiH
6. Pass entity level defence legislation in RS
7. Establish State & entity Defence budget system
8. Establish State & entity Defence audit system
9. Minister of Defence full member of the Council of Ministers
10. Staff current SCMM Secretariat 50%
11. Staff training for NATO/PfP standards
12. Staff current SCMM Secretariat 100%
13. Develop Book of Rules for current BiH Joint Staff
14. Establish 2004 defence budget & guidance 05 – 07
15. Establish draft defence budget 2005 – 07
16. Joint Staff personnel training for NATO/PfP standards
17. Design future State "Defence Ministry" Staff
18. Design future BiH Joint Staff
19. Pass Book of Rules for future Ministry of Defence Staff
20. Pass Book of Rules for future BiH Joint Staff
21. Appoint Chief of Staff, Deputy Chiefs of BiH Joint Staff, and Commander of Operational Command
22. Transfer SCMM Secretariat/recruit Ministry of Defence staff
23. Transfer SCMM Secretariat/recruit BiH Joint Staff

24. Transfer/recruit Operations Centre staff
25. Establish State level C4 system
26. Decide on Military Intelligence Service
27. Implement Decisions on Military Intelligence Service
28. Decide on interim collocation of Ministry of Defence
29. Decide on future collocation of Ministry of Defence
30. Prepare interim Ministry of Defence infrastructure
31. Decide on design, location, funding of future Ministry of Defence
32. Restructure & downsize entity MoDs
33. Restructure & downsize VRS General Staff/VFBiH Joint Command
34. Restructure & downsize Armed Forces
35. Reduce Armed Forces infrastructure including ASS & WSS
36. Decide on military education/national defence college
37. Design NATO/PfP interoperability training Plan
38. Execute NATO/PfP interoperability training
39. Review NATO/PfP hardware interoperability
40. Appoint staff for EAPC/PfP, NATO, Brussels
41. Appoint staff for PfP Cell, SHAPE
42. Appoint liaison staff for regional NATO HQ
43. Provide premises for NATO Office, Sarajevo
44. Fill and train PSO Transport Unit
45. Establish, equip and train Ceremonial Unit
46. Construction of PSO Training Centre (PSOTC)
47. Start and run training courses, PSOTC

## **9.2. Implementation of Strengthened Parliamentary and Budgetary Oversight**

Implementing Defence Reform Commission recommendations for improved parliamentary and budgetary oversight of defence will require both individual and co-ordinated actions by State and entity parliaments and Ministries of Defence in 2004 and beyond.

### ***State Level Actions***

At the State level, both the new Ministry of Defence and Parliamentary Assembly will be developing new competencies and engaging new staffs. Their activities will intersect in the parliamentary arena as senior civilian and military officials are nominated for approval to their new positions, as the new parliamentary commission begins oversight of the military establishment, and both the Ministry of Defence and parliament prepare for submission and review of the overall defence budget for 2005. Ministry of Defence and parliamentary officials and staffs will need to co-ordinate these activities.

The establishment of a Joint Defence and Security Commission in the State Parliamentary Assembly is the central Defence Reform Commission recommendation for improved parliamentary oversight. The required actions associated with this new commission are outlined below.

### ***Establish a Joint Defence & Security Commission in Parliamentary Assembly of Bosnia and Herzegovina***

Required actions:

1. Approve charter in Rules of Procedure and assign members.
2. Assign responsibility for follow-on actions.
3. Recruit/Engage permanent staff.
4. Training in defence oversight:
  - Member/staff visits to selected European parliamentary committees on defence;

- On-site training/assistance.
5. Develop plans/procedures for:
    - Review/approval of Minister and deputies, and General officers;
    - Oversight and budget reviews;
    - Co-ordination with public auditors;
    - Safe-guarding sensitive information.
  6. Build-up Commission information database on the Armed Forces of Bosnia and Herzegovina (including a professional library).
  7. Participate in discussion with Ministries of Defence and other parliamentary commissions toward development of new systems and procedures for defence planning and budgeting.

**Timeline of Important events:**

Oct - Dec 03:	Review of the Defence Reform Commission's Recommendations, including the proposed Defence Law of Bosnia and Herzegovina
January 04:	Support parliamentary review/approval of nominations for new Minister of Defence and Chief of Staff
Apr - May 04:	Conduct oversight of 2004 budget execution and reform implementation
Jun - Sept 04:	Prepare for review of overall budget for 2005
Sept - Nov 04:	Review overall budget, approve budget for State institutions

***Entity-Level Actions***

Entity-level actions to strengthen parliamentary oversight would have a similar content and timeline as outlined above, except that parliamentary commissions are already in place and entity parliamentary approval of State-level civilian officials and general officers is not necessary. Entity Ministries of Defence and parliamentary commissions will also need to participate in discussions with their State counterparts toward development of new systems and procedures for defence planning, budgeting, and oversight.

***Common Action: Establishment of Ministry of Defence Parliamentary Liaisons***

Ministries of defence should support the process of parliamentary oversight by creating a liaison office within the parliaments for the purpose of co-ordinating mutual requirements for information. Parliamentary liaison offices should report to the office of the Minister of Defence.

***Co-ordinated Actions***

Both State and entity Ministries of Defence and parliamentary commissions will be involved in new processes aimed at closer co-ordination and oversight of defence plans and budgets. The details of these processes must be developed so that the roles and functions of respective ministry and parliamentary staffs can be determined in a regular, annual cycle of activity understood by all participants. In addition, it is critical that ministry and parliamentary staffs use the same set of data for their work, including categories suitable for both defence planning and budgeting purposes. All these staffs share a common need to co-ordinate as institutions move towards the preparation, review, and approval of the overall defence budget for 2005.

A series of workshops, composed of State and entity Ministry of Defence and parliamentary staffs and facilitated by international experts, is recommended to co-ordinate these procedures. During 2004, these workshops would establish new procedures for co-ordination of the overall defence budget and identify uniform categories for defence planning and budgeting. Later, regular defence conferences would support structured co-ordination of State and entity defence business, for Ministries of Defence as well as parliamentary commissions. A notional outline of workshop or conference issues and objectives follows:

**Defence Planning and Co-ordination Workshops (4)**

1. Determine the content, schedule, and procedures for State-level co-ordination of entity plans/budgets for 2005 (requires leadership participation).

Objective: An agreed, annual cycle of activity describing roles and functions of all parties.

2. Agree/establish common budget categories for planning and budgeting (requires military and technical group).

Objective: Identify key elements/requirements for a defence resource management system [e.g. PC based, integration with budget execution and Financial Information Management System (FIMS)].

3. Discuss issues in execution of 2004 defence budget.

Objective: Identify policy, programme and budget issues for preparation of overall defence budget for 2005.

4. Resolve key 2005 defence programme/budget issues, and discuss preparations for briefings to Ministry of Finance and other government officials.

On-going Semi-annual Ministry of Defence Conferences to:

- Review budget execution issues.
- Discuss/co-ordinate State and entity plans/budgets for the next year.
- Co-ordinate preparation for briefings to State and entity government leaders.

On-going Semi-annual Conferences for Parliamentary co-chairs, and staff to:

- Discuss/co-ordinate plans/status of oversight hearings and audit/inspection reports.

***Introduction of a Common Defence Resource Management System***

A simple defence resource management system appropriate to Bosnia and Herzegovina's needs should be established across Ministry of Defence and parliamentary staffs to facilitate development and use of a common information database. The system should be suitable to the defence planning and budgeting needs of civilian and military staffs and be compatible with financial systems such as FIMS. Such a system would facilitate preparation of uniform summaries of defence activities and expenditures useful to Bosnia and Herzegovina and NATO leadership. It would also support improvement in transpar-

ency and provide parliaments and their staffs the level of budget detail necessary for effective oversight.

Introduction of such a system will involve an assessment of current systems and needs, procurement of appropriate PC-based hardware and software, installation, several months of sustained on-site training (including training for system support).

### **9.3. Assessment of Financial Effects – Costs and Savings**

The impact of defence reform on the defence budget of Bosnia and Herzegovina remains difficult to predict due to two competing trends. Continued downsizing and elimination of excess personnel, equipment, facilities and redundant headquarters would clearly produce savings. At the same time, Bosnia and Herzegovina has substantially under-funded areas such as training, maintenance, and logistics. Few if any investments are being made in modern equipment or facilities, and new capabilities will need to be developed for Bosnia and Herzegovina to become a contributing partner in PfP and NATO. Together, these trends will lead to a significant restructuring of the armed forces and the overall defence budget of Bosnia and Herzegovina. Savings associated with reducing the size of the armed forces could easily be offset by the costs of reshaping and improving its overall capabilities.

Looking to the future, tension will continue to exist between the goals of reducing defence expenditures to sustainable levels consistent with its economic capacity, and accelerating the integration of Bosnia and Herzegovina as a credible partner in Euro-Atlantic security structures. Especially in the near-term, the international community will need to make judgements about the level, focus, and duration of financial, technical, or materiel support it provides to the Armed Forces of Bosnia and Herzegovina. Such judgements will likely determine how these two goals are balanced: how rapidly defence expenditures come down and how rapidly military capabilities are improved.

This section outlines the initial estimated costs and savings associated with the defence reforms recommended elsewhere in this report. The two broad areas of reform include the creation of a new Ministry of Defence, Joint Staff and other capabilities at the State level, and the restructuring of entity armed

forces. The Defence Reform Commission is aware that proposals exist for other State-level initiatives or capabilities beyond those listed here, but has limited itself to those matters specifically addressed by the Commission. In addition, no assumptions are made concerning transfers from entity resources or outside funding.

Defence Reform Commission staff prepared the estimates based on data provided by the OSCE, local Ministries of Defence and others. They are listed in local currency to provide easy reference in relation to the overall defence budget of Bosnia and Herzegovina, which (including the Federation of Bosnia and Herzegovina and Republika Srpska expenditures) totals approximately 352 million KM in 2003. It is assumed that costs and savings would apply in 2004. One-time and annual costs are noted as such.

### **Estimated Costs and Savings of Defence Reform Commission Recommendations**

**(KM 000s)**

#### ***Manning of the State-level Ministry of Defence and Joint Staff* 4,349**

Estimate includes the personnel and other costs for the Ministry of Defence staff (100 civilians), the Joint Staff and Operational Command (50 military), and staff of the operations centre (10 military). These costs include salaries, taxes, and benefits, plus expenses for travel, transportation, office equipment and other overheads.

#### ***Ministry of Defense Facility Renovation, Lease and Operation* 3,816**

Estimate is based on renovation and use of the existing SCMM Secretariat building, and co-location of the Ministry of Defence, Joint Staff, and Operations Centre. Includes the initial cost of renovation and rewiring the ground floor and basement (1,000 KM), and the annual cost of leasing, utilities and building maintenance (2,816 KM).

**Operations Centre**

**5,172**

Estimated costs of a communication system to support State-level command and control, including connectivity between the Presidency, Ministry of Defence and Joint Staff facility, and operational units within Bosnia and Herzegovina and abroad.

**Stand Up of State-Level Units and Ministry of Defence**

**Systems/Activities**

**10,554**

Estimate covers creation of a ceremonial military unit to support State functions (259) and the first-year costs of demining equipment upgrades (4,752) to accompany the transfer of entity demining units to the State level. Equipment upgrades would assist in accelerating demining activities within Bosnia and Herzegovina and over time would provide demining capabilities that could potentially be used for international peace support operations. The Commission endorses this capability regardless of whether it operates within the Ministry of Defence.

The stand up of a Primary Military Education capability (1,600), and introduction of personnel and resource management systems (450 x 2) would facilitate Ministry of Defence development and management of common education, personnel, and budgeting systems.

Membership in PfP would be supported by a PfP Information Management System in the Ministry of Defence (172); and an additional three attaches (one each in Brussels, Mons, and Naples) (540). Establishment of a Peace Support Operations Training Centre (at initial estimated costs of 1,680) would facilitate the transition to new military missions in which NATO plays an important role.

**Reduction of Entity Forces from ~19,500 to 12,000**

**-77,063**

A reduction of 7,500 professional soldiers would include 5,000 from the Army of the Federation of Bosnia and Herzegovina and 2,500 from the Army of Republika Srpska. The estimate assumes these reductions would take place by the end of 2003, and that the annual cost of each soldier (16,000 KM and

9,100 KM respectively) is actually budgeted for only nine months. If so, annual defence budget savings beginning in January 2004 would total 60 million KM for the Federation of Bosnia and Herzegovina and approximately 17 million KM for Republika Srpska.

### ***Severance and Resettlement Costs for 7,500 Professional Soldiers***

**64,700**

This estimate assumes that each of the 7,500 soldiers separated from entity armies would receive severance pay of 7,000 KM, for a total cost of 52,5 million KM. [Assuming severance costs of 7,000 KM per soldier represents the mid-point within the 4,000-10,000 range of options currently under discussion.]

In addition, the estimate assumes soldiers would be granted transitional assistance for resettlement under a programme such as that administered by the International Organization for Migration (IOM). Approximately 62 percent of eligible soldiers applied for resettlement assistance in the 2001 discharges. For this estimate, it is assumed that 62 percent of 7,500 soldiers would apply for assistance, and that the IOM programme would provide approximately 2,580 KM per soldier, for a total cost of 12,2 million KM.

[The cost of outstanding and unfunded applications remaining from 2001, not assumed here, would increase this estimate by an additional 17,6 million KM.]

Severance pay and transitional assistance are one-time costs.

### ***Reduce Conscription by 50 Percent and Limit Service to Four Months***

**-36,500**

The Defence Policy of Bosnia and Herzegovina calls for an estimated 23,000 trained conscripts per year (16,8 in the Federation of Bosnia and Herzegovina and 6,2 in Republika Srpska) each of whom serves for six months. The annual cost of this programme including administration totals approximately 71 million KM (56 million KM and 15 million KM respectively). Based on these assumptions, reducing the annual goal to less than 12,000 and cutting the term

of service to four months would result in budget savings of 27 million in the Federation of Bosnia and Herzegovina and 8,5 million in Republika Srpska, for a total of 36,5 million KM. However, accurate figures have been difficult to find since the entities are not budgeting for the full amount, have not been meeting annual goals, and have already implemented programmes for early release. The above estimate, therefore, may overstate the potential savings from proposed reductions in conscription.

***Reduce Entity MoD Staffs by 25 Percent Not Later than June 2004***

***-1,800***

Entity Ministry of Defence staffs total approximately 1919 personnel (1328 in the Federation of Bosnia and Herzegovina, 588 in the Republika Srpska). The agreed 25 percent reduction would thus result in reductions of 332 and 147 personnel, respectively. The estimate assumes an average annual per person cost of 21,800 KM for 479 personnel, with savings applied to only six months in 2004. This would result in a six-month saving of 5,2 million KM, which is offset by one-time severance costs of 3,4 million KM (479 x 7000 KM). The net saving is thus 1,8 million KM in 2004. Future cost avoidance, however, would amount to 10,4 million KM per year.

***Reduce Reserves by 75 Percent (from 240,000 to 60,000)***

***-30,500***

OSCE estimates that the costs of personnel, training and administration for a force of 240,000 reservists total 37,3 million KM for the Federation of Bosnia and Herzegovina and 14,9 million for Republika Srpska. A 75 percent reduction in the size of reserve forces would yield savings of 22,4 million KM in the Federation of Bosnia and Herzegovina and 8,1 million in Republika Srpska, for a total of 30,5 million KM. As with conscripts, however, it is not clear that a force of 240,000 active reservists currently exists or is receiving regular training, or that current defence budgets reflect the estimated costs of support. The above estimate, therefore, may overstate the potential savings from proposed reductions in reserves.

<b>Summary of Estimated 2004 Costs and Savings of DRC Recommendations [in KM 000s]</b>		
<u>Establish BiH MOD &amp; State Level Capabilities</u>		23,891
Manning MOD, Joint Staff, Operations Centre	4,349	
MOD Facility Renovation, Lease, Operation	3,816	
Operations Centre	5,172	
Stand-Up State Units / MOD Activities	10,554	
<u>Restructure Entity Armed Forces</u>		-81,163
Downsizing to 12,000 Total Forces (7,500 reduction)	-77,063	
Severance Pay & Transition Asst. (7,500 soldiers)	64,700	
Reduce Conscription by 50%, Limit Service to 4 Mos.	-36,500 *	
Reduce MOD Staffs by 25% Not Later than June 04	-5,200	
Severance Pay for MOD Staff	3,400	
Reduce Reserves by 75% from 240,000 to 60,000	-30,500 *	
* Estimate of savings may be overstated		

The following currency rates were used: USD=1.0; KM=0.58; Euro=1.16

## DECISION OF THE HIGH REPRESENTATIVE

n. 139/03

***In the exercise*** of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on Civilian Implementation of the Peace Settlement; and considering in particular Article II.1(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

***Recalling*** paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

***Mindful*** of III.5(a) of the said Constitution, which stipulates that “Bosnia and Herzegovina shall assume responsibility for”, inter alia, matters “necessary to preserve the sovereignty, territorial integrity, political independence and international personality of Bosnia and Herzegovina”;

***Considering*** Article V.3(a) of the Constitution of Bosnia and Herzegovina, pursuant to which the Presidency of Bosnia and Herzegovina shall have responsibility for conducting the foreign policy of Bosnia and Herzegovina;

***Further considering*** Article V.3(c) of the said Constitution, which provides that the Presidency of Bosnia and Herzegovina shall have responsibility for representing Bosnia and Herzegovina in international and European organizations and institutions;

***Recalling*** Article V.5(a) of the said Constitution, which provides, inter alia, that “(e)ach member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces” and that “All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina”;

***Considering*** Article V.5(b) of the said Constitution, which provides that “(t)he members of the Presidency shall select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina”;

***Mindful*** of the undertakings of Bosnia and Herzegovina under the Organization for Security and Co-operation in Europe Code of Conduct on Politico-Military Aspects of

Security, including undertakings related to democratic political control of military forces;

**Noting** the Communiqué by which the Steering Board of the Peace Implementation Council of 28 March 2003, in reference to the sale of weapons to Iraq by the company VZ Orao, “underlined that appropriate measures, taking into consideration the issues of systemic reform and political responsibility, were essential to prevent such a situation occurring again” and “expected full cooperation from all relevant authorities in BiH in this matter, in keeping with their obligations under the Dayton-Paris Peace Accords and as a member of the United Nations. The Steering Board also stressed the need for defence reform in its own right, in order to resolve issues at variance with the BiH Constitution and to prepare BiH for integration into Euro-Atlantic structures”;

**Recalling** the defense pledges made by the authorities of Bosnia and Herzegovina on 28 January 2003 in the presence of the Political Directors of the Peace Implementation Council Steering Board, in particular the pledges to “implement defence reforms that will hasten BiH’s integration into the European family, and make the country and the wider region more stable in the long term” and to “strengthen those State-level institutions which exercise civilian command and control over the Armed Forces in BiH, in accordance with the highest international standards”.

Having considered, noted and borne in mind all the matters aforesaid, the High Representative hereby issues the following:

## **DECISION**

### **Establishing the Defense Reform Commission**

#### **Article 1**

The Defense Reform Commission of Bosnia and Herzegovina (hereinafter “the Commission”), which is hereby established, shall be responsible, as directed by the Chairman of the said Commission, for drafting and amending such legislation, as may hereafter be required to be enacted by the Parliamentary Assembly of Bosnia and Herzegovina and by the legislatures of the Federation of Bosnia and Herzegovina, and of the Republika Srpska respectively, in the fields hereinafter identified. The Commission shall also be responsible for drafting regulations as it deems necessary in order to provide for implementation of such legislation.

#### **Article 2**

The Commission shall examine the legal measures necessary to reform defense structures in Bosnia and Herzegovina, identify constitutional and legislative provisions at variance with such requirements and propose legislation and other legal instruments in accordance with the following principles:

- 1) Defense structures in Bosnia and Herzegovina, and the legislation establishing such structures, must be consistent with Euro-Atlantic

standards, in order to ensure, at a minimum, the credible candidacy of Bosnia and Herzegovina for entry into the Partnership for Peace program.

- 2) Defense structures in Bosnia and Herzegovina, and the legislation establishing such structures, must respect and be fully consistent with the commitments undertaken by Bosnia and Herzegovina within the politico-military dimension of the OSCE.
- 3) Democratic civil oversight of armed forces in Bosnia and Herzegovina must be established at both the State and Entity level.
- 4) Command and control at the State level must be guaranteed by, inter alia,
  - a. ensuring that the Presidency of Bosnia and Herzegovina is able to carry out fully its responsibility for protecting the sovereignty and territorial integrity of Bosnia;
  - b. ensuring that the Presidency of Bosnia and Herzegovina has full responsibility for representing Bosnia and Herzegovina in international and European organizations and institutions in connection with defense matters;
  - c. ensuring that State authorities have the sole authority to deploy internationally the Armed Forces in Bosnia and Herzegovina (e.g., in contribution to Peace Support Operations);
  - d. providing for the transparency of all defense structures in Bosnia and Herzegovina;
  - e. ensuring that relevant State institutions are able to exercise oversight over defense structures throughout Bosnia and Herzegovina;
  - f. ensuring that safeguards are instituted to provide for full compliance with the following clauses in Article V.5(a):

“Neither Entity shall threaten or use force against the other Entity” and

“All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina”.
- 5) The interoperability of defense structures throughout Bosnia and Herzegovina must be ensured.
- 6) Funding for defense structures in Bosnia and Herzegovina must be within the fiscal limits established by political authorities through the democratic process.

### **Article 3**

In accordance with the principles outlined in Article 2, the Commission shall, inter alia, prepare:

1. State-level legislation, including a State Law on Defense;
2. Amendments to the Constitutions of the Entities; and
3. Entity level legislation, including amendment to legislation.

### **Article 4**

The Commission shall be composed of a maximum of twelve members, one of whom shall be appointed by the High Representative to serve as Chairman.

The Secretary-General of the SCMM and the Deputy Secretary-Generals of the SCMM shall be members of the Commission.

The President of Republika Srpska and the President of the Federation of Bosnia and Herzegovina shall each appoint two civilian representatives to the Commission. One representative from each Entity shall be the Entity Minister of Defense.

The High Representative, in his capacity as European Union Special Representative, shall designate a member to the Commission from among his staff.

The North Atlantic Treaty Organization (NATO), the Stabilization Force (SFOR), and the Organization for Security and Co-operation in Europe (OSCE) shall each be invited to appoint one representative to the Commission.

### **Article 5**

The United States, the Presidency of the European Union, Turkey as representative of the Organisation of Islamic Conference and the Russian Federation may each appoint a permanent observer to the Commission.

The Chairman may also call for experts to provide expertise and evidence at meetings of the Commission, as s/he deems necessary for the fulfillment of the mandate of the Commission as provided for in this Decision.

### **Article 6**

Appointments to the Commission shall be confirmed by the High Representative.

### **Article 7**

The Chairman shall be responsible for directing the work of the Commission. He shall prepare a schedule of work and working procedures, as well as call meetings of the Commission, which may be held as required at locations throughout Bosnia and Herzegovina. No specific quorum shall be required in order to hold a meeting of the Commission.

### **Article 8**

The Chairman may call for the formation of sub-working groups as s/he deems necessary for the fulfillment of the mandate of the Commission as provided for in this Decision.

### **Article 9**

The Commission shall have such support staff and technical assistance as may hereinafter be determined.

### **Article 10**

This Decision shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 8 May 2003.

A handwritten signature in black ink, appearing to read 'Paddy Ashdown', with a horizontal line drawn underneath it.

Paddy Ashdown  
High Representative



SECRETARY GENERAL  
LE SECRÉTAIRE GÉNÉRAL  
THE RT. HON.  
LORD ROBERTSON OF PORT ELLEN

SG(2002)1215

11 November 2002

*Dear President's family, Coric, Pihic,*

I would like to congratulate you on your election to the Presidency of Bosnia and Herzegovina. I wish you every success and pledge NATO's and my continuing support to your work.

In my time as Secretary General I have seen Bosnia and Herzegovina take great strides forward. But there is still a great deal to be done if your country is to become a stable, modern and self-sufficient state within the Euro-Atlantic community. The recent discovery that weapons technology has been exported from BiH to Iraq in contravention of the United Nations Security Council resolutions and your obligations under the Dayton Peace Accord is a stark reminder that more progress is urgently needed, particularly in strengthening governmental structures at the state level. The Orao affair demonstrated that your defence institutions have little accountability at the level of the state where such authority should rest. This issue should be addressed without delay.

In July 2001, in response to a firm assertion by your predecessors of their desire to move BiH towards NATO, I set out the areas where progress was needed before membership of BiH in Partnership for Peace (PfP) could be considered. I am sure these areas are familiar to you. Although not a checklist for PfP membership, they represent key areas where your country must make changes to join PfP.

Two of these measures will be of particular importance to NATO nations: an effective and credible state level command and control structure for your armed forces, and the fulfilment of Bosnia and Herzegovina's obligations to cooperate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY), in particular to detain and turn over persons indicted for war crimes to the Tribunal.

In light of recent events I would like to focus on the first of these issues. Your predecessors made good progress towards establishing a stronger BiH defence identity. I congratulated them for taking the decisions to reorganize the Standing Committee on Military Matters (SCMM), and to create a strengthened Secretariat, with executive authority, headed by a Secretary General. These decisions should be implemented at once.

However, these measures only represent one step toward the creation of a state level command and control structure. Enhanced co-ordination mechanisms are not enough to satisfy NATO nations that the centre of gravity in defence has shifted decisively from the Entities to the State. For this you will require a state level Ministry for Military Matters and General Staff. In the immediate term, I regard the enhanced role of the Secretary General of the SCMM as vital. As the leading representative for defence matters at state level in BiH, the Secretary General should command Ministerial rank. He must also be accorded the powers and authority required to shape and lead the reform process, and to carry out his other responsibilities. He must be supported by an appropriate staff structure to ensure that the legal orders and directives of your national command authorities are carried out.

Subsequently, I would encourage you to use the ongoing political transition, and the lessons learned from the Orao affair, to build quickly on the positive changes you have already set in motion in your defence structure to transform the new state level defence executive bodies into a state level Ministry for Military Matters and General Staff, and to give the Minister for Military Matters a seat on the Council of Ministers. This would give an important signal to the International Community that you take active measures to transform BiH into a modern European democracy.

Apart from this key area of state level command and control, the other measures I have previously highlighted are also of great importance to your country as you move towards PfP. To this end I have asked the Director of the NATO Balkans Task Force to provide more detail on them to the Secretary General of the SCMM.

Again I congratulate you on your new appointments and wish you all the best in facing the many challenges before you. I look forward to the day when you will join the Partnership for Peace and when BiH will take its rightful place within the European family of nations.

I am copying this letter to Lord Ashdown, Lieutenant General Ward, Ambassador Klein and Ambassador Beecroft.

best warm  
and wishes  
Yours sincerely,  
John G. S. Smith

Presidents Sarovic, Covic and Tihic  
Bosnia and Herzegovina Presidency  
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OSCE  
Organization for Security and Co-operation in Europe

**CODE OF CONDUCT ON POLITICO-MILITARY**

**ASPECTS OF SECURITY**

Budapest, 03 December 1994

Program for immediate action of the series, number 7

Note: This document was adopted at the 91<sup>st</sup> meeting of Special Committee of  
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## **CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY**

### **PREAMBLE**

The participating States of the Conference on Security and Co-operation in Europe (CSCE), Recognizing the need to enhance security co-operation, including through the further encouragement of norms of responsible and co-operative behaviour in the field of security,

Confirming that nothing in this Code diminishes the validity and applicability of the purposes and principles of the Charter of the United Nations or of other provisions of international law,

Reaffirming the undiminished validity of the guiding principles and common values of the Helsinki Final Act, the Charter of Paris and the Helsinki Document 1992, embodying responsibilities of States towards each other and of governments towards their people, as well as the validity of other CSCE commitments,

Have adopted the following Code of Conduct on politico-military aspects of security:

#### **I**

1. The participating States emphasize that the full respect for all CSCE principles embodied in the Helsinki Final Act and the implementation in good faith of all commitments undertaken in the CSCE are of fundamental importance for stability and security, and consequently constitute a matter of direct and legitimate concern to all of them.
2. The participating States confirm the continuing validity of their comprehensive concept of security, as initiated in the Final Act, which relates the maintenance of peace to the respect for human rights and fundamental freedoms. It links economic and environmental co-operation with peaceful inter-State relations.
3. They remain convinced that security is indivisible and that the security of each of them is inseparably linked to the security of all others. They will not strengthen their security at the expense of the security of other States. They will pursue their own security interests in conformity with the common effort to strengthen security and stability in the CSCE area and beyond.
4. Reaffirming their respect for each other's sovereign equality and individuality as well as the rights inherent in and encompassed by its sovereignty, the participating States will base their mutual security relations upon a co-operative approach. They emphasize in this regard the key role of the CSCE. They will continue to develop complementary and mutually reinforcing institutions that include European and transatlantic organizations, multilateral and bilateral undertakings and various forms of regional and subregional co-operation. The participating States will co-operate in ensuring that all such security arrangements are in harmony with CSCE principles and commitments under this Code.
5. They are determined to act in solidarity if CSCE norms and commitments are violated and to facilitate concerted responses to security challenges that they may face as a result. They will consult promptly, in conformity with their CSCE responsibilities, with a participating State seeking assistance in realizing its individual or collective self-defence. They will consider jointly the nature of the threat and actions that may be required in defence of their common values.

6. The participating States will not support terrorist acts in any way and will take appropriate measures to prevent and combat terrorism in all its forms. They will co-operate fully in combating the threat of terrorist activities through implementation of international instruments and commitments they agree upon in this respect. They will, in particular, take steps to fulfil the requirements of international agreements by which they are bound to prosecute or extradite terrorists.

7. The participating States recall that the principles of the Helsinki Final Act are all of primary significance and, accordingly, that they will be equally and unreservedly applied, each of them being interpreted taking into account the others.

8. The participating States will not provide assistance to or support States that are in violation of their obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Charter of the United Nations and with the Declaration on Principles Guiding Relations between Participating States contained in the Helsinki Final Act.

#### IV

9. The participating States reaffirm the inherent right, as recognized in the Charter of the United Nations, of individual and collective self-defence.

10. Each participating State, bearing in mind the legitimate security concerns of other States, is free to determine its security interests itself on the basis of sovereign equality and has the right freely to choose its own security arrangements, in accordance with international law and with commitments to CSCE principles and objectives.

11. The participating States each have the sovereign right to belong or not to belong to international organizations, and to be or not to be a party to bilateral or multilateral treaties, including treaties of alliance; they also have the right to neutrality. Each has the right to change its status in this respect, subject to relevant agreements and procedures. Each will respect the rights of all others in this regard.

12. Each participating State will maintain only such military capabilities as are commensurate with individual or collective legitimate security needs, taking into account its obligations under international law.

13. Each participating State will determine its military capabilities on the basis of national democratic procedures, bearing in mind the legitimate security concerns of other States as well as the need to contribute to international security and stability. No participating State will attempt to impose military domination over any other participating State.

14. A participating State may station its armed forces on the territory of another participating State in accordance with their freely negotiated agreement as well as in accordance with international law.

15. The participating States will implement in good faith each of their commitments in the field of arms control, disarmament and confidence- and security-building as an important element of their indivisible security.

16. With a view to enhancing security and stability in the CSCE area, the participating States reaffirm their commitment to pursue arms control, disarmament and confidence- and security-building measures.

#### VI

17. The participating States commit themselves to co-operate, including through development of sound economic and environmental conditions, to counter tensions that may

lead to conflict. The sources of such tensions include violations of human rights and fundamental freedoms and of other commitments in the human dimension; manifestations of aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism also endanger peace and security.

18. The participating States stress the importance both of early identification of potential conflicts and of their joint efforts in the field of conflict prevention, crisis management and peaceful settlement of disputes.

19. In the event of armed conflict, they will seek to facilitate the effective cessation of hostilities and seek to create conditions favourable to the political solution of the conflict. They will co-operate in support of humanitarian assistance to alleviate suffering among the civilian population, including facilitating the movement of personnel and resources dedicated to such tasks.

## VII

20. The participating States consider the democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police to be an indispensable element of stability and security. They will further the integration of their armed forces with civil society as an important expression of democracy.

21. Each participating State will at all times provide for and maintain effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. Each participating State will provide controls to ensure that such authorities fulfil their constitutional and legal responsibilities. They will clearly define the roles and missions of such forces and their obligation to act solely within the constitutional framework.

22. Each participating State will provide for its legislative approval of defence expenditures. Each participating State will, with due regard to national security requirements, exercise restraint in its military expenditures and provide for transparency and public access to information related to the armed forces.

23. Each participating State, while providing for the individual service member's exercise of his or her civil rights, will ensure that its armed forces as such are politically neutral.

24. Each participating State will provide and maintain measures to guard against accidental or unauthorized use of military means.

25. The participating States will not tolerate or support forces that are not accountable to or controlled by their constitutionally established authorities. If a participating State is unable to exercise its authority over such forces, it may seek consultations within the CSCE to consider steps to be taken.

26. Each participating State will ensure that in accordance with its international commitments its paramilitary forces refrain from the acquisition of combat mission capabilities in excess of those for which they were established.

27. Each participating State will ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms.

28. The participating States will reflect in their laws or other relevant documents the rights and duties of armed forces personnel. They will consider introducing exemptions from or alternatives to military service.

29. The participating States will make widely available in their respective countries the international humanitarian law of war. They will reflect, in accordance with national practice, their commitments in this field in their military training programmes and regulations.

30. Each participating State will instruct its armed forces personnel in international humanitarian law, rules, conventions and commitments governing armed conflict and will ensure that such personnel are aware that they are individually accountable under national and international law for their actions.

31. The participating States will ensure that armed forces personnel vested with command authority exercise it in accordance with relevant national as well as international law and are made aware that they can be held individually accountable under those laws for the unlawful exercise of such authority and that orders contrary to national and international law must not be given. The responsibility of superiors does not exempt subordinates from any of their individual responsibilities.

32. Each participating State will ensure that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in CSCE documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service.

33. Each participating State will provide appropriate legal and administrative procedures to protect the rights of all its forces personnel.

34. Each participating State will ensure that its armed forces are, in peace and in war, commanded, manned, trained and equipped in ways that are consistent with the provisions of international law and its respective obligations and commitments related to the use of armed forces in armed conflict, including as applicable the Hague Conventions of 1907 and 1954, the Geneva Conventions of 1949 and the 1977 Protocols Additional thereto, as well as the 1980 Convention on the Use of Certain Conventional Weapons.

35. Each participating State will ensure that its defence policy and doctrine are consistent with international law related to the use of armed forces, including in armed conflict, and the relevant commitments of this Code.

36. Each participating State will ensure that any decision to assign its armed forces to internal security missions is arrived at in conformity with constitutional procedures. Such decisions will prescribe the armed forces' missions, ensuring that they will be performed under the effective control of constitutionally established authorities and subject to the rule of law. If recourse to force cannot be avoided in performing internal security missions, each participating State will ensure that its use must be commensurate with the needs for enforcement. The armed forces will take due care to avoid injury to civilians or their property.

37. The participating States will not use armed forces to limit the peaceful and lawful exercise of their human and civil rights by persons as individuals or as representatives of groups nor to deprive them of their national, religious, cultural, linguistic or ethnic identity.

## **IX**

38. Each participating State is responsible for implementation of this Code. If requested, a participating State will provide appropriate clarification regarding its implementation of the Code. Appropriate CSCE bodies, mechanisms and procedures will be used to assess, review and improve if necessary the implementation of this Code.

39. The provisions adopted in this Code of Conduct are politically binding. Accordingly, this Code is not eligible for registration under Article 102 of the Charter of the United

Nations. This Code will come into effect on 1 January 1995.

40. Nothing in this Code alters the nature and content of the commitments undertaken in other CSCE documents.

41. The participating States will seek to ensure that their relevant internal documents and procedures or, where appropriate, legal instruments reflect the commitments made in this Code.

42. The text of the Code will be published in each participating State, which will disseminate it and make it known as widely as possible.

# **DEFENCE TARGETS OF BIH - MISSION AND PLEDGES**

## **A Message to the People of Bosnia and Herzegovina**

The citizens of Bosnia and Herzegovina want to live in a peaceful and secure country. They want BiH to be a modern European state, a full member of the European family. Our country aspires, as soon as possible, to membership of the European Union and the Euro-Atlantic defence structures. Therefore, we are aware that we have to implement reform. This will enable us to turn our aspirations into reality.

Defence will be an important element of those reforms. We must establish effective civilian command by each member of the BiH Presidency of our armed forces if we are to become a credible candidate for NATO's Partnership for Peace Programme (PfP), as early as possible and within 18 months, as we hope to do.

A democratic society must also ensure that there is proper civilian command and control, and parliamentary over-sight over all defence matters.

We must also examine just how much we can afford to spend on our military forces. We know that our priority should be educating our young, providing pensions for our elderly, building a strong infrastructure to improve our economy and other important areas. Consequently, the expenditure has to be within the framework of accepted world standards.

Lastly, we must determine what is the appropriate level of forces in BiH needed to protect the territorial integrity of BiH and what is the appropriate training needed for our forces to participate in international peace-keeping operations.

The reforms outlined in this document shall be in accordance with the Constitution of BiH and will enable us fulfillment of our intention to become a full member in European family of States. They represent a continuation of what has already been achieved, through the adoption of the BiH Defence Policy, adoption of a Decision on organization and functioning of defence institutions at state level, establishment of a new SCMM structure, Military commission, Secretary General and the SCMM Secretariat, reduction and restructuring of armed forces, reduction and transparency of defence budgets, deployment of military observers to UN peace missions and other. This confirms our commitment to implement reform with the aim of achieving viable and modern solutions in defence field.

## **Our Mission**

### **Reforming Defence to ensure Security and Stability in BiH and South Eastern Europe**

We have one overriding objective: to transform the Armed Forces in Bosnia and Herzegovina to become modern, credible, affordable and capable of protecting the sovereignty and territorial integrity of BiH and fulfill their role in accordance with the Constitution of BiH. This will enable BiH to take its rightful place in defence-related activities, by paving the way for its progressive integration into European and Euro-Atlantic structures.

To do this, we first need to reform our security sector, establishing State-level civilian command by each member of the BiH Presidency over our Armed Forces, and ensure parliamentary oversight over all defence matters.

For peace to be lasting and self-sustaining, we need effective civilian command and control, transparent budgets and a defence doctrine that reflects our status in the region and which focuses on the interests of BiH as a whole.

Our Armed Forces must be capable of operating alongside others under international mandates in support of peace and justice. By the deployment of UN observers from BiH a strong signal has already been sent that our soldiers are able to assist in the process of keeping the peace abroad.

Our international commitments include compliance with UN Security Council Resolutions as well as with other international legal and political undertakings, including full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and co-operation with the International Community in preventing international terrorism

By achieving enduring stability, the result will be a strengthening of BiH's credibility abroad. This will strengthen international confidence in the country and the region, with all the positive consequences for the wider reform programme that implies.

## **Our Pledges**

### **Our pledges on defence are:**

***Pledge 1: We will implement defence reforms that will hasten BiH's integration into the European family, and make the country and the wider region more stable in the long term, by:***

- Adopting an overall Security Policy, of which Defence policy is an essential part.
- Establishing clear State-level responsibility and effective parliamentary oversight for defence and security matters.
- Rejecting all paramilitary activity and ensuring that no military activity can pose a threat to the security of BiH, or of the region.
- Fulfilling BiH's international commitments to the UN, OSCE and other international organisations.

***Pledge 2: We will strengthen those State-level institutions which exercise civilian command and control over the Armed Forces in BiH, in accordance with the highest international standards, by:***

- Enabling the each member of the BiH Presidency to carry out its role as the supreme command authority over the Armed Forces in BiH.
- Strengthening the existing Standing Committee on Military Matters (SCMM), so that it can execute the BiH Presidency's decisions on the security and defence of BiH.
- Affirming the role of the Secretary General of the SCMM through his full participation in the work of the Council of Ministers.

- Strengthening the Secretariat of the SCMM so that it can coordinate the activities of the Armed Forces in BiH and provide support to the Secretary General in his tasks.

***Pledge 3: We will provide comprehensive, effective and transparent parliamentary oversight over our State-level defence institutions to guarantee that the Armed Forces are used in the best interests of the country, and of the citizens of BiH, by:***

- Requesting the quick establishment of a properly resourced and authorised Security Policy Committee from the BiH Parliamentary Assembly.
- Adopting a legal framework that will ensure effective Parliamentary oversight of all State-level defence structures.
- Developing financial structures and procedures that ensure full transparency in all defence appropriations and expenditures.
- Enabling the SCMM and its Secretariat to be a body capable of representing BiH internationally with other States and international organizations, in line with BiH foreign and defence policies.

***Pledge 4: We will ensure that BiH has professional, modern and affordable Armed Forces, capable of protecting the sovereignty and territorial integrity of BiH and fulfill their role in accordance with the BiH Constitution, by:***

- Harmonizing the laws and procedures of the Armed Forces in BiH so that they become instruments of a modern state, similar to and compatible with the armed forces of other European states.
- Ensuring that our Armed Forces are resourced, equipped and trained to a level that is appropriate to their key tasks and the security needs of the state. In other words, the capacity and posture of BiH's Armed Forces should reflect their primary purpose – to protect Bosnia and Herzegovina's sovereignty and defend its territorial integrity.

- Restructuring our Armed Forces so that they are affordable. This implies rationalization in order to obtain maximum effectiveness within BiH's limited resources.

***Pledge 5: We will restructure our Armed Forces to enable them to participate in the Partnership for Peace, integrate into wider Euro-Atlantic structures, and engage in peace support operations and other humanitarian tasks around the world, by:***

- Developing a defence doctrine that is compatible with NATO standards, in accordance with the BiH Defence Policy.
- Working with other states, with NATO and with other international organizations, such as the United Nations, to ensure that BiH reaches the standards that are required by the Euro-Atlantic defence structures, in particular NATO's Partnership for Peace Programme (PfP), with the aim of BiH becoming a credible candidate for membership as early as possible and within 18 months.
- Developing a humanitarian aid and disaster relief capability so that our forces can undertake such operations both within and outside BiH, and can participate in international efforts to maintain international peace and security.
- Developing closer regional cooperation through coordinated defence programmes between and among States.
- Providing high-quality training for our forces in military skills, the human rights of military personnel, and the application of international humanitarian law in the military sphere.

## Delivering on Our Pledges

***Pledge 1: We will implement defence reforms that will hasten BiH's integration into the European family, and make the country and the wider region more stable in the long term, by:***

- **Adopting an overall Security Policy, of which Defence policy is an essential part, which will provide political guidance for both the Presidency and the Council of Ministers.**
  - Work with all levels of governance within BiH to implement this policy.
- **Establishing clear State-level responsibility and effective parliamentary oversight for defence and security matters.**
  - Requesting the quick establishment of properly resourced and authorized Security Committee from the BiH Parliamentary Assembly.
  - Establish links with other States to develop parliamentary expertise in defence matters.
- **Rejecting all paramilitary activity and ensuring that no military activity can pose a threat to the security of BiH, or of the region.**
  - Contribute to internal and external confidence building measures throughout the region.
  - Establish training by international standards in military skills and humanitarian law.
- **Fulfilling BiH's international commitments to the UN, OSCE and other international organizations.**
  - Work with the International Community to ensure BiH meets all the standards it has agreed to in various international agreements and treaties.

***Pledge 2: We will strengthen those State-level institutions which exercise civilian command and control over the Armed Forces in BiH, in accordance with the highest international standards, by:***

- Enabling each member of the BiH Presidency to carry out in full its role as the supreme command authority over the Armed Forces in BiH.**
  - Implement fully the Terms of Reference of the Standing Committee on Military Matters (SCMM).
- Strengthening the existing Standing Committee on Military Matters (SCMM), so that it can execute the BiH Presidency’s decisions on the security and defence of BiH.**
  - Make the Secretary General of the SCMM, and his Deputies the single focus and point of contact on defence matters for BiH.
  - Develop the SCMM’s bilateral and collective arrangements to other States and defence organizations such as NATO, the EU and the OSCE.
- Affirming the role of the Secretary General of the SCMM through his full participation in the work of the Council of Ministers.**
  - Request the change of the Rules of Procedures of the CoM in order to provide the status of the Secretary General of the SCMM.
- Strengthening the Secretariat of the SCMM so that it can coordinate the activities of the Armed Forces in BiH and provide support to the Secretary General in his tasks.**
  - Provide funding for the agreed expansion of the SCMM Secretariat.
  - Identify personnel, in order to establish full composition of the Secretariat of SCMM to a functioning organ of the SCMM.
  - Implement fully the agreed SCMM Programme for 2003.

– *Pledge 3: We will provide comprehensive, effective and transparent parliamentary oversight over State-level defence institutions to guarantee that the Armed Forces are used in the best interests of the country, and of the citizens of BiH, by:*

– **Requesting the quick establishment of a properly resourced and authorized Security Policy Committee from the BiH Parliamentary Assembly**

– Request amendments to the Rules of Procedure in the BiH Parliamentary Assembly to establish and empower this committee.

– **Adopting the legal framework that will ensure effective Parliamentary oversight of all State-level defence structures.**

– Work to harmonies existing defence and security laws in BiH.

– **Developing financial structures and procedures that ensure full transparency in all defence appropriations and expenditures.**

– Put in place control systems of all aspects of spending for defence requirements across BiH, capable of providing full transparency of defence contributions and expenditures.

– **Enabling the SCMM and its Secretariat to be a body capable of representing BiH internationally with other States and international organizations, in line with BiH foreign and defence policies.**

– Develop links between the SCMM and its Secretariat and other States and international organizations.

– Ensure that co-operation with International organizations, on defence issues goes through the SCMM and its Secretariat.

*Pledge 4: We will ensure that BiH has professional, modern and affordable Armed Forces, capable of protecting the sovereignty and territorial integrity of BiH and fulfill their role in accordance with the Constitution of BiH, by:*

- **Harmonizing the laws and procedures of the Armed Forces in BiH so that they become instruments of a modern state, similar to and compatible with the armed forces of other European states.**
  - Develop a defence doctrine and procedures so that the Armed Forces in BiH can operate together to serve the interests of BiH.
- **Ensuring that our Armed Forces are resourced, equipped and trained to a level that is appropriate to their key tasks and the security needs of the state. In other words, the capacity and posture of BiH's Armed Forces should reflect their primary purpose – to protect Bosnia and Herzegovina's sovereignty and defend its territorial integrity.**
  - Implement BiH Security Policy, including defence policy.
  - Review the threats to BiH.
  - Strengthen existing confidence building measures in the region to reduce tensions and build trust.
  - Enhance operational efficiency through coordinated training between the Armed Forces in BiH.
- **Restructuring our Armed Forces so that they are affordable. This implies rationalization in order to obtain maximum effectiveness within BiH's limited resources.**
  - Consider the role, necessity and structures for conscription in BiH.
  - Consider the tasks of reserve forces in BiH; their structures, their roles and their equipment requirements.
  - Reduce the surplus of weapons and ammunition stored in BiH.

*Pledge 5: We will restructure our Armed Forces to enable them to participate in the Partnership for Peace, integrate into wider Euro-Atlantic structures, and engage in peace support operations and other humanitarian tasks around the world, by:*

- **Developing a defence doctrine that is compatible with NATO standards in accordance with BiH Defence Policy.**
  - Develop a doctrine for peace support, disaster relief and territorial integrity operations in accordance with NATO standards.
- **Working with other states, with NATO and with other international organizations, such as the United Nations, to ensure that BiH reaches the standards that are required by the Euro-Atlantic defence structures, in particular NATO’s Partnership for Peace Programme (PfP), with the aim of BiH becoming a credible candidate for membership as soon as possible and within 18 months.**
  - Write a comprehensive plan, in concert with the IC, to make the Armed Forces in BiH compatible with other NATO armies.
- **Developing a humanitarian aid and disaster relief capability so that our forces can undertake such operations both within and outside BiH, and can participate in international efforts to maintain international peace and security.**
  - Train and develop the capabilities of the Armed Forces in BiH, to work together, in respect of to humanitarian aid operations.
  - Continue to develop structures and procedures, which will allow the Armed Forces in BiH to take a greater role in international peace support operations.
- **Developing closer regional cooperation through coordinated defence programmes between and among States.**
  - Strengthen regional cooperation, on the basis of existing agreements with other States in the region and international organizations.

- Develop bilateral links to other States on defence matters.
- **Providing high-quality training for our forces in military skills, the human rights of military personnel, and the application of international humanitarian law in the military sphere.**
- Coordinate training programmes through the Secretariat of the SCMM.
- Write and fully implement individual and collective training policies.

## **10.5. Role of the Judiciary and Relationship to the Armed Forces**

The judiciary and military are, together with a functioning public administration, both essential elements of a functioning State.

Within State powers, the military belongs to the executive, distinct from the legislature and judiciary. In pre-democratic political systems, executive powers could be exerted practically uncontrolled by the two other factors. With the development of democracy and the rule of law, however, the roles of the legislature and the judiciary became increasingly stronger. Not only must executive acts be based on the law, but they have also become, as a rule, subject to oversight by the parliaments, i.e. the legislative powers. Furthermore, they have become subject to oversight by an independent judiciary, either within the normal court system, or by special courts.

The role of an independent judiciary and its relationship to the armed forces can therefore be seen as a valid yardstick for the rule of law, similar to the role of parliamentary oversight as a yardstick for democratic control of the armed forces.

### ***The Problem***

A strong and independent judiciary is an indispensable prerequisite for the rule of law and the protection of basic human rights and fundamental freedoms, which are the characteristics of a modern State. It was typical for non-democratic/pre-democratic political systems to establish a judiciary, while at the same time in practice exempting several sectors of public life from the rule of law. The so-called "power sectors" consisting of the police, the military, various intelligence and security services, were generally exempt. Although these institutions were created by laws in the formal sense, these were mostly blanket laws which, in practice, transferred unlimited powers to the "power sectors" to interfere with basic human rights and fundamental freedoms. The laws were thus not made to protect human rights and basic freedoms but to give a cloak of legality for their breach. The end result was to exempt the power sectors from judicial scrutiny.

This is not to ignore the inherent tensions between the respect for basic human rights and fundamental freedoms on the one side and, on the other, the requirements for the security sector in its widest sense, including the military. Actions in the security sector frequently have to interfere with basic rights. The range of interference stretches from taking away property (fines), limiting the freedom of movement (arrest), damaging property and putting other people's lives at risk, if not outright killing them (warfare).

The difference between a system based on the rule of law and an authoritarian system is in how this tension is solved. In an authoritarian system, preference would be given to the security sector, being an indispensable pillar of the system's existence. Thus, acts would, as a rule, be seen by definition as "justified" as soon as a certain institution would undertake them. There would thus be practically no chance to have their legality controlled by an independent judiciary (if it would exist at all in such a system), but the situation may be characterised as "institutional immunity."

On the other hand, a system based on the rule of law would be characterised by achieving a compromise between the requirements of security and the respect for human rights and fundamental freedoms. Although it cannot ignore the necessities of security and the need of interference with human rights and fundamental freedoms, it would establish clear and applicable legal criteria for such cases. They would concern, on the one hand, absolute limits (e.g. the prohibition of torture) and on the other hand strict criteria for the exemptions. It would also give precedence to the protection of human rights over the alleged "necessities".

To guarantee this balance, the legality of all such acts has to become in one way or the other subject to legal scrutiny by an independent judiciary. This scrutiny is two-fold. It includes both individual and institutional acts to determine their legality, as well as judicial review of legislation to ensure its compliance with basic human rights and fundamental freedoms as enshrined in the Constitution.

### ***Application to the situation in Bosnia and Herzegovina***

The current legal situation with regard to defence in Bosnia and Herzegovina has been mainly inherited from the defence laws established within the former Socialist Federal Republic of Yugoslavia (SFRY) and survived practically unchanged in substance in both entities' laws. For example, the laws still refer to the role of "enterprises" for defence. This role has directly derived from the former system of "self-administration socialism," whereby enterprises were at the same time also bearers of political functions<sup>1</sup>. In the same way, the respective laws have perpetuated some "old thinking" when it comes to the kind of "institutional immunity" referred to above. They give practically carte blanche to the military with respect to expropriation and other infringements of human rights without the required clarity in defining the circumstances that would legitimise such acts, etc.

In order to establish a meaningful system of judicial oversight of the armed forces the judiciary must be able to review the institutional acts of the armed forces, as well as the legislation applicable to the armed forces.

### ***Conclusions***

The role of the judiciary with regards to the armed forces must be seen in two different perspectives.

- The first concerns the formal side, i.e. the question of the right of the judiciary, as an institution, to review the legality of actions taken by the military.
- The other one concerns the question of substance. Here, it depends on the quality of the laws concerned that are used as yardstick to measure legality. The main criteria should be clear and legally applicable. Laws have to

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<sup>1</sup> For example, the "Socialist Republic of Bosnia and Herzegovina" had a parliament consisting of an "Assembly" (Skupština) with 320 deputies and three councils – one "socialist labour council" (160 deputies), one "municipalities council" (80 deputies), and one "socio-political council" (80 delegates of party organizations of the "Socialist Federation of the working people of BiH). Delegates for the first council came from "organizations of associated labour", including the "enterprises" as referred to in the defence laws.

regulate matters in a way that the "legality" or "illegality" of an act can be determined with sufficient clarity. "Blanket laws" do not fulfil these criteria.

The question of judicial oversight of the military has to take both perspectives into account. It has to be established in the formal sense, i.e. the military must not be placed outside judicial scrutiny without being at variance with minimum standards of the rule of law. It also requires, however, a well-developed system of laws regulating the military to allow for judicial review. Laws that do not establish clear and applicable criteria, or blanket laws that practically justify every act undertaken by a certain institution, undermine judicial scrutiny. In practice, this makes the armed forces beyond the reach of the law – a notion contrary to the rule of law. It is therefore only logical that undemocratic systems frequently adopted this approach to create what could be called "institutional immunity" in practice.

## 10.6. Crosswalk of Recommendations

DEFENCE REFORM COMMISSION OBJECTIVES			DEFENCE LAWS IN BOSNIA AND HERZEGOVINA		
HR DECISION - 9 MAY 2003	NATO PfP CRITERIA	PROVISIONS WITHIN OSCE CODE OF CONDUCT	BiH DEFENCE LAW	FBiH DEFENCE LAW	RS DEFENCE LAW
Defence structures, and the legislation establishing such structures must be consistent with Euro-Atlantic standards, in order to ensure, at a minimum, the credible candidacy of BiH for entry into PfP Programme		<p>Defence policy and doctrine consistent with international law related to the use of armed forces</p> <p>Respect for Humanitarian Law</p> <p>Politically neutral forces</p> <p>Military capabilities commensurate with legitimate self-defence needs</p>	Articles 5, 6, 15(a), 15(d), 68, 69, 71	Articles 38, 41, 43	Articles 1, 13
	Develop a BiH Security Policy		Articles 14(m), 15, 32(a)		
Democratic civil oversight of armed forces must be established at both State & entity level	State-level democratic parliamentary oversight and control of the Armed Forces of BiH	Democratic control of military, paramilitary, internal security forces, intelligence services and police	Articles 4, 8, 12, 14(l), 16(e), 17, 27, 35 - 39, 41 - 45	Article 21	Article 16
Command and control at the State level must be guaranteed by ensuring that the Presidency of BiH is able to carry out fully its responsibility for protecting the sovereignty and territorial integrity of BiH	State-level command and control of its armed forces, to include a state-level ministry responsible for defence matters	<p>Democratically established command authority</p> <p>Control by authorities vested with democratic legitimacy</p> <p>Elimination of forces not accountable to legally established authorities</p>	Articles 3, 4, 9 - 11, 13 - 16, 21, 22 - 31	Article 22	Articles 1, 5, 8, 19

## 10.6. Crosswalk of Recommendations

<p>The BiH Presidency has full responsibility for representing BiH in international &amp; European organisations &amp; institutions for defence matters</p>			<p>No specific reference to Presidency representing BiH</p> <p>Articles 15(c), 25(c)</p>		
<p>Command and control at the State level must be guaranteed by ensuring that State authorities have the sole authority to deploy internationally the armed forces</p>			<p>Articles 10, 14c, 14d, 16a</p>	<p>Articles 4, 49</p>	<p>Article 9</p>
<p>Command and control at the State level must be guaranteed by providing for the transparency of all defence structures in BiH</p>	<p>Provide full transparency for defence plans &amp; budgets</p>	<p>Restraint in military expenditures and budget transparency</p> <p>Legislative approval of defence expenditures</p> <p>Transparency and public access to information related to the armed forces</p>	<p>Articles 15b, 17, 36, 38, 41- 43, 46, 47</p>	<p>Articles 20, 21, 25, 27</p>	<p>Articles 17(2), 21, 71,</p>
<p>Command and control at the State level must be guaranteed by ensuring that relevant State institutions are able to exercise oversight over defence structures throughout BiH</p>			<p>Articles 8, 14(i), 17, 57 - 62, 66</p>		

### 10.6. Crosswalk of Recommendations

<p>Safeguards are to be instituted to provide for full compliance with the following clauses in Article V.5(a):</p> <p>“Neither Entity shall threaten or use force against the other Entity”</p> <p>“All armed forces in BiH shall operate consistently with the sovereignty &amp; territorial integrity of BiH.”</p>			<p>Article 1, 4, 5, 7a</p>	<p>Articles 2, 39</p>	<p>Article 1</p>
<p>The interoperability of defence structures throughout BiH must be ensured</p>	<p>Develop a Common Doctrine &amp; Common Standards to train &amp; equip its armed forces (this includes need for VFBiH &amp; VRS to train and exercise together)</p>		<p>Article 15a</p>	<p>Articles 4, 20</p>	<p>Articles 21(14), 62</p>
<p>Funding for defence structures throughout BiH must be within the fiscal limits established by political authorities through the democratic process</p>			<p>Articles 15b, 36, 38, 42 – 47</p>	<p>Article 27</p>	<p>Articles 19(8), 72, 74</p>
	<p>Overcome internal divisions, fully support the strengthening of State level institutions, and promote cooperation, reconciliation, and stability in the region</p>		<p>Articles 74 – 77</p>		

### 10.6. Crosswalk of Recommendations

		Human Rights of Service Personnel	To be addressed in subsequent legislation		
		Exemptions from or alternative to military service/Conscientious Objectors	Article 51	Articles 72, 81	Article 29

## **10.7. Description of how the Defence Reform Commission conducted its work**

The Decision of the High Representative of 9 May 2003 established the Defence Reform Commission and defined its mandate and composition.

The Commission composed of twelve members and four observers. The Secretary-General and Deputy Secretary-Generals of the SCMM were members. The President of Republika Srpska and the President of the Federation of Bosnia and Herzegovina each appointed one civilian representative, and both Entity Ministers of Defence were commission members. The High Representative, as European Union Special Representative, designated a member to the Commission from among his staff, and NATO, SFOR and OSCE each appointed a representative. The United States, the Presidency of the European Union, Turkey as representative of the Organisation of Islamic Conference, and the Russian Federation appointed permanent observers to the Commission.

The Commission was tasked to examine the legal measures necessary to reform defence structures in Bosnia and Herzegovina, identify constitutional and legislative provisions at variance with such requirements, and propose legislation and other legal instruments in accordance with a number of core principles.

The Defence Reform Commission opened its proceedings by setting out the goals which it had to achieve, namely meeting the principles stipulated by the High Representative's decision, and creating a defence establishment that would fulfil the criteria for Bosnia and Herzegovina to become a credible candidate for NATO's Partnership for Peace programme. These principles set the base line for the Commission's work. The Commission agreed that it could not make recommendations that would not meet these principles, and recognised that whilst there were standards that had to be met, political considerations would also form an important part of the commission's deliberations.

The Defence Reform Commission's discussions were candid, and the Chairman ensured that all participants were given the opportunity to express fully their views. Decision-making was based on consensus and compromise, recognising that this was the only way to reach an effective agreement, establishing a functioning defence system that can be properly implemented. Throughout its

deliberations, the Commission and its Secretariat consulted widely with senior government officials and experts.

The Defence Reform Commission used a "Concept Paper" as a tool to focus its discussions, which was more accessible than a legal text, for the purpose of discussing ideas and alternatives. The Concept Paper began as an outline, showing the spectrum of proposed reforms, and was elaborated, with detail added, as the work progressed.

The Commission held a week-long meeting at the NATO SHAPE School in Oberammergau, Germany. The purpose of this was to reach final agreement on the issues set out in the Concept Paper. The intention was that once the Concept was agreed, it would form the basis from which the laws and amendments would be drafted.

The Concept set out the framework of the new, single defence establishment in Bosnia and Herzegovina, which stipulated the main competencies of institutions and structures, and defined the operational and administrative chains of command. However, there remained many areas needing further discussion and expansion, and so the Commission agreed to use seven working groups to assist the Commission in answering these questions. Based on the agreed Concept, and the findings of the working groups, the Commission Secretariat compiled a report for consideration and adoption by the Commission.

## 10.8. Description of How the Working Groups Conducted Their Work

The Defence Reform Commission used working groups to assist the Commission by investigating and elaborating issues arising from the Concept Paper. The working groups formed a vital part of the commission's work, providing proposed solutions to the issues they were directed to address. From their conception, it was made clear that the working groups would not decide issues themselves, but would put comprehensive recommendations before the Commission, for its consideration. Each commission member nominated expert members to the working groups, to ensure that their composition reflected that of Defence Reform Commission. It was important that all views would be included in the working group discussions, in order for balanced proposals to be reached, and for specialised experts to be involved in the drafting of the proposals.

The Defence Reform Commission agreed that there would be seven working groups, each covering a particular theme:

List of Working Groups	
Policy	Technical
Legal	Implementation
Parliamentary Oversight	Conscription
Entity	

Each group had two co-chairs, who organised the meetings, set the agendas, and led the discussions. The Commission determined the rules of procedure and guidance for the working groups at Oberammergau. It was decided that the working groups would operate, to the greatest extent possible, on a consensus basis.

The working groups were assigned tasks, and asked to report back to the Commission in three phases. Firstly, they presented an interim written report on their findings. Then, the co-chairs gave oral presentations to the Commission during its July meetings. Finally, based on feedback from the commission members, and the Chairman's guidance, the working groups completed their tasks and presented their final reports to the Commission Secretariat in August. The Secretariat Staff used the final findings of the working groups, along with the Commission's agreed Concept Paper, to compile a report for consideration and adoption by the Commission.

