

Special report by the High Representative to the Secretary General of the United Nations on the implementation of the Peace Agreement in Bosnia and Herzegovina

In my capacity as the final authority regarding the interpretation of the General Framework

Agreement for Peace (GFAP), as mandated by Annex 10 of said Agreement and various UN

Security Council Resolutions, I find Republika Srpska (RS) to be in clear breach of the

General Framework Agreement of Peace, in particular of Annexes 4 and 10. The recent

decisions taken by the RS authorities represent the most serious violation of the GFAP since

it was signed more than 15 years ago.

On 13 April 2011, the Republika Srpska National Assembly (RSNA), upon the proposal of

the Republika Srpska President, held a special session to discuss a document entitled

Information on the Investigation and Prosecution of War Crimes and on the Tracking

Missing Persons, as well as to discuss the role and activities of the High Representative and

the establishment, jurisdiction and practice of state-level judicial institutions in Bosnia and

Herzegovina. This special session culminated in the RSNA adopting five sets of conclusions

(See Annex 1), which directly challenge UN Security Council resolution 1948 (2010) and

previous UN Security Council resolutions on Bosnia and Herzegovina.¹

The RSNA conclusions directly challenge the role of the High Representative and his powers

as envisioned under Annex 10 of the GFAP, as well as all decisions and laws enacted by the

High Representative pursuant to his mandate. They also reject the authority of the

Constitutional Court of Bosnia and Herzegovina, a pillar of the country's constitutional order

as established by Annex 4 of the GFAP. Moreover, the conclusions categorically reject the

current authority and competencies of the state level judicial institutions on the territory of

Republika Srpska and challenge the role of the Parliamentary Assembly of Bosnia and

Herzegovina in adopting legislation related to these institutions. As such, the conclusions

seek to undermine the entire constitutional system of division of responsibilities between the

State and the entities as established by the Constitution of Bosnia and Herzegovina (Annex 4

of GFAP) and as further interpreted by the Constitutional Court of Bosnia and Herzegovina

through previous rulings. As a result, the RSNA conclusions formally disregard and/or reject

the principles established under Annex 10 and Annex 4 of the GFAP.

At the same special session on 13 April, the RSNA also adopted a decision to hold a

referendum within RS on the High Representative's powers and on state judicial institutions.

The referendum question is: *"Do you support the laws imposed by the High Representative of*

the International Community in Bosnia and Herzegovina, especially those pertaining to the

Court of Bosnia and Herzegovina and the Bosnia and Herzegovina Prosecutor's Office, as

well as their unconstitutional verification in the Bosnia and Herzegovina Parliamentary

Assembly?" The decision on holding the referendum entered into force on 27 April 2011 (See

Annex 2). Following the timeline outlined in the decision, the referendum will likely be held

on or shortly after 12 June 2011. *Its results would be binding in nature, legally obliging the*

RSNA to act upon them.

1 Including Resolutions 1247 (1999), 1423 (2002), 1491 (2003), 1551 (2004), 1575 (2004), 1639 (2005), 1722 (2006), 1785 (2007), 1845 (2008) and 1895 (2009).

The relevant authorities in Republika Srpska have begun preparations for the referendum.

The Republika Srpska Government has been assigned to provide funding and technical

support and the RSNA appointed a Referendum Commission on 28 April 2011, which will be

one of the key bodies for the conduct of the referendum and will provide parliamentary

oversight. Reflecting the binding nature of the planned referendum, the Republika Srpska

President has confirmed that he will assign the RSNA to adopt pertinent legislation following

the referendum, which would repeal “all anti-Dayton and unconstitutional decisions and

laws” imposed by the High Representative.

The adopted conclusions and the decision on referendum put into question all laws enacted

by the High Representative – most of which established institutions carrying out

competencies assigned to the state by the Constitution of Bosnia and Herzegovina – claiming

they are in violation of the GFAP and that Republika Srpska has a right to challenge their

legal effect, including via a referendum. This would have a significant and negative impact

on the functionality and sustainability of Bosnia and Herzegovina, since many of the core achievements of the past 15 years in the implementation of the Peace Agreement have been enacted in this way. In line with relevant UN Security Council resolutions, the High Representative has enacted a significant number of decisions and laws which are fundamental for Bosnia and Herzegovina, such as Bosnia and Herzegovina's flag, the national anthem, citizenship and travel documents, the establishment of the state border service, the establishment of a statistics office and key changes to the BiH Council of Ministers, to name but a few. The recent actions by RS threaten all these reforms.

Any referendum that interferes with or challenges aspects of the GFAP represents a fundamental violation of said Agreement. Legally speaking, the status and powers of the High Representative are matters arising under the GFAP and international law, which therefore do not fall within the purview of Republika Srpska. Therefore, Republika Srpska cannot enact legislation on these matters – including a referendum.

Bosnia and Herzegovina's state-level judicial institutions have exclusive competence under

the Constitution of Bosnia and Herzegovina for international and inter-entity criminal law

enforcement. The Court of Bosnia and Herzegovina and Bosnia and Herzegovina's

Prosecutor's Office are institutions created for the State to carry out those competences.

Furthermore, the establishment and jurisdiction of the Court of Bosnia and Herzegovina, as

well as the constitutionality of the *Law on the High Judicial and Prosecutorial Council (also*

challenged in the adopted conclusions) have been confirmed by the Constitutional Court of

Bosnia and Herzegovina in three separate decisions. By determining that these competencies

were unconstitutionally usurped from Republika Srpska, the RSNA has substituted its own

interpretation of the Constitution of Bosnia and Herzegovina for that of the BiH

Constitutional Court, thereby ignoring previous rulings by the BiH Constitutional Court,

which are final and binding.

In addition to Republika Srpska's violations of the Peace Agreement, as represented by the

RSNA conclusions and referendum decision, these decisions must be seen in the broader

context of other developments reported in my regular bi-annual report to the Secretary

General. Specifically, the authorities of Republika Srpska and in particular its President, have continued openly to question the territorial integrity and sovereignty of Bosnia and Herzegovina, repeatedly questioning the sustainability of the country and advocating its dissolution. The authorities of Republika Srpska have also pursued a policy of obstructing, undermining and questioning the authority of other key state-level institutions, such as the Indirect Taxation Authority, the Electricity Transmission Company and the Institute for Missing Persons. The same authorities have also taken unilateral action on state property, which is one of the objectives for closing the Office of the High Representative and they have continued to deny that genocide took place in Srebrenica in 1995, notwithstanding the confirmation of this fact by two international tribunals in numerous rulings.

It is my firm belief that the recent decisions taken by the Republika Srpska authorities represent the most serious violation of the Peace Agreement since it was signed more than 15 years ago. I have fully informed the Steering Board of the Peace Implementation Council of my assessment.