

Speech by Deputy Head of the Rule of Law Pillar Bill Potter at the seminar “Draft Law on the Intelligence and Security Agency”

Organized by the Centre for Security Studies and the Geneva Centre for Democratic Control of Armed Forces

Distinguished Ambassadors,
Ladies and Gentlemen

Let me begin by conveying the apologies of the High Representative, Paddy Ashdown, who is unable to be with us today. On both his and my own behalf, I would like to thank the organizers, the Geneva Institute for Democratic Control of Armed Forces and Sarajevo's own Centre for Security Studies, for inviting me to speak to you. In particular, I should like to express my appreciation to Ambassador Turkovic for her continuing engagement in promoting an understanding of the need for – and the ramifications of – intelligence and security reform.

My purpose today is to provide you with a brief introduction, from the OHR perspective, to the process of intelligence reform and to the draft Law on the Intelligence and Security Agency that has emerged from it.

In late May this year, the High Representative issued a Decision establishing the Expert Commission on Intelligence Reform with the aim of drafting legislation for a single intelligence agency in Bosnia and Herzegovina.

Six representatives of the Entities' security and intelligence services joined Ambassador Kalman Kocis, who was named as the commission's chairman.

The High Representative outlined in his Decision the crucial principles that were to guide the work of the commission. The new state-level agency should:

- have jurisdiction throughout the entire territory of BiH
- gather intelligence to provide security from threats to the wellbeing and constitutional order of BiH
- be apolitical in its orientation and thoroughly professional in its operation
- work under the executive authority of the Council of Ministers
- be subject to effective oversight by a parliamentary committee
- cooperate with other agencies in both BiH and abroad;

and, lastly, but very importantly

- co-operate with the Hague Tribunal (ICTY)

Together, these principles form the basis for a real, effective and democratically accountable state-level Agency. You will see them shining through the draft law.

Ambassador Kocis and his team performed an amazing feat. Benefiting from their collective experience (Kalman Kocis had led Hungary's reform of its intelligence and security sector), they were able to translate these vital principles into practical legislation in just under three months. After putting the result of their labours out to more expert scrutiny, they were able to hand over the finished draft law to the Chairman of the Council of Ministers in September.

That this was possible was a tribute to the seriousness and professionalism with which the representatives of both FOSS and the OBS engaged in the work of the commission.

The draft law has been hailed by many of those who were asked to comment on it as providing a model for a modern European intelligence and security agency. It combines sound operational principles and clear lines of command with extensive democratic oversight by parliament and a rigorous system of internal controls.

In this context it is appropriate that I should also extend my thanks to those representatives of the Centre for Democratic Control of Armed Forces who worked with the commission and contributed so many helpful comments and suggestions.

For those of you who are not yet familiar with the provisions of the draft law, their many advantages will become apparent as this seminar proceeds. As you will learn, the draft law provides the necessary tools for combating the threats that confront us today in Europe, ranging from terrorism (so terribly illustrated by last week's bombings in Istanbul) to organized crime (which erodes the foundations of any state by undermining confidence in the rule of law).

Here, I would like to recall one more aspect of the High Representative's original Decision. This was that Bosnia and Herzegovina's new Intelligence and Security Service should become operational by 1 January 2004.

This date is rapidly approaching, yet the Council of Ministers has still to adopt and put the law into parliamentary procedure. Their dilatory approach is not helping Bosnia and Herzegovina move forward, especially in light of the new challenges that now confront us following last week's publication of the European Commission's Feasibility Study.

That report makes it crystal clear that reform of the intelligence sector is one of those essential conditions that must be fulfilled by next summer if Bosnia and Herzegovina is to earn the right to proceed towards the negotiation of a Stabilisation and Association Agreement with the EU.

If the Agency does not start operating by the beginning of 2004, it will be very difficult to convince the European Commission that the intelligence sector has been truly reformed.

In short, the commission has done its job admirably. Now the politicians need to do their job – and to move the draft law into and through parliamentary procedure as quickly as possible.

This seminar will serve to underline the point. I wish you an enlightening and rewarding time.

Thank you