

Decision Appointing a Supervisor for Intelligence Reform

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”;

Further recalling III.5(a) of the Constitution of Bosnia and Herzegovina, 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”;

Acknowledging the enactment of the Law on the Intelligence and Security Agency of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina 12/04 of 14 April 2004) to provide independent information and analysis regarding threats to the existence or to the constitutional order of Bosnia and Herzegovina, and acts punishable under international law;

Further acknowledging the significant progress made by the Expert Commission on Intelligence Reform drafting regulations, operational plans and other relevant legal instruments necessary for the implementation of the aforementioned legislation;

Noting that Intelligence and Security Agency of Bosnia and Herzegovina, (hereinafter: the Agency), became operational on 1 June 2004, and in particular, the appointment of Director General and Deputy Director General of the Agency, and the formation of the Intelligence Committee of the Parliamentary Assembly of Bosnia and Herzegovina;

Mindful of that ensuring the respect for internationally recognized human rights within Bosnia and Herzegovina during the conduct of Agency operations, including those rights included in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, requires the strengthening of newly established institutional structures within the intelligence-security community, as well as further reforms to ensure the exercise of proper internal direction and control.

Having considered, noted and borne in mind all the matters aforesaid, the High Representative hereby issues the following:

DECISION

Appointing a Supervisor for Intelligence Reform

Article 1

This Decision establishes and defines the scope of authority of the Supervisor for the Intelligence Reform Supervisor (hereinafter "Supervisor").

Article 2

Mr. Kalman Kocsis is hereby appointed as Supervisor for an initial term ending 31 December 2004.

Article 3

The Supervisor shall monitor, advise and assist the BiH authorities in all aspects of the implementation of the Law on the Intelligence and Security Agency by, *inter alia*:

- a) Monitoring and advising on all aspects of the establishment of the Intelligence and Security Agency, including advising the Director-General, Deputy Director-General, and Inspector General to ensure the execution of their duties fall within the Law, except otherwise provided under Article 4 of this Decision;
- b) Monitoring and advising on all aspects of the operation of Security-Intelligence Committee of the Parliamentary Assembly of Bosnia and Herzegovina;
- c) Advising on all related aspects of the role of the Chairman of the Council of Ministers vis-à-vis the Agency and the operation of CoM Executive Intelligence Committee;
- d) Monitoring and advising on all aspects of the operation of the CoM Intelligence Security Advisory Service;
- e) Identifying additional measures necessary to further reform and professionalize the intelligence-security community of BiH, including legislative, administrative or procedural measures necessary to improve cooperation between civilian, military and criminal intelligence structures.

Article 4

The Supervisor shall oversee the operational activities to determine if they are consistent with the law. Such determination will be made on the basis of all reports insofar as said reports do not identify the source or method of collection of the information contained therein.

The Supervisor shall not engage in operational activities nor request specific information concerning operational activities of the Agency that relate to the Agency's cooperation with foreign security and other relevant services pursuant to Article 70 of the Law on the Intelligence and Security Agency.

Should instances arise when there is cause to believe that the Agency's cooperation with foreign security and other relevant services is being carried out illegally or impairs institution-building activities, the Supervisor shall refer the matter to the High Representative for resolution.

The Supervisor shall be bound by an obligation of secrecy with respect to information concerning official, military or state secrets to which he/she have had access in his/her capacity. This obligation shall remain in effect after termination of his/her tenure as Supervisor.

Article 5

The Supervisor shall regularly report to the High Representative on progress implementing the Law on the Intelligence and Security Agency, the progress reforming the intelligence-security community in Bosnia and Herzegovina generally, and on any violations of law in the conduct of Agency operations.

Article 6

The Supervisor shall advise the High Representative and the international community on any additional measures, including

any legal acts, which may be necessary to strengthen the institutional structures of the Agency and to develop a functioning and modern intelligence-security community within Bosnia and Herzegovina.

Article 7

The Director General, Deputy Director General, the Inspector General and employees of the Agency shall cooperate fully with the Supervisor and facilitate the exercise of his mandate.

Notwithstanding paragraphs 1 and 2 of this Article, the Director General and Deputy Director General remain solely responsible for the direction of Agency operations and the Supervisor shall not direct the operations of the Agency.

Notwithstanding paragraphs 1 and 2 of this Article, the Chair of the Council of Ministers and the Executive Intelligence Committee, as provided for by the Law on the Intelligence and Security Agency of Bosnia and Herzegovina, remain solely responsible for the supervision and political oversight of the Agency's work.

Article 8

If the Director General, Deputy Director General, the Inspector General or any employee of the Agency fail to facilitate the work of the Supervisor as required by paragraph 2 of Article 6 of this Decision, or otherwise obstruct the exercise of the Supervisor's mandate, the Supervisor shall report such obstruction to the High Representative with a recommendation as to the appropriate action which maybe exercised by the High Representative or any other appropriate body.

Article 9

At the end of his term of appointment, the Supervisor shall submit a final report assessing the progress of reforms within

the intelligence-security community of Bosnia and Herzegovina to the High Representative, the Chairman of the Council of Ministers, the CoM Executive Committee and the Security-Intelligence Committee of the Parliamentary Assembly of BiH.

Article 10

Upon entry into force of this Decision, the High Representative's Decision Establishing the Expert Commission on Intelligence Reform of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina 16/06) shall cease to have effect.

Article 11

This Decision shall enter into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina.

Sarajevo, 10 June 2004

*Paddy Ashdown
High Representative*