

Decision Establishing the Expert Commission on 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";

Considering the need for independent information and analysis relevant to the security of Bosnia and Herzegovina;

Noting, in particular, the need for establishment of a mechanism for collecting information regarding threats to the existence or to the constitutional order of Bosnia and Herzegovina and acts punishable under international law;

Mindful of the continual need to ensure the highest level of internationally recognized human rights within Bosnia and Herzegovina, including those rights included in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols.

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

DECISION

Establishing the Expert Commission on Intelligence Reform

Article 1

The Expert Commission on Intelligence Reform of Bosnia and Herzegovina (hereinafter "the Commission"), which is hereby established, shall be responsible for drafting and amending such legislation, as may hereafter be required to be enacted by the Parliamentary Assembly of Bosnia and Herzegovina in the fields hereinafter identified. The Commission shall also, as it deems necessary, be responsible for drafting the regulations and operational plans needed for implementation of such legislation.

Article 2

The Commission shall examine the legal measures necessary to reform intelligence structures in Bosnia and Herzegovina, identify existing legislative provisions at variance with such requirements and propose legislation and other legal instruments in accordance with the following:

1) A single intelligence agency for Bosnia and Herzegovina (hereinafter: the Agency) must be established with jurisdiction throughout the territory of Bosnia and Herzegovina and with responsibility for gathering intelligence in order to provide for the security of Bosnia and Herzegovina, including intelligence regarding threats to the existence or to the constitutional order of Bosnia and Herzegovina and acts punishable under international law.

- 2) A Director and a Deputy Director(s) of the Agency, with responsibility for management of the Agency, must be appointed on the basis of demonstrated professionalism and previous experience in the area of intelligence and not on the basis of political affiliation.
- 3) The status of employees of the Agency must be clearly defined, including the method of their appointment, dismissal and promotion.
- 4) Executive oversight of the work of the Agency must be ensured. In this context, the responsibilities of the Council of Ministers must be defined.
- 5) The Agency must be subject to parliamentary oversight. In particular, a Parliamentary Committee must supervise the legality of the work of the Agency and its expenditures.
- 6) A procedure for cooperation by the Agency with similar bodies in other countries, as well as relevant bodies in Bosnia and Herzegovina, must be established.
- 7) The Agency must cooperate with the International Criminal Tribunal for the Former Yugoslavia, *inter alia*, by providing information to the Tribunal concerning persons responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991.
- 8) A mechanism for streamlining and downsizing in the field of intelligence must be established. Eligibility of former Entity intelligence officers for employment in the Agency must be based on an objective performance assessment.
- 9) An efficient system for the classification of intelligence information, as well as a system for protection of such information, must be established.

Article 3

The Commission shall ensure that legislation and other legal instruments drafted in accordance with Articles 1 and 2 of this decision are in line with best European practice in the field of intelligence and include safeguards to protect against abuse. Such safeguards shall include, but not be limited to, the following:

- 1) The Agency must perform its duties in accordance with the Constitution of BiH, including the human rights instruments annexed thereto. In particular, the Agency must refrain from collecting information on individuals solely on the basis of their ethnic and racial origin, religious convictions, sexual behavior, political opinions or membership in lawful movements or organizations.
- 2) The Agency must be apolitical.
- 3) A clear distinction must be drawn between the status and powers of Intelligence Officers in the Agency and law enforcement officers in Bosnia and Herzegovina.
- 4) The use of all forms of surveillance must be regulated by strict procedures in accordance with the principles of legality, proportionality and necessity. The Agency may engage in surveillance in non-public places, surveillance of telecommunications, electronic surveillance and surveillance of documents only in cases where there has been advance approval by a competent judge of the Court of Bosnia and Herzegovina.
- 5) Intelligence relating to natural persons must be:
 - obtained and processed objectively, fairly and lawfully;
 - stored for specified and legitimate purposes and not be used in a way incompatible with those purposes;
 - adequate, accurate, relevant and not excessive in relation to the purposes for which it is stored;
 - preserved in a form which permits identification of the data subjects for no longer than is necessary for the purpose for which those data are stored.
- 6) Individuals who believe their rights to have been violated by acts or omissions of the Agency must be able to seek redress.

7) A mechanism must be established for monitoring compliance by the Agency with its operational policies and relevant legislation as well as for investigating complaints regarding the Agency.

Article 4

The Commission shall produce an operational plan for the establishment of the Agency referred to in Article 2 of this decision. The plan shall be prepared with a view to ensuring that the Agency would be able to begin its work by 1 January 2004.

Article 5

The Commission shall be composed of seven members.

The Acting Director of the Intelligence and Security Service of the Federation and the Director of the Intelligence and Security Service of Republika Srpska shall each appoint three members to the Commission, on the basis of professionalism and experience in the field of intelligence.

The High Representative will confirm the aforesaid appointments to the Commission.

Article 6

A Chairman, appointed by the High Representative as a member of the Commission, 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. No specific quorum shall be required in order to hold a meeting of the Commission.

The Chairman may also call for experts to provide expertise and evidence at meetings of the Commission, as he deems necessary for the fulfillment of the mandate of the Commission as provided for in this Decision.

Article 7

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

Sarajevo, 29 May 2003

*Paddy Ashdown
High Representative*