

Order Suspending the Application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban

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 the 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”;

Recalling Paragraph 4 of Resolution 1174 (1998) of the United Nations Security Council of 15 June 1998, by which the Security Council, under Chapter VII of the United Nations Charter “... reaffirms that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Noting that, under Chapter VII of the United Nations Charter, the United Nations Security Council expressly affirmed the aforementioned Conclusions of the Peace Implementation Council in a series of resolutions, including by way of illustration, Resolutions 1247 (1999), 1423 (2002), 1491 (2003), 1551 (2004), 1575 (2004), 1639 (2005), 1722 (2006), 1785 (2007), 1845 (2008), 1895 (2009) and 1948 (2010);

Recalling that the Peace Implementation Council Steering Board, by its Declaration of 24 September 2004 at the level of Political Directors, called for a lasting solution to the issue of State Property;

Recalling further that a Decision of the Council of Ministers of Bosnia and Herzegovina established, in December 2004, the “Commission for State Property, for the Identification and Distribution of State Property, the Specification of Rights and Obligations of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia-Herzegovina in the Management of State Property” (hereinafter: Commission), comprised of expert representatives from both Entities of Bosnia and Herzegovina, the Brcko District of Bosnia and Herzegovina and institutions of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, Nos. 10/05, 18/05, 69/05 and 70/05);

Considering that the Commission, according to Article 3 of the aforementioned Decision of the Council of Ministers of Bosnia and Herzegovina, is tasked, among other things, with proposing “criteria to be used in order to identify which property is owned by Bosnia and Herzegovina, the Entities and Brcko District” and with “draft[ing] legislation to be adopted, which ensures implementation of identified criteria” aforementioned;

Reaffirming that, in order to protect the interests of Bosnia and Herzegovina and its subdivisions from the potential prejudice posed by further disposals of State Property prior to the enactment of appropriate legislation, the High Representative enacted laws at the level of the State and the Entities, which temporarily prohibit the disposal of State Property, namely the *Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina* (“Official Gazette of Bosnia and Herzegovina”, No. 18/05), *Law on the Temporary Prohibition of Disposal of State Property of the Federation of Bosnia and Herzegovina* (“Official Gazette of the Federation of Bosnia and Herzegovina”, No. 20/05), and the *Law on the Temporary Prohibition of Disposal of State Property of Republika Srpska* (“Official Gazette of Republika Srpska”, No. 32/05), (collectively hereinafter: State Property

Disposal Ban);

Recalling that on 27 February 2008 the Peace Implementation Council Steering Board defined the “Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other Levels of Government” as the first of five objectives that will need to be delivered by the authorities of Bosnia and Herzegovina prior to the Office of the High Representative’s transition, and requested that the “High Representative undertake all appropriate measures to ensure that the above objectives are met”;

Recalling further that the aforementioned State Property Disposal Ban temporarily prohibits ownership transfers “until the entry into force of legislation regulating implementation of criteria to be used for the identification of property owned by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District of BiH, and legislation specifying the rights of ownership and management of State Property, which shall be enacted upon recommendations of the Commission, or until either an acceptable and sustainable resolution of the issue of apportionment of State Property between the State and other levels of government has been endorsed by the Peace Implementation Council Steering Board, or the High Representative decides otherwise”;

Bearing in mind the Communiqués of the Peace Implementation Council of 30 June and 1 December 2010 by which the Steering Board called upon the competent authorities to “engage constructively on an intergovernmental agreement to settle respective ownership rights between the state and other levels of government,” and urged the authorities in BiH to “refrain from taking unilateral actions, and reminded that such actions only have the effect of preventing resolution of the state property objective”;

Considering that, on 14 September 2010, the National Assembly of Republika Srpska adopted the *Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban* (“Official Gazette of Republika Srpska”, No. 135/10), according to Article 3 of which all State Property situated in Republika Srpska and under the Disposal Ban shall be owned by that Entity and recorded as such in the land and other public registers, and thereafter, in accordance with Article 4, the Government of Republika Srpska shall be authorized to manage and dispose of State Property situated in that Entity;

Mindful that, although the *Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina* (“Official Gazette of Bosnia and Herzegovina”, Nos. 18/05 , 29/06, 85/06, 32/07, 41/07, 74/07, 99/07 and 58/08) and the *Law on the Temporary Prohibition of Disposal of State Property of the Federation of Bosnia and Herzegovina* (“Official Gazette of the Federation of Bosnia and Herzegovina”, Nos. 20/05 , 17/06, 62/06, 40/07, 70/07, 94/07 and 41/08) remain in force, the *Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban* effectively supersedes the *Law on the Temporary Prohibition of Disposal of State Property of Republika Srpska* (“Official Gazette of Republika Srpska”, Nos. 32/05 , 32/06, 100/06, 44/07, 86/07, 113/07 and 64/08) and the implementation of the *Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban*, including through the further disposal of State Property, potentially prejudices the ownership interests of Bosnia and Herzegovina;

Considering that, on the basis of contradictory readings of Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina, the Constitution of Bosnia and Herzegovina, the institutions of Bosnia and Herzegovina and Republika Srpska disagree about the respective ownership rights of each government over the assets encompassed by the *Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban*, and as such, legislation enacted by Republika Srpska cannot unilaterally resolve the State Property ownership dispute;

Noting that at least one request for the review of the constitutionality of the *Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban* before the Constitutional Court of Bosnia and Herzegovina has been announced;

Mindful that it should belong to the domestic authorities to solve the State Property ownership dispute, and that the Constitutional Court of Bosnia and Herzegovina should determine *inter alia* whether the Constitutional Court is competent to take a decision in the matter at hand, and if so, whether the *Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban* is consistent with the Constitution of Bosnia and Herzegovina;

Taking into consideration that, until the Constitutional Court reaches a final decision on the matter concerning

the disputed legislation, the preservation of the ownership interests of the State and other levels of government requires the suspension of the application of legal acts by which new rights of ownership may be established on State Property;

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

ORDER

Suspending the Application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban

Article 1

The application of the Law on the Status of State Property Situated on the Territory of the Republika Srpska and Under the Disposal Ban published in the "Official Gazette of Republika Srpska", No. 135/10 is hereby suspended until a final decision of the Constitutional Court of Bosnia and Herzegovina on said Law enters into force.

Article 2

The suspension of the application of the law referred to in Article 1 shall have, *inter alia*, the following effect:

1. The disposal of state property as defined under Article 2 of the Law referred to in Article 1 of this Order which includes direct or indirect transfer of ownership is hereby prohibited until a final decision of the Constitutional Court of Bosnia and Herzegovina on said Law enters into force;
2. Any change of ownership rights over state property as defined under Article 2 of the Law referred to in Article 1 of this Order in relevant registries is hereby prohibited until a final decision of the Constitutional Court of Bosnia and Herzegovina on said Law enters into force;
3. The authorities of Republika Srpska and its officials shall refrain from applying the law referred to in Article 1 of this Order until a final decision of the Constitutional Court of Bosnia and Herzegovina on said Law enters into force;
4. Any decision, act, contract, or other legal instrument purporting to dispose of state property as defined under the law referred to in Article 1 of this Order and contrary to the provisions of this Order shall be deemed null and void *ab initio*;
5. Whoever violates any provision of this Article may be subject to legal sanctions.

Article 3

Nothing in this Order shall be understood as prohibiting disposal of property pursuant to applicable laws regulating privatization or pursuant to Articles 71 to 74 of the Law on Defense of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", No. 88/05).

Article 4

This Order is issued pursuant to the international mandate of the High Representative and is not issued by way of substitution for any domestic authority. It shall have precedence over any inconsistent provisions of any law, regulation or act, existing or future. This Order shall be directly applicable and no further act is required to ensure

its legal effect.

Article 5

This Order shall enter into force forthwith and shall be published on the official website of the Office of the High Representative.

This Order shall be published without delay in the "Official Gazette of Bosnia and Herzegovina".

Sarajevo, 5 January 2011

Dr.Valentin Inzko
High Representative