

Decision Repealing the Conclusions of the Republika Srpska National Assembly No. 01-787/09 and No. 01-788/09 adopted on 14 May 2009

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 “[f]acilitate, 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”;

Bearing in mind that the Republika Srpska National Assembly, at its Session held on 14 May 2009, following consideration of the Republika Srpska Government “Information on the Effects of the Transfer of Constitutional Responsibilities from Republika Srpska to the Institutions of BiH”, adopted the Conclusion No. 01-787/09 adopting the said “Information” as well as additional Conclusions No. 01-788/09 (hereinafter collectively referred to as “the Conclusions”);

Aware that the Conclusions were published in the Official Gazette of Republika Srpska on 15 June 2009 (No. 50/09) and entered into force the day after their publication;

Noting that under the Rules of Procedure of the Republika Srpska National Assembly, the Conclusions, *inter alia*, determine policies for the Republika Srpska authorities and provide instruction as to how to carry out those policies and set out the obligations of the Government, ministries and special organizations in regard to implementation of these policies;

Considering that the Conclusions undermine the exclusive competencies of Bosnia and Herzegovina expressly listed in the Constitution of Bosnia and Herzegovina;

Considering further that the Conclusions disregard decisions of the Constitutional Court of Bosnia and Herzegovina rendered on many of the issues listed as responsibilities “taken over from or transferred by” the Republika Srpska;

Taking note of the fact that the Conclusions indistinctively challenges all laws that were enacted by decisions of the High Representative by stating that they are not based on the Constitution of Bosnia and Herzegovina;

Noting further that the Conclusions instruct and/or demand from certain authorities or representatives of Republika Srpska to take actions to implement the policies contained in said Conclusions;

Concerned by the fact the Conclusions seeks to give the Republika Srpska National Assembly the mechanism to trigger the entity voting procedure provided for in the Constitution of Bosnia and Herzegovina, thereby undermining the functionality of the Parliamentary Assembly of Bosnia and Herzegovina and consequently damaging the ability of Bosnia and Herzegovina to fulfill its EU and NATO Agenda;

Recalling that the Constitution of Bosnia and Herzegovina, and in particular Article III,5 thereto, foresees that responsibilities not belonging to Bosnia and Herzegovina under the Constitution can only be assumed by the institutions of Bosnia and Herzegovina as agreed by the entities, and that the agreement of Republika Srpska has been and shall continue to be sought for the assumption of such responsibilities;

Also aware that the interests of the entities within the institutions of Bosnia and Herzegovina are adequately protected through the representatives elected from the territory of those entities or delegated by the entity institutions;

Mindful of the fact that Article VI, 5 of the Constitution of Bosnia and Herzegovina provides that “[d]ecisions of the Constitutional Court are final and binding,” and that Article III,3,(b) of the Constitution of Bosnia and Herzegovina provides, *inter alia* that “[t]he Entities and any subdivisions thereof are required to comply fully with this Constitution (...), and with the decisions of the institutions of Bosnia and Herzegovina”;

Concluding therefore that that the Conclusions undermine the system of division of responsibilities between the State and the Entities as established under the Constitution of Bosnia and Herzegovina and as further interpreted by the Constitutional Court of Bosnia and Herzegovina in a number of its decisions and therefore formally disregard or challenge the above mentioned provisions of Annex 4 to the General Framework Agreement for Peace and that by so doing calls into question the legal existence of Republika Srpska as provided for under the same Annex 4;

Deploring that the Republika Srpska National Assembly, by seeking to substitute its own interpretation of the Constitution of BiH and Article III thereof to the interpretation made by the Constitutional Court of Bosnia and Herzegovina, undermines the authority of the highest institution upholding the rule of law in Bosnia and Herzegovina;

Emphasizing that the Constitution of Bosnia and Herzegovina is the only source of competencies and that the legitimate constitutional exercise of such responsibilities by the institutions of Bosnia and Herzegovina cannot be limited by other lower levels of government;

Recalling that the PIC Steering Board has in its Communiqué “noted with concern that the attempts to roll back previously agreed reforms and to undermine existing state level institutions have continued. These actions run counter to the GFAP and the long-established efforts of the PIC Steering Board to support state building. The authorities in Bosnia and Herzegovina need to revise their approach without delay and play an active and positive role in ensuring the full and unfettered functioning of all State institutions, including those responsible for upholding the Rule of Law.”

Convinced that bringing the *status quo ante* is necessary in order to re-focus the debate of domestic authorities on the challenges linked to Euro-Atlantic integration;

Having taken into account and considered the totality of all matters aforesaid the High Representative hereby issues the following:

DECISION

Repealing the Conclusions of the Republika Srpska National Assembly

No. 01-787/09 and No. 01-788/09 adopted on 14 May 2009

The Conclusions of the Republika Srpska National Assembly No. 01-787/09 and No. 01-788/09 adopted on 14 May 2009 (“Official Gazette of Republika Srpska” No. 50/09) shall be repealed as of the entry into force of this Decision.

This Decision shall enter into force and shall be published on the website of the Office of the High Representative forthwith. It shall be published in the Official Gazette of Bosnia and Herzegovina and of Republika Srpska without delay.

Sarajevo, 20 June 2009

Dr. Valentin Inzko
High Representative