

SECURITY COUNCIL
November 2, 2022

Congratulations to the new Security Council President and we express our satisfaction with the extension of the mandate of the EUFOR Althea mission.

The occasion for today's address on behalf of Bosnia and Herzegovina, a sovereign and independent state, mostly refers to the past six-month period in the country, with a special emphasis on the recently held General Elections, from October 2, 2022. The previous period was relatively peaceful and largely dedicated to the holding of the General Elections in Bosnia and Herzegovina. We can even say that the election campaign was more peaceful than the previous ones, although there were sporadic occurrences of secessionist and nationalist rhetoric.

Before I offer you an overview of the mentioned six-month period in Bosnia and Herzegovina, allow me to emphasize on this occasion that the state of Bosnia and Herzegovina is one of the signatories of the General Framework Agreement for Peace in Bosnia and Herzegovina, better known as the Dayton Peace Agreement, with the other two neighboring countries with six witnesses, of which 5 countries plus the European Union. It is known that peace agreements are always signed by the participants in the war, so from that point of view of international law, the signing of the Dayton Peace Agreement ended the interstate armed conflict, as determined by the International Criminal Tribunal for the former Yugoslavia from Hague. I state this because, occasionally, in the public space we hear from neighboring countries the claim that they are the guarantors of the Dayton Peace Agreement, which is incorrect and badly intentioned, because the Dayton Agreement does not identify anyone as a guarantor of the agreement. With this incorrect claim that they are guarantors of the Dayton Peace Agreement, the neighboring countries are trying to create a wrong environment in which they have the right to intervene in the political, economic and social system in Bosnia and Herzegovina, which simply put is an attack on the sovereignty of Bosnia and Herzegovina and is one of the most significant factors of destabilization of the entire region.

According to the Dayton Peace Agreement, monitoring the implementation of the military aspect was assigned to NATO and EUROOF as equal legal

successors of the former Stabilization Forces or SFOR, while monitoring the implementation of the civilian aspect is carried out by the Office of the High Representative or OHR with the help of the Peace Implementation Council (PIC). This is very important to point out, because in the previous period we saw a significant violation of these provisions of the Dayton Peace Agreement by neighboring countries, but unfortunately also by the OHR itself.

Due to the fact that today's topic is the six-month Report of the High Representative, I use this opportunity to remind you that his competence is established by Annex 10 of the Dayton Peace Agreement in such a way as to supervise the implementation of the civilian aspect, which, among other things, includes the holding of fair and free elections in Bosnia and Herzegovina.

Guided by this premise, the Office of the High Representative (OHR) in the previous period imposed two decisions concerning the Election Law of Bosnia and Herzegovina, as well as amendments to the constitution of one of the BiH entities.

The first intervention was at the end of July 2022, whereby amending certain paragraphs in the Election Law of Bosnia and Herzegovina, the OHR tried to improve the integrity and transparency of the election process, although it was already known then that the competent authority - the Central Election Commission - in early May in 2022, announced the holding of elections for October 2, 2022. Therefore, the High Representative, knowing that the elections were announced according to existing rules, made the first amendment to those rules, trying, as he claims, to improve the integrity of the election process. However, the body for conducting elections - the Central Election Commission - had only two months to organize that part of the election process according to these new rules but without enough of necessary time. The result was what we have it today. The counting of election results is difficult, a number of irregularities have been identified, and even the appearance of falsified ballots. As a result, it is certainly found that the election rules were changed only two months before the election, which made it impossible for the Central Election Commission to organize everything on time and adequately, and the cause for this is none other than OHR.

The second intervention according to the Election Law of Bosnia and Herzegovina was made on the day of the election, October 2, 2022, after the

voting of the citizens of Bosnia and Herzegovina was done. In that second intervention, the OHR imposed completely new rules for assigning delegates to the upper house of the legislative body of the BiH entity of the Federation of Bosnia and Herzegovina. At the same time, the High Representative made amendments to the constitution of the BiH entity of the Federation of Bosnia and Herzegovina, although this is not part of the civilian aspect of the Dayton Peace Agreement that falls under its jurisdiction from Annex 10. To make all this as clear as possible, I will offer you a few elements in which we can easily comprehend that the High Representative has taken actions contrary to Annex 10 of the Dayton Peace Agreement and the Constitution of Bosnia and Herzegovina, thereby bringing Bosnia and Herzegovina to a state of destabilization and beyond any further possibility of continuing its path towards the European Union and the NATO alliance.

The first disputed element is the following. Bosnia and Herzegovina is determined by its constitution as a democratic country which operates under the rule of law and free and democratic elections. This constitutional principle was violated by the High Representative by imposing changes to the election rules after the elections were over. With this, the High Representative deceived all the voters in Bosnia and Herzegovina, because they would certainly have voted differently if they were familiar with the new election rules. At the same time, the High Representative deceived all the actors of the election, more specifically all the political parties and independent candidates, who would certainly have offered different electoral lists and electoral programs that would be in accordance with these new electoral rules. How can Bosnia and Herzegovina implement its own constitutional principle that it is a democratic country, if the election rules are changed after the elections? It cannot be done at all, and it was the High Representative who made it impossible to do so, who in his work has no right to do anything contrary to the Constitution of Bosnia and Herzegovina. Does one think that Bosnia and Herzegovina and its citizens are not good enough for complete democracy?

I would like to remind you that the Constitution of Bosnia and Herzegovina is not part of the civilian aspect of the Dayton Agreement, which means that it cannot be interpreted by the High Representative, because that is the duty of the Constitutional Court of Bosnia and Herzegovina only.

I am using this opportunity to remind you that in some European countries (Bulgaria, Romania and Greece), through domestic or international courts, there was a judicial invalidation of all changes to the electoral rules immediately before or after the elections, which the judicial authorities saw as a direct attack to democracy. Likewise, in the United States of America, the Supreme Courts invalidated changes to election rules immediately before the election or when those election rules prevented certain ethnic groups defined by skin color from exercising their civil rights. It was in the cases of *Purcell vs. Gonzales* and *Merrill vs. Milligan*. This all means that any change in election rules immediately before or after the election is considered as a direct attack on democracy in any country. The High Representative apparently did not take this into account.

In a similar way, we have the opinion of the Venice Commission, the highest legal authority in Europe, which clearly states that the election rules cannot be changed too often and never one year before the election, for the reason that all citizens and all actors of the election have to be familiar with the new election rules in time. This opinion was not respected by the High Representative either.

The second disputed element is the following. The High Representative imposed such changes to the Election Law of Bosnia and Herzegovina in which the evaluation of living people is carried out through a mathematical formula and their coefficient for participation in the election process is determined in accordance with their ethnicity. This means that you have citizens of Bosnia and Herzegovina who are an ethnic minority in certain parts of the country and who have a coefficient of, for example, 0.5, while citizens of the same ethnicity in the southern part of Bosnia and Herzegovina have a coefficient of 1.5, which gives them greater rights and chances in the electoral process. It is the ultimate form of ethnic discrimination, which is prohibited by United Nations acts such as the UN Convention on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms. I remind you that these international instruments are an integral part of the Constitution of Bosnia and Herzegovina, which have direct application. How can any country value people, living human beings, give them a higher or lower personal coefficient, by which they should have a higher or lower level of human rights? The answer is very simple, there is no country which can do that. It is particularly worrisome that the High Representative completely destroyed the principle of the rule of law, which implies the equality of all before law without exception. In

contrast, he created a system in which citizens, persons, individuals are not equal before the Election Law of Bosnia and Herzegovina. In addition, the High Representative did not respect any single judgment of the European Court of Human Rights in which the existence of systemic discrimination was established, which is a constitutional obligation in Bosnia and Herzegovina.

This is another indicator of violation of the Constitution of Bosnia and Herzegovina and international acts by the High Representative.

As an example, I will offer you the fact that I, as an ethnic Jew from Bosnia and Herzegovina, in this new electoral system imposed by the High Representative, will have no equal rights, opportunities or chances to adequately participate in the electoral process. In Bosnia and Herzegovina, it is obvious that someone is trying to create an environment based on the premise of "Equal but Separate", which is based on racial and ethnic discrimination, and which was rejected decades ago, just as all the elements of apartheid were rejected, which unfortunately through the interventions of the High Representative are trying to impose in Bosnia and Herzegovina's political and social system. This is absolutely unacceptable.

The third disputed element. The High Representative imposed amendments to the Constitution of the BiH entity of the Federation of Bosnia and Herzegovina, which uses two different censuses, one from 1991 and the other one from 2013. His decision shows his exact intention to, in cooperation with the neighboring Republic of Croatia, ensure unlimited participation in government for one political party - HDZ - which is a branch of that political party from neighboring Croatia. According to the 1991 census, there would be 5 ministers from ethnic Croats controlled by the HDZ in the Government of the BiH entity of the Federation of Bosnia and Herzegovina, while according to the 2013 census there would be 3 or two less. Therefore, the High Representative fully consciously kept the ethnic quota from 1991, because it corresponds to wishes of neighboring Croatia. On the other hand, by using the 2013 census to fill the upper house of the legislative body called the House of Peoples, he increased the quotas needed to make decisions in favor of those same HDZ-controlled ethnic Croats. This made Bosnia and Herzegovina the only country in the world that uses one census for the formation of legislative bodies of government, and another one for the formation of executive bodies of government. With this,

the High Representative brought all citizens of Bosnia and Herzegovina into a state of complete legal uncertainty.

In addition, Annex 7 of the Dayton Peace Agreement mandates the return of all displaced persons to their pre-war homes and until that process is completed, the 1991 census must be applied. The reason is very simple. In this way, it will never be possible to legalize the results of ethnic cleansing in Bosnia and Herzegovina in accordance with the judgments of the International Criminal Court from Hague. However, with his decisions, the High Representative informally declared Annex 7 ended and thus formally accepted the results of ethnic cleansing, genocide and other most terrible war crimes. This is not the job of the High Representative and it is very harmful to the Dayton Peace Agreement.

The fourth disputed element refers to the fact that the High Representative planned and did all this in cooperation with the neighboring Republic of Croatia, which the Government of the Republic of Croatia itself publicly announced, probably considering itself a guarantor of the Dayton Agreement, which it certainly is not. With this, the High Representative committed, among other things, a criminal offense prescribed by the Criminal Law of Bosnia and Herzegovina. In addition, the High Representative selectively implemented the judgments of the Constitutional Court of Bosnia and Herzegovina, i.e. he did not implement the only one concerning the suppression of discrimination, namely the one in the "Komšić" case, thereby committing another criminal offense of disobeying the decisions of the Constitutional Court of Bosnia and Herzegovina.

Finally, in my conclusion, I want to share with you a few important observations. The intention of the High Representative to enable fairer elections with his decisions was not realized. On the contrary, it introduced a number of confusing elements and made it difficult to carry out the election process. His second intention, that through interventions into the Constitution of the BiH entity of the Federation of Bosnia and Herzegovina and the Electoral Law of Bosnia and Herzegovina, allegedly we wanted to enable the unblocking of the process of government formation. Simply put, it is not correct, because the unblockings were not removed, and at the same time he introduced a significant asymmetry in the formation authorities in two BiH entities, where both of entities must respect the Constitution of Bosnia and Herzegovina. It is not possible to have two different ways of

government formation in two BiH entities, which are obliged to respect provisions of the Constitution of Bosnia and Herzegovina.

By making changes to the election rules immediately before and after the election, the High Representative violated the Constitution of Bosnia and Herzegovina and a number of international acts incorporated into the legal system of Bosnia and Herzegovina. That is certainly not and cannot be his role. Deceiving the voters by changing the election rules after the elections was held is an act of the High Representative that caused such a destabilization of the situation in Bosnia and Herzegovina, which is manifested by mass protests of citizens in front of the OHR building in Sarajevo, who are dissatisfied and believe that apartheid has been introduced in their country. In addition, an appeal was submitted to the Constitutional Court of Bosnia and Herzegovina, because the High Representative's decisions are clearly unconstitutional. Instead of waiting for the outcome of that court process, the High Representative puts pressure on political actors, and even on judicial instances, to implement his decisions as soon as possible. This is absolutely unacceptable.

For all these reasons, it has become more than obvious that the role of the current High Representative has become destabilizing in favor of one of the neighboring countries, as well as some of his international mentors, but to the detriment of the state of Bosnia and Herzegovina and its citizens. I use this opportunity to emphasize that Bosnia and Herzegovina still supports the institution of the High Representative, in accordance with the mandate from the Dayton Peace Agreement, but that the activity of the current acting High Representative has become a problem that needs to be solved as soon as possible. That is why it is important to say once again that anyone who performs the duties of the High Representative cannot do unconstitutional things or work outside of his authority, which is unfortunately the case now. That is why I hereby invite you to solve this issue together in the coming period.

Thank you for your attention.