



**Permanent Mission of Bosnia and Herzegovina
to the United Nations
in Geneva**

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The Permanent Mission of Bosnia and Herzegovina to the United Nations at Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights, and referring to the letter of the Chairperson of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, dated 9 May 2012, has the honor to transmit response of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations at Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 6 June 2012



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INFORMATION REGARDING THE USE OF MERCENARIES AS A MEANS OF VIOLATING HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION

With regard to the letter of the Chairperson of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, we are writing to provide the following information:

Namely, Bosnia and Herzegovina is a country (according to the Constitution of Bosnia and Herzegovina) of three constituent peoples (Bosniaks, Serbs and Croats) and (under the Law on the Protection of National Minorities) 17 national minorities, which is a fact that as such indicates the diversity of cultural heritage as part of national wealth of this country.

Bosnia and Herzegovina is a complex state, which emerged in the aftermath of disintegration of the Socialist Federal Republic of Yugoslavia (exercising the right of republics to secession and self-determination enshrined in the 1974 Constitution), and which consists of two Entities: the Federation of Bosnia and Herzegovina (having 10 cantons), Republika Srpska and the Brcko District of BiH "sui generis" administrative unit.

With the spring 1992 referendum in Bosnia and Herzegovina, the country was plunged into a tragic armed conflict in the period between 1992 and 1995 that ended by signing the Framework Agreement for Peace in Bosnia and Herzegovina (GFAP or Dayton Peace Agreement).

We remind that Article IV 4 a) of the Constitution of Bosnia and Herzegovina, provides that the Parliamentary Assembly of Bosnia and Herzegovina shall pass laws in order to discharge the obligations of Bosnia and Herzegovina under Article II 1 of the Constitution of Bosnia and Herzegovina - Human Rights and Fundamental Freedoms and Article II 2 - International Standards, in conjunction with Article II 3 - a list of rights which provides that all persons in Bosnia and Herzegovina shall fully enjoy human rights and fundamental freedoms on an equal footing, starting from the fundamental human right to life over the rights of individuals to liberty and security, including prohibition of torture, inhuman treatment and punishment, keeping in captivity or subordination, to the rights to freedom of thought, conscience and religion, including freedom of expression, peaceful assembly and selection of residence.

The European Convention on Human Rights and Fundamental Freedoms (1950) is an integral part of the Constitution of Bosnia and Herzegovina and, as such, is directly applicable in Bosnia and Herzegovina jurisdiction (principle of supremacy in the application) and thereby Article 14 of the Convention which prohibits any form of discrimination is directly applicable in the legal system of BiH and so is Protocol 12 thereto, which contains a general prohibition of discrimination.

Further, other instruments for protection of human rights are based on the principle of prohibition of discrimination (e.g. the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, the Convention on the Prohibition of Torture, and Other Inhuman Treatment or Punishment and above all the International Convention on the Prohibition of All Forms of Discrimination).

The Charter of the United Nations established the concept of equality of all human beings which became the foundation of the spirit of international and European instruments for the protection of human rights and fundamental freedoms.

Multilateral treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) determines that Member States take the necessary, effective measures to end the practice of movements that contribute to the outbreak of racism, racial discrimination, xenophobia and all forms of intolerance, including extreme political parties, movements and groups such as Neo-Nazis and skinhead groups.

The Constitution of Bosnia and Herzegovina ensures the highest level of protection of internationally recognized human rights and fundamental freedoms. Article II of the Constitution of Bosnia and Herzegovina provides that the rights and freedoms enshrined in the European Convention on Human Rights and Fundamental Freedoms and Protocols thereto are directly applied in the legal system of Bosnia and Herzegovina, and they have supremacy over other valid laws and regulations.

2. Article II Paragraph 3 of the Constitution of Bosnia and Herzegovina establishes a list of human rights that includes the following rights guaranteed by the internationally recognized instruments:

- (a) The right to life.
- (b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
- (c) The right not to be held in slavery or servitude or to perform forced or compulsory labor.
- (d) The rights to liberty and security of person.
- (e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
- (f) The right to private and family life, home, and correspondence.
- (g) Freedom of thought, conscience, and religion.
- (h) Freedom of expression.
- (i) Freedom of peaceful assembly and freedom of association with others.
- (j) The right to marry and to found a family.
- (k) The right to property.
- (l) The right to education.
- (m) The right to liberty of movement and residence.

Bosnia and Herzegovina has committed to provide the highest level of protection of economic, social and cultural rights provided for by national legislation and international regulations.

With regard to the issue of human rights and fundamental freedoms, entity constitutions and constitutions of the cantons are consistent with the human rights standards guaranteed by the Constitution of Bosnia and Herzegovina.

The legislative and legal system of Bosnia and Herzegovina does not regulate the matter of private military and security companies, so bearing in mind this fact we do not have any information that can be used when preparing reports for the 25th session of the UN Human Rights Council.

A single unified military was established at the level of Bosnia and Herzegovina in pursuance of the Law on Defense of Bosnia and Herzegovina.

The military forces are officially named the Armed Forces of Bosnia and Herzegovina. These forces were made of three components (three brigades) as follows: the Army of the Republic of Bosnia and Herzegovina, the Croatian Council of Defense and the Army of the Republika Srpska. The Army of the Republic of Bosnia and Herzegovina and the Croatian Defense Council were united in the Federation Army by signing the Washington Treaty and the signing of the Dayton Peace Accords created the foundations for the establishment of the Armed Forces of BiH. The Supreme Commander of the Armed Forces of BiH is the Presidency, then the BiH Ministry of Defense and the Joint General Staff of BiH. The military service in the Armed Forces includes military personnel, civilians and cadets. The military personnel are professional active military personnel and reserve military personnel. The Armed forces have around 10,000 professional military personnel, about 5,000 reserve military personnel and about 1,000 civilian employees.

The Law on Intelligence and Security Agency of BiH was adopted due to the influence exerted by international stakeholders and national efforts to approximate Bosnia and Herzegovina, also in this segment of the establishment, to Euro-Atlantic integration (NATO and EU).

The legislator had in mind the needs of the country for independent intelligence and analysis essential for security of Bosnia and Herzegovina, particularly the need to establish mechanisms for collecting information on acts punishable under international law and threats to the viability or the constitutional order of Bosnia and Herzegovina. Therefore, on 29 May 2003, the High Representative issued the Decision on Establishing the Expert Commission for the Intelligence and Security Service Reform.

The Expert Commission worked hard and professionally so that it could meet the deadline and draft the Law on Intelligence and Security Agency of Bosnia and Herzegovina which was commented and evaluated as one of the most effective pieces of legislation of its kind in Europe by numerous international experts and Bosnia and Herzegovina organizations. This implies, first of all, the protection of interests of citizens of Bosnia and Herzegovina by providing the highest standards of internationally recognized human rights in Bosnia and Herzegovina, including rights under the European Convention on Human Rights and Fundamental Freedoms and its protocols. Pursuant to Article IV 4a) of the Constitution of Bosnia and Herzegovina the Parliamentary Assembly of Bosnia and Herzegovina passed the Law on Intelligence and Security Agency of Bosnia and Herzegovina, which entered into force on the eighth day of its publication in the Official Gazette of Bosnia and Herzegovina No. 12/04.

The State Investigation and Protection Agency (SIPA) was established in 2002 after the passage of the Law on Agency for Information and Protection, which defined this agency as an independent institution of BiH, responsible for collecting and processing the data for the implementation of international criminal law and BiH Criminal Codes, as well as for the

protection of very important persons, diplomatic and consular offices and buildings of institutions of Bosnia and Herzegovina and diplomatic missions. Pursuant to the Law on State Investigation and Protection Agency, in June 2004, the Agency for Information and Protection was transformed into the State Investigation and Protection Agency and was vested with full police powers and became the first police agency with the entire territory of BiH under its jurisdiction. This law defines SIPA as an administrative organization of the Ministry of Security that has operational autonomy, whose responsibilities are prevention, detection and investigation of crimes under jurisdiction of the Court of Bosnia and Herzegovina, the physical and technical protection of protected persons and facilities, protection of vulnerable witnesses and witnesses under threat.

That SIPA has been successfully discharging its tasks is proved by the operations it has carried out to arrest war crimes suspects, investigate crimes of money laundering, organized crime, terrorism, human trafficking and other crimes, as well as by the provision of support and protection to witnesses, the successful performance of protection of persons and facilities and the establishment of a special unit. Given that crime, particularly organized crime, has assumed an international character, the State Investigation and Protection Agency coordinates and cooperates with domestic and international law enforcement agencies with a view to fighting against all types of crime in a more efficient manner and thereby raising the level of global security to an even higher level.

Please note that Bosnia and Herzegovina does not have a separate (*lex specialis*) law on the fight against terrorism. The legislative framework is given in several laws and they are criminal codes and criminal procedure codes both at the state level and at entity level, the law on the application of certain interim measures for effective implementation of the mandate of the International Criminal Tribunal for the Former Yugoslavia and other international restrictive measures and the Law on Anti-Money Laundering and Terrorist Financing Activities.

The Criminal Procedure Code of Bosnia and Herzegovina (as well as entity criminal procedure codes) contains provisions which ensure respect for human rights at all stages of criminal proceedings, regardless of the type of the offense.

In early 2010 the Bosnia and Herzegovina 2010-2013 Strategy for the Prevention and Fight against Terrorism was adopted. This document provides an overview of fulfillment of obligations under the 2006-2009 Strategy and the Strategy itself, among other things, deals with reviewing the need for appropriate legislation.

The most recent amendments to the Criminal Procedure Code provides that police detention may not exceed 72 hours in suspected terrorism cases and police detention may not exceed 24 hours for other criminal offenses.

The Bosnia and Herzegovina Strategy for the Prevention and Fight against Terrorism sets forth, as one of the goals, a media campaign that aims to prevent public incentives to commit terrorist acts, i.e. deterring any support to terrorist activities. It envisages the prevention through community policing by preventing incitements and recruitment of terrorists in susceptible communities.

Ratification and application / implementation of conventions, treaties and charters of the UN and the Council of Europe and the transposition thereof in the legal system of Bosnia and Herzegovina contribute to the fight against terrorism while respecting fundamental human rights and freedoms of man and citizen.

Please note that the European Convention on Human Rights and Fundamental Freedoms is an integral part of the BiH Constitution and it has supremacy over other laws. In accordance with the provisions thereof, which the above-mentioned laws are aligned with in order to protect life and personal security of citizens, a statutory state mechanism (armed forces, SIPA, OSA, the Ministry of Security) has been established to be in charge of security of Bosnia and Herzegovina through the implementation of legislation.