



## **Resolution 1383 (2004)<sup>1</sup>**

### **Honouring of obligations and commitments by Bosnia and Herzegovina**

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1. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002. On its accession, it accepted the obligations incumbent on all member states under Article 3 of the Statute: compliance with the principles of pluralist democracy and the rule of law as well as respect for human rights and fundamental freedoms of all persons placed under its jurisdiction. At the same time, it entered into a number of specific commitments which it agreed to honour within set deadlines and which are listed in [Opinion No. 234 \(2002\)](#) on Bosnia and Herzegovina's application for membership of the Council of Europe.

2. The Parliamentary Assembly welcomes the slow but steady progress towards a functioning pluralist democracy and a state governed by the rule of law and respect for human rights, which has been made by the Bosnian authorities in the first two years of membership of the Council of Europe.

3. For the first time since the end of the war, the October 2002 general elections were administered by the domestic authorities themselves and not by the OSCE. Given the country's unique constitutional framework, they were largely in line with international standards for democratic elections. The Assembly regrets, however, the lack of progress in the review of the electoral legislation which should, in line with Council of Europe principles, end the constitutional discrimination of all those not belonging to one of the three constituent peoples. The Assembly welcomes the recent constitutional changes allowing for direct election of municipal mayors and expects that the local elections scheduled for October 2004 will be free and fair.

4. Bosnia and Herzegovina fulfilled almost all major formal commitments due within a year of accession, in particular the accession to key human rights treaties, the implementation of amendments to the constitutions and the adoption of several laws in the field of justice and education. This must now be followed up with concrete implementation of the adopted legislation and compliance with Council of Europe standards.

5. As regards the commitments due within two years of accession, the Assembly calls for speedy ratification of a number of conventions which were signed on 30 April and 11 May 2004 but have not yet been ratified. It also urges Bosnia and Herzegovina to sign and ratify without further delay the European Charter for Regional or Minority Languages (ETS No. 148).

6. In the past eighteen months there has been a surge in legislative activity which produced new laws in key areas of reform, notably the adoption of a new Criminal Code and a Code of Criminal Procedure. In addition, a new state-level high judicial and prosecutorial council will soon be set up, the process of reappointment of judges and prosecutors is about to be

completed and the court restructuring is under way. In the field of education, state level framework laws on primary, secondary and higher education have been prepared. Major defence reform has been carried out, laws on merging the Entities' intelligence and security agencies and customs administrations have been adopted and the chamber within the State Court responsible for dealing with serious economic crimes, corruption and trafficking has started to operate. Reform of the public broadcasting services is also under way.

7. Although Bosnia and Herzegovina may now have a number of laws that meet European standards, the Assembly is concerned by the undue delay in setting up the implementing bodies, one of the reasons for which is the shortage of domestic professionals capable of administering the reforms.

8. The functioning of state level institutions has improved. The chairmanship of the Council of Ministers no longer rotates and new state level ministries, including the Ministry of Defence in December 2003, have been created. The Assembly stresses that the slow and undoubtedly painful process of transferring competencies from entity to state level to create a modern and functional state will in the long term serve the interests of all citizens of Bosnia and Herzegovina.

9. The last period has also seen an unprecedented attempt at inter-party dialogue and co-operation between the constituent peoples which – although fragile - demonstrates that there is an alternative to perpetual confrontation and obstructionism which has so far dominated Bosnian politics. However, the country's capacity to reform is impeded by the lack of human and other resources at state level and the overstaffing at entity and cantonal level. Furthermore, there is a lack of proper training and merit-based recruitment. Co-operation and co-ordination between the different - and far too numerous - levels of authority are generally too low.

10. The Assembly regrets that, essentially, much of the progress achieved in the last two years has been a result of the constant pressure by the international community, and in particular the High Representative. It recalls that a key objective of Bosnia and Herzegovina's membership of the Council of Europe was to promote domestic ownership and responsibility for reform. The Assembly notes that during the last year the number of laws imposed and the number of domestic officials dismissed by the High Representative has decreased. The Assembly urges the High Representative to continue with this trend and in particular to stop the practice of removing officials, including judges and elected representatives, from office. The Parliamentary Assembly expects the Council of Europe to stand ready to assist Bosnia and Herzegovina in all its efforts to build a peaceful, democratic, viable and sustainable state, but before the responsibilities for running the state are completely transferred to the domestic authorities, the country's leadership will have to demonstrate a higher degree of political maturity.

11. The Assembly stresses that the functioning of the complex political and institutional system set up by the Dayton Agreement requires a higher degree of mutual readiness for dialogue and consensus and, most importantly, a sense of common interest. Although it appears that the time is not yet ripe for changing the existing constitutional set up – widely acknowledged as excessively complicated - the Assembly nevertheless calls on the authorities and the political forces in the country to engage in a constructive dialogue on this issue.

12. The Assembly therefore calls on all political parties in the country to go beyond the sectarian political divides and to put the interests of citizens first. It deeply regrets the obstruction of certain cantons in the federation which, more than a year after the passing of the Framework Law on Primary and Secondary Education, have so far refused to comply with the requirement of at least administrative reunification of schools. The Assembly also deeply regrets the Bosnian Croat parties' opposition to the adoption of a state level legislation on higher education. It also calls on the domestic authorities to actively co-

operate in order to achieve the complete reunification of Mostar, following imposition of its new statute by the High Representative.

13. As regards refugees and internally displaced persons, the Assembly notes with satisfaction that, almost nine years after the war, around 1 million people have returned to their pre-war homes or elsewhere in Bosnia and Herzegovina, and that implementation of property laws reached 93% throughout the country. It calls on the domestic authorities and international donors to pursue their efforts in order to achieve a sustainable return. It hopes that Bosnia and Herzegovina's accession to the Council of Europe Development Bank will further enhance this effort. The Assembly is, however, preoccupied by the fact that there are another 1 million people who have still not returned and now have little chance of doing so.

14. The Assembly regrets that the fate of thousands of people who disappeared during the war is still unknown. It calls on the authorities to do their utmost to alleviate the families' grief and to co-operate fully with the Srebrenica Commission that was set up in December 2003. At the same time, the Assembly welcomes the efforts of the authorities of Bosnia and Herzegovina in their elaboration of a state law on missing persons and encourages the state parliament to adopt this law as soon as possible.

15. The Assembly urges the authorities, especially in the Republika Srpska, to fully co-operate with the International Criminal Tribunal for the former Yugoslavia (ICTY) and to take concrete action to arrest and transfer to The Hague both MM. Karadzic and Mladic, as well as other persons indicted and not yet brought before the ICTY. The support apparently enjoyed by these war criminals in certain parts of the country is an insult to the memory of the victims and a major obstacle to reconciliation.

16. The Assembly also urges the domestic authorities to continue to promote respect for and protection of individual human rights throughout the country, to provide the necessary support and financial resources to state level institutions such as the Constitutional Court and the State Court, to ensure full compliance with all judicial decisions and to speed up the merger of the three existing ombudsman institutions into one single state level institution with branch offices in the Entities and in the Brcko district.

17. The Assembly decides to continue the monitoring procedure until the authorities of Bosnia and Herzegovina have achieved further progress in the compliance with general obligations and specific commitments resulting from Council of Europe membership.

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<sup>1</sup> *Assembly debate* on 23 June 2004 (20th Sitting) (see [Doc. 10200](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Surján and Ms Shakhtakhtinskaya.  
*Text adopted by the Assembly* on 23 June 2004 (20th Sitting).