



**BOSNIA AND HERZEGOVINA**  
Permanent Mission to the United Nations  
New York

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No. 201-22-05-1-72-1/17

The Permanent Mission of Bosnia and Herzegovina to the United Nations presents its compliments to the United Nations Office of Legal Affairs and, in reference to document Ref. LA/COD/50/1 dated 16 January 2017, has the honour to submit herewith comments of Bosnia and Herzegovina, provided by the Ministry Justice of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations avails itself of this opportunity to renew to the United Nations Office of Legal Affairs the assurances of its highest consideration. *[Signature]*



New York, 25<sup>th</sup> May 2017

**Office of Legal Affairs**  
**United Nations**  
**New York**



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Bosnia and Herzegovina  
Ministry of Justice

Number: 06-07-14-1032/17  
Sarajevo, 8 March 2017

**MINISTRY OF FOREIGN AFFAIRS  
BOSNIA AND HERZEGOVINA  
SARAJEVO**

**SUBJECT: General Assembly, UN- Criminal accountability of United Nations officials and experts on mission**

Re your letter number: 07/1-21-05-4-2607-1/17 dated 1 February 2017  
- Information is being sent

The Ministry of Foreign Affairs of Bosnia and Herzegovina sent to the Ministry of Justice of Bosnia and Herzegovina the letter under number and date referenced above, enclosing therewith document of the Office of Legal Affairs of the United Nations LA/COD/50/1 dated 16 January 2017 concerning the General Assembly resolution 70/114 entitled "Criminal accountability of United Nations officials and experts on mission" with a questionnaire annexed thereto, providing guidance to assist countries in providing answers.

The document and the questionnaire of United Nations concerning the implementation of the Resolution adopted by the General Assembly on 14 December 2015 on Criminal accountability of United Nations officials and experts on mission adopted at the 75th plenary meeting UN-a on 14 December 2015 seeks an answer to the question to which extent national provisions establish jurisdiction over crimes committed extraterritorially by nationals while serving as United Nations officials or experts on mission.

Answering the question above, we are underlining the following:

Bosnia and Herzegovina became a member of the United Nations on 22 May 1992 (Resolution 757), which, as a successor of Yugoslavia, became a contracting party to all conventions and agreements ratified by Yugoslavia. BiH participates in the work of the United Nations through permanent missions in New York, Geneva, Vienna, as well as in UNESCO in Paris.

Accordingly, Bosnia and Herzegovina has an obligation to respect decisions of international organizations, which represent one of the sources of international law and obligations, which is confirmed in the Constitution.

We emphasize that Article V, Section 18 a) of the 1946 UN Convention on the Privileges and Immunities provides that UN officials shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. However, section 21 of the same article states that the UN shall cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this article. Section 22 b) of the same article of the Convention states that experts performing missions for the United Nations shall be accorded immunity from legal process in respect of words spoken or written and acts done by them in the course of the performance of their

mission, while section 23 of the same article states that the Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of UN.

Article III / b of the Constitution of Bosnia and Herzegovina provide that the general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities. One of the principles of international law is "Pacta sunt servanda", i.e. the principle of fulfilment in good faith of respective international obligations, including obligations under international treaties to which the country acceded to or entered into. Any breach of any pact would constitute the basis of liability of the State party to the particular treaty, under international law, including a wide range of sanctions which can be imposed on the State party. In the case of Bosnia and Herzegovina, any breach and / or non-fulfilment of international obligations would be at the same time a violation of domestic law, i.e. the Constitution.

Bearing in mind the provisions cited above from the UN Convention (which Bosnia and Herzegovina is a State party to on the basis of succession, the text published in SFRY Official Gazette No. 20/1950), as well as reserves in terms of possible derogations from it in the interest of justice, we emphasize that Bosnia and Herzegovina has no specific legislation that regulates matters of criminal liability of officials and experts, who are citizens of BiH working in UN missions, but the criminal legislation of Bosnia and Herzegovina applies to its nationals as follows:

Territoriality is the basic principle of territorial validity of criminal legislation. According to the territorial principle our criminal legislation applies to anyone who perpetrates criminal offence in our territory regardless of his nationality. So, when it is found that an offense was committed in our territory, the application of our criminal legislation is required, regardless of whether the perpetrator is our citizen, foreigner or a stateless person, if the offense was committed against our or any other state, against our or foreign citizen, against our or any other country or international organization's assets. In Bosnia and Herzegovina, territorial principle is a basic (primary) principle of applying the criminal legislation.

An exception to the application of the territorial principle is provided in international law according so that domestic criminal law cannot be applied to persons enjoying diplomatic immunity. Therefore, this representative rule applies to foreign citizens and represents an exception to the territorial principle, which allows us to waive the right of punishment and transfer it to the State in which the (foreign) offender, who committed the offence in our territory, has permanent residence.

#### The validity of our criminal legislation for crimes committed outside of our territory

Another group of rules of territorial validity of criminal legislation govern the validity of our criminal legislation in cases where crimes were committed abroad, i.e. the legislation cannot be enforced applying the territorial principle. Thus, it is a territory that does not fall under our judicial authorities, which is a territory under judicial authorities of another country or territory that does not belong to any judicial authorities. For the application of our criminal legislation in such cases involving our nationals, the law provides for several principles: the protective principle and personality principle.

Protective principle – in all modern criminal codes the sovereign has adopted the protective principle where the repressive power of the state extends to certain crimes committed outside its territory to threaten its important values or assets. The basis of the application of national legislation in such cases is the significance of the protected assets, i.e. the nature and character of the crime. These are crimes against the state, its constitutional order and safety or other important assets, which are committed outside

of its borders, regardless of whether their perpetrator is a national, foreigner or a stateless person.

Protective principle is the prime principle by its nature, which means that our criminal legislation applies to such cases regardless of whether the aforesaid crimes are provided for in the criminal law of the country of commission, whether they were tried there and to what extent the punishment has been served. So, the principle of double jeopardy, i.e. the principle of *non bis in idem*, is derogated provided that the sentence served or part thereof is credited against the sentence imposed in our country.

Nationality or active personality - while the protective principles covers an extension of the validity of our criminal legislation to anyone outside our borders solely to the person who commits the offenses enumerated in the provisions, the principle of active personality or the national principle, our repressive rule applies only to offenses committed by our nationals abroad, excluding those offenses covered by the protective principle. The requirement for this is that our national is found in our territory or has been extradited. The main reason for justification and adoption of such principle derives from the postulate of equity and interests of each country that its nationals abroad abide by law. No person should be allowed to avoid justice and enjoy impunity just because of the fact that he is our national by harbouring in his country.

Bosnia and Herzegovina signed an Agreement on the status of the North Atlantic Treaty Organization and its personnel in Bosnia and Herzegovina. This Agreement as Appendix B to Annex 1-A is an integral part of the General Framework Agreement for Peace in Bosnia and Herzegovina and paragraph 2 of the Agreement states that provisions of the 13 February 1946 Convention on the Privileges and Immunities of the United Nations, which relate to experts on mission, apply *mutatis mutandis* to NATO personnel involved in the Operation, unless otherwise provided in this agreement.

Thus, this template Agreement on the Status of NATO Forces (abbreviated as the PFP / NATO SOFA) governs the legal status of members of military and civilian forces in NATO countries and states' obligations toward them. The Presidency of Bosnia and Herzegovina ratified this Agreement in 2008 and, for the purpose of its effective implementation and enforcement, in 2012 the Council of Ministers adopted Guidelines on the Application and Implementation of PFP / NATO SOFA in Bosnia and Herzegovina.

Taking into account the specificity of the subject matter and content of the UN letter and the questionnaire, we further note that there are no special military courts, martial law or legislation in Bosnia and Herzegovina.

Taking into account the national criminal legislation of Bosnia and Herzegovina, as well as the listed international obligations, we can conclude that the criminal legislation of our country applies to United Nations officials or experts on mission who are nationals of Bosnia and Herzegovina, within the limits permitted by international treaties which our country has to abide by.

Sincerely yours,

Cc: - addressee  
- file

**MINISTER**

**Josip Grubeš**