



Ref. No. 07-05-11501/07
Sarajevo, September 28th 2007

MINISTRY OF FOREIGN AFFAIRS

SARAJEVO

**Subject: Action Plan to Achieve Universality and Full Implementation
of the Rome Statute of the International Criminal Court**

Reference: Your document No. 07/1-21-05-4-10291/07 dated September 3rd 2007

In reference to your document requesting information about promotion of the ratification and full implementation of the Rome Statute of ICC, within our competence, we would like to inform you as follows:

It is indisputable that B&H has accepted the idea and activities initiated under the auspices of the United Nations with the purpose of establishing the permanent International Criminal Court. Through ratification of the Rome Statute, B&H has expressed a strong political and formally legal support to the Court establishing and starting to work. B&H stands up for integrity, independence and efficient functioning of the Court in accordance with the principles set out in the Preamble of the Rome Statute and its other provisions. B&H is taking necessary steps in adjusting its national legislation in order to create conditions enabling implementation of the Rome Statute as well as to ensure a legal mechanism for synergy between national criminal courts and the International Criminal Court. B&H will also insist on full co-operation of the state parties with the International Criminal Court through respecting the obligations assumed by the Rome Statute as well as on recognition of the basic principles of the Court according to which for individuals, who committed the most severe crimes in relation to the international community, as a whole, there must be a clearly defined legal mechanism of their criminal responsibility.

Within its supporting of further enhancement of the international criminal laws and activities of implementing the Rome Statute, B&H has included enacting of special laws as well as amending the then valid ones, which regulated prosecution of perpetrators of international war crimes and crimes against humanitarian law.

Inter alia, efforts have been made at the state level and within the criminal legislation reform a series of laws have been enacted, out of which the most important ones are the following:

- the Criminal Code and Law on Criminal Proceedings, which entered into force in March 2003;



- the Law on Protection of Threatened and Endangered Witnesses which entered into force in March 2003;
- the Law on Movement and Stay of Aliens and Asylum which entered into force in October 2003.

These laws are new, not only by their name and systematicness, but also by numerous new processing institutions, solutions and modifications of those existing so far. They have been adjusted to serve the needs and requirements of the new age, due to which some of the significant connections with previously valid laws have been cut, primarily by releasing them from ideological heritage and by complying the provisions with international legal standards defined in this legal field by the most important legal acts. In particular, it should be pointed out that the new Law on Criminal Proceedings represents a radical reform in the evolution of the criminal processing legislation in B&H. It is justifiable to say that the Law on Criminal Proceedings of B&H may be compared to modern legislation of the Central and Western European countries and that it may be considered as a modern European criminal processing law with elements of the Anglo-Saxon system, being more advanced than reforms in other countries of the region. We may also say with confidence that the same standards have been incorporated to a great extent into the Law on Criminal Proceedings of B&H as into the Rome Statute of ICC.

New laws on protection of witnesses in a criminal proceeding deserve attention first of all because they regulate a completely new matter within the criminal legislation of B&H. All legal measures of witness protection have been prescribed in a clear manner.

The Court of Bosnia and Herzegovina has been established including the Special Department of War Crimes and the Prosecutor's Office of Bosnia and Herzegovina with the Special Department of War Crimes, which has opened the way for transferring cases from the International Criminal Tribunal for the Former Yugoslavia to local courts. Up to the moment, the Court of Bosnia and Herzegovina has completed successfully a great number of cases within the group of crimes against humanity and values protected by the international law as per the Section XVII of the Criminal Code of B&H.

By implementing the war crime against civilians into the criminal legislation of B&H, the international legal and constitutional requirement has been met. The Criminal Code of B&H has adopted the ordinary systematicness of international crimes, excluding crimes against peace, that is the crime of aggression.

The war crime against civilian population is a crime as per the Article 173 of the Criminal Code of Bosnia and Herzegovina (hereinafter: the B&H CC), which belongs to a group of crimes against humanity and values protected by the international law as per the Section XVII of the B&H CC. The structure of this Section of the Law confirms that this is a heterogeneous group of crimes whose common characteristic is defense of the values protected by the international law (national, ethnic, racial or religious groups; humanity; elementary rights of civilians during war, armed conflict or occupation; cultural, historical and religious monuments; safety of international signs; safety of air and/or marine travel, protection against terrorist attacks, etc.).



By prescribing within national legislation that certain violations of international laws represent a crime means that Bosnia and Herzegovina has met its international obligations based on international conventions, it has ratified, and in some cases it is a direct constitutional requirement. Namely, according to the Annex 1 of the Constitution of B&H, the following conventions have been incorporated into the supplementary Agreement on Human Rights applied in Bosnia and Herzegovina: the Convention on the Prevention and Punishment of the Crime of Genocide (New York, December 9th 1948) and Geneva Conventions I-IV on the Protection of the Victims of War (August 12th 1949) and Geneva Protocols I-II hereto (June 8th 1977). However, it is obvious that the B&H CC has accepted only partially the systematicness of the international crimes defined by the Rome Statute of the ICC.

Pursuant to the provisions of the Article 5 (Crimes within the jurisdiction of the Court) of the ICC Rome Statute, the following four types of crime belong to the Court jurisdiction: the crime of genocide, crimes against humanity, war crimes and the crime of aggression. The ICC Rome Statute is considered, due to manifold reasons, to be the perspective of the international justice and the most important event in history of the international humanitarian law. It remains unclear why has our legislator failed to prescribe also the crime of aggression as the most severe crime, when it is mandatory to be included into this Section of the Law.

As for international co-operation, in addition to the fact that the provisions of the Rome Statute regulate completely the procedure concerning prosecution of the perpetrators of international war crimes and crimes against humanitarian law, B&H is open, at any time, for any form of bilateral co-operation in this segment.

We would like to kindly ask you to inform, by diplomatic means, the Secretariat of the Assembly of State Parties to the Rome Statute of the International Criminal Court.

Sincerely yours,

signed
Bariša Čolak, Minister

(Round stamp of the Ministry)

Hereby I certify that this translation is identical to the original document issued in Bosnian language.



Sanda Šeta, Official Court Interpreter of English

October 16th 2007, File. No. 138-BookIII/07