Supervisory Order Amending the Statute of Brcko District and Enacting the Law on Amendments to the Law on Courts of Brcko District

In accordance with the powers vested in me by Paragraphs 8, 10, 11, 13, 36 and 37 of the Final Award, dated March 5, 1999, of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area ("the Brcko Tribunal");

In accordance also with Paragraph 67 of the Final Award of March 5, 1999 providing in relevant parts that the Brcko Tribunal "will retain jurisdiction over (…) dispute until such time as the Supervisor, with the approval of the High Representative, has notified the Tribunal (…) that such institutions are functioning effectively and apparently permanently";

Recalling that the Statute of the Brcko District of Bosnia and Herzegovina ("the Statute") was enacted by Supervisory Order dated March 8, 2000, establishing the initial organization of Brcko District institutions;

Further recalling that since then, the Statute has been amended by Supervisory Orders dated August 23, 2000; March 26, 2004; July 15, 2005; September 12, 2005; February 2, 2007 and May 6, 2008; and by Brcko District Assembly decision dated July 7, 2005;

Noting that when I enacted amendments to the Statute on May 6, 2008, which introduced measures in order to improve the effectiveness and functionality of the Brcko District Assembly

and to harmonize Brcko District legislation with State legislation, I reserved the right to make further changes to the Statute, should that prove necessary or conducive to the efficiency of Brcko District institutions;

Noting further that on March 25 and 26, 2009, both Houses of the Parliament of Bosnia and Herzegovina adopted Amendment I to the Constitution of Bosnia and Herzegovina ("Amendment I"), providing a constitutional solution for the status of Brcko District and its access to the Constitutional Court of Bosnia and Herzegovina, which was subsequently published in the Official Gazette of Bosnia and Herzegovina, No. 25/09, on March 31, 2009;

In furtherance of the adoption of Amendment I and aiming at accordingly reflecting those constitutional changes in the Brcko District legal framework, it is necessary to amend Brcko District legislation needs to be amended, in particular relevant provisions of the Statute and of the Law on Courts of Brcko District of Bosnia and Herzegovina published in the Official Gazette of Brcko District of Bosnia and Herzegovina, Nos. 19/07 and 20/07, in order to regulate and expedite access of Brcko District institutions to the Constitutional Court of Bosnia and Herzegovina;

Of the opinion that such changes are necessary to be made without delay in order to harmonize Brcko District legislation with the Constitution of Bosnia and Herzegovina and to improve the effectiveness and functionality of the Brcko District Courts as well as to ensure the protection of the interest, status and powers of Brcko District through effective procedure and the maintenance of harmony after Supervision has ended;

Mindful of the need to clearly define the procedure of assessment of compatibility of all legal acts within the Brcko District legal system and therefore to have a Brcko District law regulating this matter as soon as possible prepared by

relevant legal experts of the Brcko District judiciary in close cooperation with my Office;

Having consulted with the President of the Appellate Court of Brcko District and members of the Brcko District Judicial Commission and having received legal expertise as well as broad support and acceptance of the need for making this Order;

Having therefore decided to make the necessary amendments to the Statute and related legislation by way of Supervisory Order, and believing this course to be the most appropriate and needed to create the conditions required for the orderly termination of Supervision and for the effective functioning of Brcko District institutions after Supervision has terminated;

Again reserving the right to make further changes to the Statute should that prove necessary or conducive to the effective functioning of Brcko District institutions;

I therefore hereby order that:

1. The Amendments to the Statute of the Brcko District of Bosnia and Herzegovina hereinafter set out in Annex I to this Supervisory Order are hereby enacted. These Amendments to the Statute take effect on the date of this Supervisory Order.
2. Every institution and every public official of Brcko District shall observe the amended Statute with effect from the date of this Supervisory Order.
3. The Law on Amendments to the Law on Courts of Brcko District of Bosnia and Herzegovina, hereinafter set out in Annex II to this Supervisory Order, is hereby enacted as a Law of Brcko District.
4. The Law on Amendments to the Law on Courts of Brcko District of Bosnia and Herzegovina enacted by virtue of Paragraph 3 of this Supervisory Order shall be published

without delay in the Official Gazette of the Brcko District of Bosnia and Herzegovina, and shall enter into force on the eighth (8th) day after its publication.

5. The Amendments to the Statute and the Law on Amendments to the Law on Courts of Brcko District of Bosnia and Herzegovina enacted by virtue of Paragraphs 1 and 3 of this Supervisory Order may subsequently be amended by the Brcko District Assembly in accordance with the Statute and the Rules of Procedure of the Assembly of Brcko District of Bosnia and Herzegovina.
6. The Brcko District Judicial Commission shall immediately start preparing a draft law regulating the procedure of assessment of compatibility of legal acts in the District, as well as amendments to the Law on Public Attorney Office reflecting the amendment to the Statute, and shall provide my Office with this law for my approval no later than February 15, 20010, whereupon I may consider enacting this law as a law of Brcko District by further Supervisory Order.
7. The Expert Service of the Brcko District Assembly shall immediately start preparing draft amendments to the Rules of Procedure of the Brcko District Assembly reflecting the amendments to the Statute and shall provide my Office with the draft amendments for my approval no later than February 15, 2010, whereupon I may consider enacting these amendments by further Supervisory Order.

Final Provisions

8. This Supervisory Order has immediate effect without further procedural steps. It shall be published without delay in the Official Gazette of the Brcko District of Bosnia and Herzegovina. All public officials in the Brcko District shall take all necessary measures to ensure that it is executed in full and on time.
9. This Supervisory Order is published in English and in

the official languages of Bosnia and Herzegovina. In the event of any inconsistency, the English language version is authoritative for all purposes.

10. For the avoidance of doubt, the provisions of this Order override all inconsistent legislation and legal acts to the extent necessary to give this Order full effect.

11. The Law on Amendments to the Law on Courts of Brcko District of Bosnia and Herzegovina hereby enacted and attached to this Supervisory Order as its Annex II is published in the official languages of Bosnia and Herzegovina, which are authoritative for all purposes.
12. The Amendments to the Statute hereby enacted and attached to this Supervisory Order as its Annex I is published in English and in the official languages of Bosnia and Herzegovina. In the event of any inconsistency:

(a) the English language version is authoritative for all purposes while Supervision continues in Brcko District;

(b) the version in the official languages of Bosnia and Herzegovina is authoritative for all purposes after Supervision has terminated.

Dr. Raffi Gregorian

Supervisor of Brcko District

Principal Deputy High Representative

Annex I to the Supervisory Order Amending the Statute of Brcko District and Enacting the Law on Amendments to the Law on Courts of Brcko District, dated December 21, 2009

Amendments to the Statute of the Brcko District of Bosnia and Herzegovina

Amendments

to the Statute of Brcko District of Bosnia and Herzegovina

Amendment 1

In the Statute of the Brcko District of Bosnia and Herzegovina ("Official Gazette of Brcko District of BiH", No. 17/08), in Article 22, a new item (j) shall be added to read as follows:

"(j) initiate dispute before the Constitutional Court of Bosnia and Herzegovina in accordance with Article VI. 4 of the Constitution of Bosnia and Herzegovina."

The current item (j) becomes item (k).

Amendment 2

After Article 33a, a new Article 33b shall be added to read as follows:

Article 33b

(Referral of a dispute to the Constitutional Court of Bosnia and Herzegovina)

The Assembly shall make a decision concerning referral of a dispute before the Constitutional Court of Bosnia and Herzegovina pursuant to Article VI. 4, Paragraph 3 of the Constitution of Bosnia and Herzegovina."

Amendment 3

Article 40 shall be amended to read as follows:

Article 40

Conformity of legal acts

(1) The District Courts shall have jurisdiction to decide whether any District law, bylaw, or any other legal act of any institution of the District is in conformity with the Statute.

(2) The District Courts shall have jurisdiction to decide whether any District bylaw or any other legal act of any institution of the District is in conformity with any District law.

(3) The District Courts shall have jurisdiction to decide on conflict of competencies between District Courts and other District institutions or between District institutions as per this Statute.

(4) District legislation shall prescribe the procedures before the District Courts regarding complaints of the kinds set out in paragraphs (1), (2) and (3) above of this Article 40."

Amendment 4

In the Article 68, a new Paragraph (4) shall be added to read as follows:

"(4) Notwithstanding Paragraph (1) of this Article, the Public Attorney shall undertake any actions as stipulated in Paragraph (3) when the Mayor, the Speaker or one of their deputies determines that an issue arises which relates to the status and powers of the District. In particular, in proceedings conducted before the Courts, the Public Attorney shall request from any Court, when an issue arises which is subject to the jurisdiction of the Constitutional Court of Bosnia and Herzegovina under Article VI.3.c of the Constitution of Bosnia and Herzegovina and which relates to the status and powers of the Brcko District, to initiate the

proceedings before the Constitutional Court of Bosnia and Herzegovina in accordance with Article VI.3.c of the Constitution of Bosnia and Herzegovina and respective regulations governing the work of the Constitutional Court."

The current Paragraphs (4) and (5) shall become Paragraphs (5) and (6).

Annex II to the Supervisory Order Amending the Statute of Brcko District and Enacting the Law on Amendments to the Law on Courts of Brcko District,

dated December 21, 2009

Law on Amendments to the Law on Courts of Brcko District of Bosnia and Herzegovina

Law on Amendments to the Law on Courts of Brcko District of Bosnia and Herzegovina

Article 1

In the Law on Courts of Brcko District of Bosnia and Herzegovina ("Official Gazette of Brcko District of BiH", Nos. 19/07 and 20/07), Article 6 shall be amended to read as follows:

Article 6

(Conformity of legal acts)

(1) The District Courts shall have jurisdiction to decide whether any District law, bylaw, or any other legal act of any institution of the District is in conformity with the Statute.

(2) The District Courts shall have jurisdiction to decide whether any District bylaw or any other legal act of any

institution of the District is in conformity with any District law.

(3) The District Courts shall have jurisdiction to decide on conflict of competencies between Courts and other District institutions or between District institutions as per the Statute.

(4) The procedure before the District Courts as per Paragraphs (1), (2) and (3) of this Article shall be regulated in a separate Law."

Article 2

In Article 21, item 3), sixth line, word "constitutionality" and comma (,) shall be deleted.

Article 3

Article 23 shall be amended to read as follows:

Article 23

(Law Constitutionality Assessment)

(1) The District Courts may initiate proceedings before the Constitutional Court of Bosnia and Herzegovina in accordance with Article VI.3.c of the Constitution of Bosnia and Herzegovina and respective regulations governing the work of the Constitutional Court of Bosnia and Herzegovina.

(2) In proceedings conducted before the District Courts, when an issue arises which is subject to the jurisdiction of the Constitutional Court of Bosnia and Herzegovina under Article VI.3.c of the Constitution of Bosnia and Herzegovina and which relates to the status and powers of the Brcko District, the Court shall initiate the referral proceedings described in Paragraph 1 of this Article.

(3) In proceedings conducted before the District Courts to

which the District is a party, when an issue arises which is subject to the jurisdiction of the Constitutional Court of Bosnia and Herzegovina under Article VI.3.c of the Constitution of Bosnia and Herzegovina and which relates to the status and powers of the Brcko District, the Court shall immediately initiate the referral proceedings described in Paragraph 1 of this Article upon the request of the District.

(4) If a proceeding is initiated as per Paragraph (2) or (3) of this Article, the District Courts shall request the Constitutional Court of Bosnia and Herzegovina to take interim measures for suspending the application of the disputable law until the Constitutional Court of Bosnia and Herzegovina makes its final decision, if warranted to protect the status and powers of Brcko District.

(5) Nothing in this Article infringes upon the rights of parties to appeal judgments of Brcko District Courts to the Constitutional Court of Bosnia and Herzegovina, in accordance with this Law and with Article VI.3.b of the Constitution of Bosnia and Herzegovina and respective regulations governing the work of the Constitutional Court of Bosnia and Herzegovina."

Article 4

This Law shall take effect eight (8) days after being published in the "Official Gazette of Brcko District of BiH".