Decision Enacting the Law on the Center for the Srebrenica-Potocari Memorial and Cemetery for the Victims of the 1995 Genocide

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall "[F]acilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation";

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including, under sub-paragraph (c) thereof, "measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Noting that the Judgment of the International Court of

Justice, dated 26 February 2007 in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v. Serbia and Montenegro) determined that genocide was committed in Srebrenica;*

Notingthat under Article VII of the General Framework Agreement for Peace in Bosnia and Herzegovina it was recognised "that the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace", and that under Article II: 1 of Annex 4 of the last said Agreement, Bosnia and Herzegovina and both Entities are required to "ensure the highest level of internationally recognised human rights and fundamental freedoms";

Recalling the High Representative's Decision of 25 October 2000 designating in perpetuity the piece of land situated at Potocari in the municipality of Srebrenica as a cemetery and as a solemn place for the erection of a memorial to those who met their deaths in July 1995 at Potocari/Srebrenica;

Recalling and confirmingall the matters set out in the preamble of the said Decision and bearing in mind that the High Representative's said Decision was intended to be the first in a series of Decisions regulating the arrangements necessary to establish the cemetery and memorial;

Noting that, under the said Decision of 25 October 2000, the High Representative was to establish under the applicable local law such foundation or association as might be appropriate in order to administer and provide initial funding for the cemetery and memorial;

Bearing in mind that the Foundation "Srebrenica–Potocari", Memorial and Cemetery was established by the Decision of the High Representative, no. 102/01 of 10 May 2001 and registered in the Register of Foundations of Public Interests by the

decision of the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina no. 01/6 –166-1-MP/02 of 11 December 2002;

Ever conscious of the importance of establishing a cemetery and memorial as a means of bringing reconciliation to the peoples of Bosnia and Herzegovina, which reconciliation will in turn promote the return of displaced persons and refugees and permanent peace;

Respecting the fact that the recognition of the inherent dignity and of the equal and inalienable rights of each and every human being is the foundation of freedom, justice and peace in the world;

Out of respect further for the solemn duty which falls upon the living to ensure the dignity and proper burial of the dead, and respecting the rights of the families of the deceased to bury their dead in accordance with their religious beliefs, a right which flows from Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

Acknowledging with deep regret that a large number of victims killed at Srebrenica/Potocari remains to be recovered and exhumed from places still unknown;

Acknowledging furtherthat it belongs to Bosnia and Herzegovina to ensure that a final resting place and a site for a memorial for those who perished in the aforesaid genocide is found and properly managed;

Conscious further of the necessity of a constant reminder that genocide should never be repeated to any people again in Bosnia and Herzegovina.

Having considered, noted and borne in mind all the matters aforesaid,

I hereby issue the following:

Decision

Enacting the Law on the Center for the Srebrenica-Potocari Memorial and Cemetery for the Victims of the 1995 Genocide

The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 29 thereof on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall be published in the "Official Gazette of Bosnia and Herzegovina " without delay and shall enter into force upon publication.

Sarajevo, 25 June 2007	*Dr. Christian Schwarz-Schilling*
	High Representative

Law

on the Center for the Srebrenica-Potocari Memorial and Cemetery for the Victims of the 1995 Genocide

CHAPTER 1 – GENERAL PROVISIONS

Article 1

(Establishment of the Center)

This Law shall establish the Center for the Srebrenica-Potocari Memorial and Cemetery for the Victims of the 1995

Genocide (hereinafter referred to as: the Memorial Center) the status and structure of which shall be defined by this Law.

Article 2

(Legal successor)

The Memorial Center is the legal successor of the Foundation "Srebrenica–Potocari", Memorial and Cemetery (hereinafter referred to as: the Foundation) established by the Decision of the High Representative, no. 102/01 of 10 May 2001 and registered in the Register of Foundations of Public Interests by the decision of the Ministry of Civil Affairs and Communications of Bosnia and Herzegovina no. 01/6–166-1-MP/02 of 11 December 2002.

Article 3

(Owner of the Property

(1) The Memorial Center shall be the owner of all movable and immovable property, which previously belonged to the Foundation.

(2) The property referred to in paragraph (1) of this Article may not be charged with any mortgage as a security for loans or any other encumbrances.

Article 4

(Registration)

The Memorial Center shall be a legal entity and shall be registered in accordance with the Law on Registration of Legal Entities Established by the Institutions of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", Nos. 33/02 and 37/03).

Article 5

(Seat)

The Seat of the Memorial Center shall be in Srebrenica-Potocari.

Article 6

(Seal)

(1) The Memorial Center shall have its seal of round shape with the following inscription affixed: “Bosnia and Herzegovina” and the name of the Memorial Center. The use of seal shall be regulated by decision of the Governing Board referred to in Article 8 of this Law.

(2) The Governing Board of the Center may, by its decision, adopt symbols of the Memorial Center.

CHAPTER 2 – MANDATE OF THE MEMORIAL CENTER

Article 7

(Mandate and Objectives)

The mandate and objectives of the Memorial Center are:

a) to construct and maintain the Memorial Center;

b) to receive and disburse funds for the Memorial Center;

c) to cooperate with similar centers, foundations, associations worldwide; and

d) to conduct other activities related to the Memorial Center.

CHAPTER 3 – INSTITUTIONAL STRUCTURE

Part A. The Governing Board

Article 8

(Governing Board)

(1) The State of Bosnia and Herzegovina shall manage the Memorial Center through the Governing Board of the Memorial Center.

(2) The Governing Board shall be responsible to the Council of Ministers of Bosnia and Herzegovina.

Article 9

(Appointment of the members of the Governing Board)

(1) The Council of Ministers shall appoint the members of the Governing Board of the Memorial Center for a four-year term.

(2) The Council of Ministers shall determine the method of election of the members of the Governing Board. The Law on Ministerial, Council of Ministers and other Appointments of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", Nos. 7/03 and 37/03) shall not apply to the appointment of the Government Board members.

Article 10

(Conflict of interest)

(1) Article 4, paragraph (1) and Article 11, paragraphs (1) and (2) of the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", Nos. 13/02, 16/02, 14/03 and 12/04) shall not apply to the members of the Governing Board.

(2) The members of the Governing Board shall have no right to any remuneration for their work.

(3) The travel costs, food rations and catering expenditures may be covered for the members of the Governing Board and members of the Advisory Working Group, in accordance with a

decision of the Governing Board.

Article 11

(Composition of the Governing Board)

(1) The Governing Board shall have seven members.

(2) The Governing Board shall be chaired by the Chair of the Governing Board, who shall be elected by majority vote of the Governing Board members.

(3) The Chair of the Governing Board shall represent the Memorial Center in all legal and public relations.

Article 12

(Responsibilities of the Governing Board)

The Governing Board shall:

a) adopt the Statute, as well as other normative acts and by-laws of the Memorial Center;

b) have financial responsibility over the work of the Memorial Center;

c) issue all relevant decisions regarding the work of the Memorial Center;

d) adopt the annual budget of the Memorial Center upon proposal of the Service referred to in Article 18 of this Law;

e) adopt the Memorial Center’s annual activities plan upon proposal of the Service referred to in Article 18 of this Law and ensure its lawful and efficient realization;

f) submit reports on annual active and passive balance sheet of the Memorial Center to the Council of Ministers and the Parliamentary Assembly of Bosnia and Herzegovina;

g) elect the Director of the Service referred to in Article 18

of this Law;

h) perform other tasks as are necessary for the operation of the Memorial Center.

Article 13

(Voting)

(1) The Governing Board shall issue its decisions by majority vote of the total number of its members.

(2) A majority of the members of the Governing Board shall constitute a quorum.

Article 14

(Sessions of Governing Board)

The Governing Board shall perform its tasks in session that are convened as needed, but at least once every month.

Article 15

(Observers)

(1) The Governing Board may invite observers to attend its sessions.

(2) The observers may give their suggestions and make observations, but have no right to vote on the decisions.

Part B. The Advisory Working Group

Article 16

(Advisory Working Group)

(1) The Governing Board shall appoint the Advisory Working Group members by its decision.

(2) The Advisory Working Group shall be composed of up to nine

members and shall include representatives of the associations of families of victims of the genocide committed in Srebrenica in 1995, representatives of the Islamic Community of Bosnia and Herzegovina and representatives of executive authorities of the Srebrenica Municipality.

(3) The Advisory Working Group shall assist the Governing Board in performing its responsibilities under Article 11 of this Law.

(4) The Governing Board shall appoint members of the Advisory Working Group for a term of four years.

Article 17

(Decisions issued by the Advisory Working Group)

Decisions issued by the Advisory Working Group shall not be binding upon the Governing Board.

Part C. The Service

Article 18

(Service)

The Memorial Center shall have its Service, which shall be accountable to the Governing Board.

Article 19

(Responsibilities of the Memorial Center Service)

The Service shall, under the supervision of the Governing Board, have the following responsibilities in relation to the functioning of the Memorial Center:

a) to draft and implement the decisions of the Governing Board;

b) to perform financial, legal, administrative, technical and other organizational duties necessary for the operation of the Memorial Center;

c) to perform other tasks and duties entrusted to it by the Governing Board.

Article 20

(Director of the Service)

(1) The Service shall be managed by a Director appointed by the Governing Board for a term of four years.

(2) The Director of the Service shall be present during the session of the Governing Board, without the right to vote.

Article 21

(Staff)

As of the day of entry into force of this Law, employees who were employed by the Foundation shall become the employees of the Memorial Center and shall be subject to the Labor Law for Institutions of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", Nos. 26/04, 7/05 and 48/05).

CHAPTER 4 – FINANCING

Article 22

(Financing)

(1) The Memorial Center shall have the status of a Budget User in the meaning of Article 2, sub-paragraph b) of the Law on Financing of the Institutions of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", No. 61/04) and shall be registered in the Registry of Budget Users, in accordance with the Instruction on the Contents and Method of

Keeping the Registry of Users of the Budget of the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", No. 28/01).

(2) The Memorial Center shall have its own Budget.

(3) The Budget of the Memorial Center shall be financed from the funds allocated from the "Budget of the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina" and from the funds allocated through donations and contributions by donors.

(4) The funds allocated to the Memorial Center from the "Budget of the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina" shall not be less than the operational costs of the Memorial Center as provided by the Budget of the Memorial Center.

(5) The Memorial Center may receive donations from national and international donors to its operational budget and for special projects outside the operational budget of the Memorial Center.

(6) All donations provided for under paragraph (5) of this Article shall be transferred to a special purpose account with the Central Bank of Bosnia and Herzegovina.

Article 23

(Control of the work of the Memorial Center)

(1) Control over the legality of operation of the Memorial Center shall be exercised by the Institutions of Bosnia and Herzegovina and other competent bodies as well as by independent auditors, at least annually.

(2) The reports on the control performed pursuant to paragraph (1) of this Article shall be presented to both the Council of Ministers and the Parliamentary Assembly of Bosnia and

Herzegovina.

Article 24

(Security)

The Memorial Center and Cemetery shall be considered as facility and properties for which Bosnia and Herzegovina is obligated to provide protection under paragraph (1) of Article 16 of the Law on the State Investigation and Protection Agency ("Official Gazette of Bosnia and Herzegovina", Nos. 27/04, 63/04 and 35/05).

CHAPTER 5 – TRANSITIONAL AND FINAL PROVISIONS

Article 25

(Statute)

A Statute of the Memorial Center regulating the method of operation of the Memorial Center shall be issued by the Governing Board of the Center within 30 days following the day of entry into force of this Law and shall be published in the Official Gazette of Bosnia and Herzegovina.

Article 26

(Bank Accounts Ownership Transfer)

Notwithstanding Article 22 of this Law, funds of the Foundation, which are assigned to burials and headstone and are deposited on accounts held with commercial banks shall, after their transfer to the Center, remain in said accounts until such projects are completed.

Article 27

(Governing Board of the Foundation)

The Governing Board of the Foundation shall act as the

Governing Board of Memorial Center under this Law until such time as the members of the Governing Board of the Memorial Center have been appointed by the Council of Ministers.

Article 28

(Termination of the Foundation)

(1) On the day of entry into force of this Law, the Foundation shall cease to exist and shall be deleted from the Register of Foundations of Public Interest.

(2) On the day of entry into force of this Law, all rights and obligations of the Foundation shall become the rights and obligations of the Memorial Center, and all movable and immovable property that was the ownership of the Foundation shall become the ownership of the Memorial Center.

Article 29

(Entry into force)

This Law shall enter into force on the day of its publication in the “Official Gazette of Bosnia and Herzegovina”.