Decision Limiting the Scope of the Ban from Public Office in the Removal Decisions Issued by the High Representative

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 ("GFAP"), 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 "Facilitate, 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 as well as the smooth running of the common institutions" ("Conclusions");

Noting that, pursuant to the GFAP and the Conclusions, the High Representative has exercised his authority to remove officials from public office, thus far, on one hundred sixty (160) occasions;

Recalling that the Security Council of the United Nations has repeatedly affirmed, through its resolutions adopted pursuant to Chapter VII of the Charter of the United Nations, that the role of High Representative as final authority in theater regarding the implementation of Annex 10 to the GFAP includes the "authority to make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997" (See, for instance, S/ RES/1247(1999), S/ RES/1305(2000), S/ RES/1357(2001), S/ RES/1396(2002) or S/ RES/1491(2003)) ("Resolutions");

Convinced that the exercise of such power has proved and continues to prove essential in preventing obstruction of the implementation of the GFAP;

Mindful, however, that the sanction of removal imposed against public officials pursuant to the powers vested in the High Representative constitutes an extraordinary measure interfering with certain rights of the persons concerned, and that, given its comprehensive nature, such a sanction can only be justified if: (1) deemed a provisional remedy, deployed at a period and for a period during which it advances the legitimate aims specified in the GFAP and the Conclusions; and (2) issued sparingly and judiciously, following due consideration of all relevant facts and factors;

Noting the conclusions of the General Affairs and External Relations Council of the Council of the European Union in which the Council "applauded the progress that Bosnia and Herzegovina has made in the ten years since the end of the war, […] warmly welcomed the fact that the progress made by Bosnia and Herzegovina had now made it possible for the [European] Commission to recommend the opening of negotiations

on a Stabilisation and Association Agreement" and "authorised the Commission to open negotiations at the earliest opportunity";

Persuaded that the launch of negotiations on a Stabilisation and Association Agreement marks a historic threshold which, when crossed, will enable Bosnia and Herzegovina to become fully part of the community of European nations, as well as provide new instruments and mechanisms for overcoming the lingering legacy of the war;

Further noting, in this connection the statement of the Steering Board of the Peace Implementation Council issued in June 2005 in which it expressed its "intention to continue the process of transferring responsibilities to the BiH authorities […]. The end point of this process will be an important milestone in BiH's development – the point at which BiH takes its destiny into its own hands, and moves forward towards integration with the EU";

Recalling that all decisions removing officials from their public position(s) also include a ban on holding public office in the future;

Profoundly convinced that such a broad prohibition was necessary to meet the challenges confronting Bosnia and Herzegovina in its bid to restore peace, build institutions, consolidate national identity, bridge ethnic divides and work towards regional integration, all at an accelerated pace to overcome the retrograde momentum of the country's past, but equally convinced that such prohibition should be imposed sparingly in the future as Bosnia and Herzegovina demonstrates bourgeoning political maturity by, *inter alia*, embarking on negotiations with the European Union;

Welcoming the fact that Bosnia and Herzegovina has made substantial progress in this connection, as evidenced by the launch of the Stabilization and Association negotiations;

Recognizing that, given this progress, the provisional extraordinary measure of banning removed officials from public life requires review and reassessment in order to ensure its continued responsiveness to and compatibility with present circumstances;

Having carried out such a review and assessment and concluded that, subject to certain limitations, the ban imposed on removed officials should be lifted ("Lifting of the Ban");

Having in mind that this should be seen as a further step in the liberalization of past removals, which is consistent with Bosnia and Herzegovina's progressive "normalization" as it enters the European Union processes, could be viewed as a test for Bosnia and Herzegovina's politicians and as such is a process which can be either widened or reversed in the coming period, according to results.

Emphasising, however, that the Lifting of the Ban shall not apply to officials removed for undermining the efforts of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), particularly in the cases of the war crime indictees Radovan Karadzic and Ratko Mladic;

Convinced that this limitation on the Lifting of the Ban is necessitated by the following considerations: (1) unstinting cooperation with ICTY is indispensable to the country's further rehabilitation, reconciliation and integration; (2) Bosnia and Herzegovina's progress in this connection has not been as notable as in other areas; and (3) the reintroduction of such individuals into public life still poses the threat of reversing the limited gains recently made;

Mindful that the General Affairs and External Relations Council of the Council of the European Union, in its conclusions referenced above, echoed this conclusion by underscoring the need for accelerated and robust cooperation with ICTY as a precondition for rapid and satisfactory

conclusion of negotiations on a Stabilization and Association Agreement;

Convinced further that the country's development of its security sector is still sufficiently fragile to warrant the continued exclusion of removed officials from those sensitive areas of government;

Noting, in particular, the need for further crucial reform in this sector and the distinct possibility that such reforms would be at grave risk if entrusted again to the hands of those who have a demonstrated track record of obstructing reforms;

Concluding, therefore, that the scope of the Lifting of the Ban shall not accommodate or countenance professional engagement by removed officials in the security sector;

Considering that the process of liberalization of past removals is a continuing one and that it is yet too soon to allow persons who have been removed to have access to senior management positions in the civil service at all levels of government in BiH;

Ever conscious of the need to balance in due proportion the public good with the rights of individuals and of the need for policy to keep pace with changes in political circumstances;

For the reasons hereinafter set out the High Representative hereby issues the following

DECISION

LIMITING THE SCOPE OF THE BAN FROM PUBLIC OFFICE IN THE

REMOVAL DECISIONS ISSUED BY THE HIGH REPRESENTATIVE

Article 1

(1) Notwithstanding the terms of any Decision issued by the High Representative by which a person is barred from holding public office, any person falling under the scope of any such Decision shall hereby be entitled to apply for and, if appointed, hold a position in civil service bodies at all levels of government in Bosnia and Herzegovina unless provided otherwise by this Decision.

(2) For the purpose of this Decision, the words “civil service bodies” in Paragraph 1 of this Article shall be understood as:

a) The Institutions of Bosnia and Herzegovina referred to in Article 1 of the *Law on Civil Service in the Institutions of Bosnia and Herzegovina* (BiH O.G. no. 12/02, 19/02, 8/03, 4/04, 17/04, 26/04, 37/04, 48/05);

b) The civil service authorities under Article 1 of the *Law on Civil Service in the Federation of Bosnia and Herzegovina* (FBiH O.G. no. 29/03, 23/04, 39/04, 54/04) and bodies referred to in Article 74 of the said Law;

c) The bodies referred to in Article 2 of the *Law on Administrative Service in the Administration of Republika Srpska* (RS O.G. no. 16/02, 62/02, 38/03, 42/04) and the administrative services of units of local self-government referred to in the *Law on Local Self Government* of Republika Srpska (RS O.G. no. 101/04, 42/05);

d) The bodies of Brcko District defined as “administrative bodies” pursuant to Article 2 of the *Law on Civil Servants and Employees* of Brcko District (Brcko District O.G. no. 41/04/ 20/05).

(3) For the purpose of this Decision, the word “position” referred to in Paragraph 1 of this Article shall be understood as covering only positions that can be filled through an open public competition under applicable legislation.

Article 2

At the level of Bosnia and Herzegovina , the entitlement prescribed in Paragraph 1 of Article 1 of this Decision shall not apply to the following positions:

a) Any type of position in the Ministry of Security of Bosnia and Herzegovina, the Ministry of Defense of Bosnia and Herzegovina, the State Investigation and Protection Agency, the State Border Service of Bosnia and Herzegovina, the Office for Cooperation with Interpol, the Intelligence-Security Agency of Bosnia and Herzegovina, the Armed Forces of Bosnia and Herzegovina and any other agency, body or unit responsible for matters related to public security, defense and intelligence;

b) Any managerial civil servant position referred to in item a) of Paragraph 1 of Article 7 of the *Law on Civil Service in the Institutions of Bosnia and Herzegovina* (BiH O.G. no. 12/02, 19/02, 8/03, 4/04, 17/04, 26/04, 37/04, 48/05) as positions of Senior Executive Manager (Secretary), Senior Executive Manager with special assignment (Secretary with special assignment), Assistant Minister, Assistant Director and Chief Inspector.

Article 3

In the Federation of Bosnia and Herzegovina , including the Federation, Cantons, Cities and Municipalities, the entitlement prescribed in Paragraph 1 of Article 1 of this Decision shall not apply to the following positions:

a) Any type of position in a Ministry of Interior in the Federation of Bosnia and Herzegovina, the Ministry of Defense of the Federation of Bosnia and Herzegovina and any other agency, body or unit responsible for matters related to public security;

b) Any managerial civil servant position referred to in

item a) of Paragraph 1 of Article 6 of the *Law on Civil Service in the Federation of Bosnia and Herzegovina* (FBiH O.G. no. 29/03, 23/04, 39/04, 54/04) as positions of Head of independent administration and Head of independent institution, Senior Executive Manager (Secretary) of a civil service authority, Head of Administration and Head of institution within a Ministry, Assistant Head of a civil service authority and Chief Federation or Chief Cantonal inspectors.

Article 4

At the level of Republika Srpska, the entitlement prescribed in Paragraph 1 of Article 1 of this Decision shall not apply to the following positions:

a) Any type of position in the Ministry of Interior of Republika Srpska, the Ministry of Defense of Republika Srpska and any other agency, body or unit responsible for matters related to public security;

b) Any civil servant position referred to in Paragraph 1 of Article 32 of the *Law on Administrative Service in the Administration of Republika Srpska* (RS O.G. no. 16/02, 62/02, 38/03, 42/04) as Assistant Minister, Senior Executive Manager (Secretary) of the Ministry, Head of Administrative Organization, Deputy and Assistant Head of Administrative Organization as well as Inspectors who are managing the work of inspectorates or managing affairs related to inspection of enforcement of laws and other regulations of Republika Srpska;

c) Any position at the level of local self-government in Republika Srpska referred to in the *Law on Local Self Government* of Republika Srpska (RS O.G. no. 101/04, 42/05) as Secretary of the Assembly of Local Self Government Unit, Head of Department and Section Manager.

Article 5

At the level of Brcko District, the entitlement prescribed in Paragraph 1 of Article 1 of this Decision does not apply to the following positions:

a) Any type of position in the Brcko District Police Service and any other agency, body or unit responsible for matters related to public security;

b) Any managerial civil service position in the Brcko District including:

i) positions referred to in item 1) of Paragraph 1 of Article 8 of the *Law on Civil Servants and Employees* of Brcko District (Brcko District O.G. no. 41/04, 20/05) as managerial civil servants of I-IV category;

ii) positions of Head of District Revenue Agency, Head of Tax Administration and Head of any other administrative unit or department.

Article 6

The entitlement prescribed in Paragraph 1 of Article 1 of this Decision shall not apply to the position or positions from which a person was removed by Decision of the High Representative.

Article 7

This Decision does not apply in any manner or form, either directly or indirectly, to any person who is the subject of a Decision issued by the High Representative by which he/she is barred from holding public office for reasons directly or indirectly related to non-compliance with the International Criminal Tribunal for the Former Yugoslavia.

Article 8

When applying for a position in a civil service body to which a person is entitled to under the terms of this Decision,

he/she shall inform in writing the appointing and selecting authority of the fact that he/she was the subject of a Decision of the High Representative barring him/her from public office and other office covered by said Decision, and forward a copy of such Decision to the said authority and/or authorities.

Article 9

For the avoidance of doubt, this Decision does not apply in any manner or form to:

a) Any directly or indirectly elected position within a legislature at any level of government in BiH;

b) Any executive position at any level of government including the members of the Presidency, the Presidents, the Vice-Presidents, the Chair of Council of Ministers, the Prime Ministers, the Ministers, the Deputy Ministers, the Mayors and Deputy Mayors and members of government of Brcko District; or

c) Any advisor attached to any of the positions referred to in items a) or b) of this Paragraph insofar as these positions are not filled through an open public competition.

Article 10

For the avoidance of doubt, no degree of retroactivity is intended. This Decision only enables the concerned persons to apply for and, if appointed, hold public positions falling within the scope of this Decision as of the date hereof. No entitlement to positions occupied in the past in contravention of any removal Decision and the accompanying ban is intended either expressly or impliedly under this Decision.

Article 11

This Decision shall enter into force forthwith and shall be published, without delay, in the Official Gazette of Bosnia

and Herzegovina , the Federation of Bosnia and Herzegovina , Republika Srpska and the District of Brcko.

Sarajevo, 28 November 2005

Paddy Ashdown
High Representative