Decision Enacting the Law on Immunity of Bosnia and Herzegovina

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 "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";

Recalling further paragraph 12.1 of the Declaration of the Peace Implementation Council which met in Madrid on 15 and 16 December 1998, which made clear that the said Council considered that the establishment of the rule of law, in which all citizens had confidence, was a prerequisite for a lasting

peace, and for a self-sustaining economy capable of attracting and retaining international and domestic investors;

Bearing in mind that accountability to the public of officials and persons holding elective office is one of the cornerstones of a functioning democracy but also noting that a proper functioning democracy also requires that such persons should enjoy such immunities under civil and criminal law as are appropriate for the proper carrying out of their functions and duties;

Consciousof the need to protect the integrity of the legislative and executive institutions of Bosnia and Herzegovina, by laying down the procedure by which delegates and members of the Parliamentary Assembly of Bosnia and Herzegovina may invoke immunity from criminal and civil liability, and members of the Presidency of Bosnia and Herzegovina as well as members of the Council of Ministers of Bosnia and Herzegovina may invoke immunity from civil liability.

Bearing in mind the totality of the matters aforesaid the High Representative hereby issues with immediate effect the following

DECISION

Enacting the Law on Immunity of Bosnia and Herzegovina,

. The Law which follows and which forms an integral part of this Decision shall come into effect as provided for in Article 9 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.

Sarajevo, 6 October 2002

Paddy Ashdown

High Representative

THE LAW ON IMMUNITY OF BOSNIA AND HERZEGOVINA

Article 1.

(Purpose of Law)

This Law is passed in order to protect the integrity of the legislative and executive institutions of Bosnia and Herzegovina, by laying down the procedure by which delegates and members of the Parliamentary Assembly of Bosnia and Herzegovina may invoke immunity from criminal and civil liability, and members of the Presidency of Bosnia and Herzegovina as well as members of the Council of Ministers of Bosnia and Herzegovina may invoke immunity from civil liability.

Article 2.

(Scope and Application of Law)

This Law shall identify those persons entitled to invoke immunity as a defense in criminal or civil proceedings and provide specific rules of criminal and civil procedure which shall be mandatory for Prosecutor's Offices, courts, and other participants in criminal and civil proceedings as specified in this Law. Nothing contained in this Law shall however impinge in any way on the procedures or jurisdiction of the Constitutional Court of Bosnia and Herzegovina as provided for in Article VI of the Constitution of Bosnia and Herzegovina.

Article 3.

(Persons entitled to immunity (non-liability))

Delegates to the House of Peoples and Members of the House of Representatives shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly of Bosnia and Herzegovina.

Members of the Presidency of Bosnia and Herzegovina and members of the Council of Ministers of Bosnia and Herzegovina shall not be held civilly liable for any acts carried out within the scope of their duties in the Presidency or Council of Ministers, respectively.

Article 4.

(Duration and Definition of Immunity)

The immunity granted to the individuals listed in Article 3. of this Law may be invoked at any time for acts carried out within the scope of their duties in the said institutions, but may not be treated as a general bar preventing criminal prosecution or the institution of civil proceedings.

For the purpose of this Law, the phrase “acts carried out within the scope of their duties” shall refer to acts arising out of an individual’s duties in the Parliamentary Assembly, Presidency, or the Council of Ministers of Bosnia and Herzegovina, as respectively applicable and as defined in the Constitution of Bosnia and Herzegovina.

Article 5.

(Generally Applicable Law)

Except as otherwise provided in this Law, criminal and civil proceedings in relation to individuals listed in Article 3. of this Law as aforesaid shall be conducted in accordance with normally applicable criminal and civil procedure codes.

Article 6.

(Procedure in Criminal Proceedings)

If, in the course of criminal proceedings, an individual listed in paragraph 1. of Article 3. of this Law claims that the act which is the basis for the criminal proceedings was carried out within the scope of his or her duties as defined in Article 4. hereof, this issue shall be heard and decided by a judgment *(judgement shall be translated as a decision/odluka)* of a competent court. Model procedural rules governing the hearing of such issues, including the identification of the competent court for the hearing of the same, shall be drawn up by the competent ministry.

Such judgment shall be final and binding, subject to appeal to the Constitutional Court of Bosnia and Herzegovina.

Article 7.

(Procedure in civil proceedings)

If, in the course of civil proceedings brought against an individual listed in Article 3. of this Law, an individual claims that the act which is the basis for the civil proceedings was carried out within the scope of his or her duties as defined in Article 4. hereof, this issue shall be heard and decided by a judgment (*a judgment shall be translated as a decision/odluka*) of the competent court. Model procedural rules governing the hearing of such issues including the identification of the competent court for the hearing of the same shall be drawn up by the competent ministry.

Such judgment shall be final and binding, subject to appeal to the Constitutional Court of Bosnia and Herzegovina.

Article 8.

(Repeal)

As of the date of entry into force of this Law, the Law on Immunity of Bosnia and Herzegovina (BiH O.G. 1/97, 3/99) shall

be repealed and previous procedural bars to prosecution of or civil proceedings against those otherwise entitled to immunity are hereby repealed. Such repeal shall be without prejudice to substantive defenses in criminal and civil proceedings previously provided for by law.

Article 9.

(Entry into force and publication)

This Law shall come into effect forthwith and shall be published without delay in the “Official Gazette of Bosnia and Herzegovina”, and in the Official Gazettes of the Federation of Bosnia and Herzegovina, Republika Srpska and the District of Br~ko of Bosnia and Herzegovina.